

SOUTH AFRICA / JUDGMENT

A.M and Another v Road Accident Fund (4611/2005) [2014] ZAKZPHC 67 (12 August 2014) [2014] ZAKZPHC 67

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Seegobin

CASE / FILE NUMBER

4611/2005

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IN

THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC

OF SOUTH AFRICA

CASE

NO: 4611/2005

DATE:

12 AUGUST 2014

In

the matter between: [A.....]
[M.....].....First
Plaintiff
[A.....]
[M.....] obo
[A.....]
[M.....] &
[T.....]
[R.....]
[M.....].....Second
Plaintiff
And
ROAD
ACCIDENT
FUND.....Defendant
ORDER
(a) The defendant
is liable to compensate the plaintiffs for their agreed or proved
damages arising out of the death of the deceased,
Mr S M.....,
in the collision which occurred on 8 August 2000.
(b) The defendant
is ordered to pay the plaintiffs costs to date, such costs to include
the costs occasioned by the employment of
senior counsel as well as
all costs in respect of plaintiffs expert Mr Greenfield, such costs
to include the costs for his report
(Exhibit 'H'), his
travel expenses from Johannesburg, his qualifying fees and his fees
for attending court on 6 June
2013.

JUDGMENT

SEEGOBIN J:

INTRODUCTION

- [1] This is an action for damages. The claim is one for loss of support. It is instituted by the plaintiff in her personal capacity and in her capacity as mother and guardian of her two children. The claim arises out of the death of the first plaintiff's husband, S..... M..... ('The deceased'), who died as a result of injuries sustained in a motor vehicle collision on the 8 August 2000. The plaintiff's claim is brought in terms of section 17(1)(b) of the Road Accident Fund Act 56 of 1996 ('the Act') and lies against the Road Accident Fund ('the Fund') a statutory body established in terms of the Act with the capacity to institute and defend proceedings of this nature.

- [2] The collision occurred during the very early hours of 8 August 2000 on the northbound carriageway of the N3 freeway at or near Howick, KwaZulu-Natal. The deceased's vehicle was a maroon 3 series BMW sedan with registration numbers N.....

The only occupants of the vehicle were the deceased and one Sathaseevan (otherwise known as Mervyn Pillai ('Pillai'))

who is the brother of the first plaintiff.

- [3] At the commencement of the trial on 17 October 2012 and by agreement between Mr Moolla SC for the plaintiff and Mr Crampton for the defendant, I directed in terms of Rule 33(4) of the Uniform Rules that only the issue of negligence will be determined initially with all other issues to stand over for later determination.
- [4] It was agreed that the onus of proving negligence was on the plaintiff.
- [5] The plaintiff's case rested on Pillai who was the only eye witness to the collision. It is common cause that Pillai also instituted a claim against the Fund, albeit separately, arising out of certain injuries sustained by him in the collision. It is further common cause that he deposed to an affidavit on 5 October 2000 which was submitted together with his claim documentation to the Fund. The Fund had no direct eyewitness evidence on how the collision occurred. However, it led the evidence of several witnesses in an endeavor to controvert the plaintiff's version of how the collision occurred. The evidence of the Fund was largely circumstantial in nature and will be dealt with in due course.

PLAINTIFF'S CASE

- [6] Pillai is a 43 year old male employed by the South African Police Services as a Senior Administrative Clerk. He commenced his

employment in or about 1993. Since about 2006 he was stationed at the Accident Unit at Hilton. This unit was consistently

referred to by the witnesses as a call centre or control centre and these names will be used interchangeably herein.

- [7] Pillai testified that the collision occurred on Tuesday 8 August 2000 just shortly after midnight. At the time of the collision the deceased was living in Johannesburg where he was employed. On that Monday 7 August 2000 Pillai met the deceased at Pillai's mother's home at 370 Bombay Road at approximately 18h30. According to Pillai he and the deceased then proceeded to an ATM of the Absa branch in Longmarket Street, Pietermaritzburg where the deceased withdrew some money. From there they proceeded to Debonair Pizza's where the deceased purchased some pizzas. Thereafter they proceeded to Pastor Bob's residence in Bombay Road and from there to Pillai's residence where they had supper. Thereafter they dropped off the deceased's children at Pillai's mother's home in Bombay Road and proceeded to the deceased's residence in order to lock up. From here they proceeded to the Hilton Radio Control Centre as the deceased wanted to visit his friend Mr Navin Singh. They

spent approximately forty-five minutes at the control centre and from there proceeded to Shepstone House in Longmarket Street where the deceased visited someone else whilst Pillai waited for him in the car. They thereafter set off for Howick when they were involved in the accident.

