



IN THE HIGH COURT OF SOUTH AFRICA

(MPUMALANGA DIVISION, MBOMBELA MAIN SEAT)

CASE NUMBER: 2930/2022

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|-----|---------------------------------|
| (1) | REPORTABLE:NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES |

SIGNATURE

4/09/2026

DATE

In the matter between:

KHOSA GOODMAN OBERT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. It is further uploaded onto CaseLines by the Judge's Secretary. The date of this order is deemed to be 4 September 2026

JUDGMENT

GUMEDE AJ

1. This is an action for damages instituted by Mr Khosa Goodman Obert (“the plaintiff”), against the Road Accident Fund (“the Fund” or “the defendant”), arising out of a motor vehicle collision in which the plaintiff was involved as the driver of a motor vehicle.
2. The parties agreed to separate the issues of liability and quantum in terms of Uniform Rule 33(4) and this judgment concerns only the issue of liability. The central question for this court is whether the plaintiff has discharged the onus of proving, on a balance of probabilities, that the collision was caused by the negligence of the insured driver, Mr. Makwakwa Andy Nkululeko, or whether the Plaintiff was the sole cause of the accident.
3. Only the plaintiff himself testified. The defendant did not call any witnesses.

THE PLAINTIFF'S CASE

4. The plaintiff's case is that on the day of the collision he had been assisting with a ritual ceremony at his family home and was sent by his elders to purchase items at a nearby shopping centre. He testified that he was familiar with the road, having used it daily to travel to and from work, and that the weather was clear and bright and sunny.
5. He says that he was driving along Khumbula Road when he observed a tractor, driven by the insured driver at an intersection. The plaintiff contends that the insured driver unlawfully entered the road without indicating and improperly parked his vehicle in the middle of the road, partially obstructing the lane of travel. The plaintiff testified that he attempted to avoid a collision by swerving to the right but was prevented from doing so by oncoming traffic. He collided with the tractor and sustained a head injury. He argues that the insured driver's negligence was the sole cause of the accident.
6. In his police statement, the plaintiff recorded that he had been travelling at 80 km/h in a 60 km/h zone; in his oral evidence at trial, he said he had been travelling at approximately 61 km/h. He could not explain why, at that speed, he was unable to stop before colliding with a tractor which he says he could see ahead of him.

7. Furthermore, in his police statement the plaintiff said he struck the tractor “at the back on the left side”; in his supplementary affidavit he said he “bumped the insured motor vehicle on the left wheel”; in his oral evidence he first said he struck the “rear end” of the tractor, and, on further questioning, he then said that the point of contact was on the right.
8. There was also an issue regarding intoxication. It was put to him that the hospital records generated upon his admission recorded that he was intoxicated. The plaintiff disputed this, while maintaining that he had consumed half a glass of beer earlier that day. The plaintiff was also challenged about failing to report the collision until 15 October 2021, some eight months after the fact. He could not recall precisely when he reported the matter but estimated one or two months after the collision.

THE DEFENDANT’S CASE

9. The defendant's case is that the Plaintiff was negligent and was the sole cause of the accident. The defendant’s relies on three main submissions (i) that the plaintiff has provided inconsistent evidence regarding the date, time, and manner of the accident, which destroys his credibility; (ii) that the Plaintiff was intoxicated at the time of the accident; and (iii) that the Plaintiff, as the driver who collided with the vehicle in front of him, is prima facie negligent and has failed to provide a reasonable explanation to rebut this presumption. The

defendant contends that the claim has been manufactured for the purpose of financial compensation.

EVALUATION OF EVIDENCE

10. It is trite that the plaintiff bears the onus of proving, on a balance of probabilities, that the insured driver was negligent and that such negligence caused the collision.
11. The credibility of the plaintiff and the consistency of his evidence are central to the determination of this matter. As already stated, the plaintiff gave contradictory versions of events.
12. The most significant contradiction concerns the date of the accident. The plaintiff's initial particulars of claim state the accident occurred on 7 February 2021. His Notice in terms of Rule 28 and supplementary affidavit, deposed to in January 2026, seek to amend this date to 8 February 2021. Under cross-examination, the plaintiff conceded that his evidence was inconsistent and that there are two different dates in question. When asked which date the court should accept, he testified that the court should accept the later date, 8 February 2021. There was an attempt to amend the particulars, but this was not concluded as no amended pages were delivered.

13. The particulars of claim also allege that the accident occurred at night and seemingly blames the tractor for having no lights on. In his testimony, however, he stated it was bright and sunny and occurred at 16:00 in the afternoon.
14. The plaintiff also initially testified that he collided with the insured driver's vehicle on the left wheel but later stated he hit it on the rear end. He was unable to provide a consistent description of the point of impact.
15. The plaintiff sought to explain these contradictions by citing his head injury and a miscommunication with his legal representatives. He even distanced himself from his own signed statement, claiming it was incomplete and that there was a miscommunication. I am unable to accept such an explanation, one may accept miscommunication when it comes to the police statement but what about communication with his own attorney who drafted the particulars of claim.
16. Furthermore, the plaintiff admitted to consuming alcohol on the day of the accident. Although he claimed it was only half a glass and had no effect on him, his hospital records which were prepared on the day in question state that he was intoxicated. The plaintiff's denial in the face of this documentary evidence further undermines his credibility.
17. In contrast, the defendant's version finds more support in the objective evidence. The Accident report indicates that the plaintiff himself alleged he was

travelling at about 80km/h in a 60km/h zone. The plaintiff later denied this and claimed he was travelling at 61km/h. I am of the view that the record made to the police is more likely to be accurate than the later self-serving testimony of the plaintiff, particularly given his established lack of credibility.

18. A driver who collides with the rear of a vehicle in front of him is prima facie negligent. The onus is on the plaintiff to provide a credible explanation that exculpates him. Given the inconsistent and unreliable evidence, the plaintiff has failed to discharge this onus. I find it highly improbable that a reasonable driver travelling at 61km per hour as now alleged by the plaintiff would be unable to stop his vehicle in time to avoid a collision, unless he was not keeping a proper lookout, was travelling at an excessive speed, or was otherwise not in proper control of his vehicle which may have been exacerbated by him being intoxicated as recorded in the hospital records.

CONCLUSION

19. I am not persuaded that the collision was caused by the negligence of the insured driver. I find the evidence of the plaintiff to be unreliable, contradictory, and improbable. The objective evidence supports the inference that the plaintiff was driving at an excessive speed, failed to keep a proper lookout, and was potentially intoxicated. He has failed to provide a credible explanation for colliding with the tractor in front of him.

20. The Plaintiff's claim against the Defendant must fail.

COSTS

21. There is no reason to depart from the ordinary rule that costs follow the result.

ORDER

22. In the result, I make the following order:

1. The plaintiff's claim is dismissed.
2. The plaintiff is to pay the defendant's costs of suit



Zodwa Gumede
Acting Judge of the High Court

APPEARANCES

Counsel for the Plaintiff: Adv M Sithebe, instructed by: Mahlalela Attorneys,
Mbombela

Counsel for the Defendant: Adv J Ragau, instructed by: State Attorney, Nelspruit

Date of Hearing: 19 February 2026

Date of Judgment: 4 September 2026