- [8] At the time of the accident the deceased was driving a motor vehicle which belonged to him and which he had owned for approximately one month. They were travelling on the N3 freeway, northbound. Somewhere close to Merrivale they were travelling in the fast lane when a vehicle approached from behind flashing its lights at them. Pillai felt a bump on the vehicle and this caused the deceased's vehicle to move forward. The deceased then lost control of the vehicle which went off the road on the left hand side. Pillai thereafter found himself at an unknown premises where he tried to alert the residents of these premises but no one came out. There was a vehicle parked in this yard and he sat on this vehicle. The police later arrived and fetched him from these premises. He was first taken to the Howick Police Station and thereafter to Grey's Hospital where he was admitted and discharged on that Friday.
- [9] Pillai confirmed that since the accident he has not returned to the scene at all. He did however return to the unknown premises recently with his attorney. He estimated that the premises were approximately 1.5 to 2 kilometres away from the N3 freeway, although he could not recall how he got to these premises in the first place on the day in question. He was also unable to remember what happened between the time that the vehicle left the road and when he found himself at these premises. According to Pillai he sustained head injuries, chest injuries and his left clavicle was fractured.
- [10] Pillai was then subjected to a lengthy cross-examination directed at showing that his version of how the accident happened was not to be accepted, but Mr Crampton for the defendant was hampered in this task by reason of his not being armed with any contrary direct evidence to gainsay what Pillai was testifying to regarding the collision itself.
- [11] Under cross-examination Pillai confirmed that the person referred to as Navin Singh and who the deceased wanted to visit at the control centre that evening was in fact Warrant Officer Navin Singh who was the supervisor in charge of the unit at the time and who is now deceased. In Pillai's estimation he and the deceased arrived at the Hilton call centre between 21h30 and 22h00. They were there for approximately forty five minutes to an hour and left at approximately 23h00. He confirmed his earlier testimony that they then proceeded to Pietermaritzburg as the deceased wanted to visit a friend at Shepstone House. He estimated that the deceased spent about forty five minutes to an hour there. According to his estimation they would have arrived at Longmarket Street at approximately 23h15 where they would have spent approximately 1 hour and thereafter set off for Howick.
- [12] Pillai admitted that he consumed alcohol prior to meeting the deceased that evening at around 18h30. He consumed three double brandies which did not put him under the influence at all. He testified that while it was possible that the deceased had consumed

alcohol at Shepstone House, at no stage did the deceased consume any alcohol in his presence. He emphatically denied that he and the deceased consumed any alcohol at the Hilton call centre. He further denied the version of the defendants witnesses to the effect that it was quite obvious (to them) that he and the deceased were under the influence when they were in the kitchen area of the call centre. He denied that they were at the said unit at around midnight. He also denied that their speech was slurred or that his conduct was different from the way he ordinarily conducted himself when he was sober or that the deceased was so drunk that he could hardly stand and appeared as if he was “pissed out of his mind”. He denied having a 2litre Coke bottle with him or that shortly, that is ten to fifteen minutes after leaving the unit a call was received by the unit about the accident happening on the N3 freeway. He denied that they left the unit at about midnight.

- [13] He admitted that he was interviewed by a Mr Beekarun (‘Beekarun’) but emphatically denied that he went to the scene of the accident with Beekarun or that he mentioned to Beekarun words to the effect that he and the deceased were both under the influence of alcohol at the time when the accident occurred. He also denied telling Beekarun that he had consumed a bottle of spirits. He emphatically denied that he had made a written statement to Beekarun, or that Beekarun took a detailed version from him. He further denied telling Beekarun that the collision occurred at or near Peels Honey Shop and that a large white 10 ton truck began flashing its lights at them. He further denied saying that on seeing the truck and the flashing lights the deceased slowed down and moved to the slow lane. He also denied that the truck proceeded to pass them and that when it was parallel to their car it suddenly came onto their lane and knocked into their vehicle on the back right side. He denied saying that on impact the back bumper of their vehicle flew off and landed on the road surface. He also denied that on impact their car lost control and crashed into the barrier and began somersaulting.
- [14] Pillai denied that Beekarun took his version and wrote it down and thereafter read it back to him whereafter he signed the statement. He also denied asking Beekarun to fax him a copy of the statement to him at the Impendle Police Station where he was stationed at the time. He further denied that Beekarun tried to contact him at the Impendle Police Station or that Beekarun had made prior arrangements to meet with him or that Beekarun arranged to meet him at his mother’s (that is Pillai’s) house in Bombay Road.
- [15] He denied telling Beekarun that he needed to consult with his attorney or that he was able to identify and show him the general

area where the accident occurred. Pillai was adamant that the signatures appearing on Exhibits ‘C16’ to ‘C17’

(his statement) were not his or that he had made the statement in question. He denied requesting a copy of the statement which (on the defendant’s version) led Beekarun to go to Gandhi Road in order to make copies there and to deliver the copies to Pillai’s house in Mysore Road. Pillai further denied that Beekarun met him at the Impendle Police Station and it was then that he informed Beekarun that he needed an opportunity to speak to his attorney. It was suggested that

Beekarun would contact him later in the week in order to meet him at his home in Mysore Road. He denied this.

[16] Pillai reiterated that when Beekarun came to his house he provided him with an oral explanation consistent with his statement (to the Fund) and Beekarun went away. The witness denied that he told a Mr Beharie that the accident happened because the deceased was lighting a cigarette and therefore took his attention off the road. Pillai went on to elaborate on to what he meant when he said that the vehicle lost control. He explained that his recollection was that the vehicle veered slightly to the right and then sharply to the left. He recalled that the vehicle was airborne for a while and that was his last recollection of what happened.

[17] According to Pillai he and the deceased were initially planning to travel to Mooi River but these plans changed and they then decided to travel to Howick. He denied that he was lighting up a cigarette in the vehicle and stated that in any event the deceased did not allow smoking in his vehicle.

[18] When Pillai was re-examined, he stated that 2 George Close Place is at the end of a road, in a cul-de-sac. He further confirmed that he was unable to point it out to his attorney's and as such he would not have been able to point it out to Beekarun as alleged.

[19] That concluded the evidence for the plaintiff. The plaintiff's case was thereafter provisionally closed with the plaintiff reserving to herself the right to call any further evidence in rebuttal.

DEFENDANT'S CASE

[20] The first witness to testify on behalf of the defendant was Hayden James van Heerden (van Heerden). The witness is employed by the South African Police Services since 1994 and when he testified he was a service manager at the Government garage. From about 1996 until 2004 he worked at the collision unit in Pietermaritzburg. On the 8 August 2000 he was on stand-by duty when he was called out by the control room at Hilton to attend to an accident scene at or near Howick.

[21] With reference to his pocket book (Exhibit 'C' page 13) he explained that he was called out at 02h03 on the 8 August 2000. He got ready and "grabbed a little bit of equipment" and proceeded to the scene. From there he liaised with the control room which referred him to a police vehicle that was already on the scene. When he arrived there he found Sergeant Reddy from the South African Police Services, Howick, already there. On the scene he found one vehicle and immediately concluded that it was a simple one vehicle collision in that the vehicle had left the road.

[22] He testified that it was a particularly dark night and the deceased was lying outside the vehicle. He identified the photographs contained in the photo album (Exhibit 'B') as having been taken by him as well as the key to the photo album (Exhibit 'C') which he prepared. He testified that the deceased's vehicle was found down a very steep embankment on a field

which was approximately twenty metres away from the road. Judging from where the deceased was laying it did not seem to the witness that there was just one person involved in the collision. According to the witness it did not make sense that the deceased was the driver as a driver does not normally get thrown out of a vehicle in an accident.

- [23] While he was still busy trying to piece things together he received a telephone call from the control room with two people speaking to him simultaneously enquiring about who was involved in the collision. They were also asking him to describe the vehicle that was involved as well as asking for a description of the deceased and so on. He was informed that the driver of the vehicle was Mervin and that he was last seen leaving the control room premises. However, the witness could not find Mervin on the scene. He then called a Warrant Officer Jack Haskins who was based at the Dog Unit in the Search and Rescue Division. Haskins had a dog specially trained in finding injured or lost people.
- [24] Van Heerden identified photograph 6 of Exhibit 'B' which depicts a cigarette stuck in the windscreen. He testified that his investigations required him to look for reasons as to why a vehicle would have left the road ending up down this steep embankment. Because of this he walked 'hundreds of metres' along the N3 northbound carriageway in order to try and ascertain why the vehicle left the road in this fashion. He

was looking for certain specific signs such as sand, grass, fragments of glass, skid marks or any disturbance of the natural surroundings

which would indicate to him how the vehicle swerved or whether there was something catastrophic that happened to have caused it to leave the road. The result of his investigation was that he was unable to find anything.

- [25] With regard to the plaintiff's version as to how the collision occurred, he stated that there was no physical evidence to substantiate this version. In other words, the absence of glass, plastic, skid marks and tyre marks did not support the

plaintiff's version of how the collision occurred. When he was specifically asked about how much of the road he had

inspected, he stated that he walked a considerable distance with his torch and camera. He walked both backwards and forwards along the northbound freeway. He expressed the opinion that high speed was involved judging from the extent of the damage to the deceased's vehicle. He found it significant that the passenger was flung out of the vehicle and that when the vehicle had rolled the doors flew open. This indicated to him that the vehicle was travelling at a high speed at the time.

- [26] He confirmed that he was at the scene for a least half an hour according to the entry in his pocket book. He stood off scene at 02h35 and refueled at Howick West at 03h40. He recalled that he went back to the scene the next morning although his pocket book does not reflect this. He confirmed that he was interviewed by detectives regarding the cigarette which was found lodged in the windscreen as they were investigating a case of culpable homicide.

Approximately two to three years ago an ex-detective from Brixton interviewed both him and Warrant Officer Haskins regarding the accident.

- [27] Under cross-examination by Mr Moolla, the witness conceded that he had no independent recollection of the time when he arrived at the scene or of having returned to the scene the next day. He admitted that he was unable to answer questions put to him by the plaintiff's attorney without reference to colour photographs. He was further unable to recall if the car was there the next morning. He was unable to say whether Sergeant Reddy had opened the doors of the car bearing in mind that Sergeant Reddy was on the scene before him.
- [28] Although he noted in his pocket book that the driver was "Manikum" he was not convinced that Manikum was in fact the driver. In spite of this he did not make any corrections to this effect in his pocket book. He identified Exhibit 'D' as having been prepared by him and according to which he had received the call at 02h02. He confirmed that he identified the driver on Exhibit 'D' as being 'S Manikum'. He was unable to explain why he did not correct his notes if he firmly believed that Manikum was not the driver.
- [29] When he was taxed further with regard to his observations at the scene, he suddenly found himself in great difficulty as he was unable to recall how far back he examined the N3 from where the vehicle had left the road. He conceded that it was possible that he did not go back far enough. He further conceded that it was possible that there was debris further back but that because of poor lighting or the fact that he did not go back far enough he was unable to find any. He was also unable to dispute that there could have been skid-marks which he did not find. He was unable to dispute that it was possible that the deceased's vehicle was knocked from the rear causing it to leave the road in the fashion in which it did. He conceded that it was possible that the debris could have been blown away by passing vehicles.
- [30] The next witness who testified was Mr Sagri Beharie. In August 2000 the witness was employed by the South African Police Services as a senior administrative clerk in the Radio Control Division. His duties included that of telephone/radio operator, dispatching of complaints, and rendering assistance to all SAPS members and vehicles, etc.
- [31] According to Beharie the plaintiff's witness Mr Mervin Pillai was a colleague of his who worked on different shift to him. He testified that on the night in question (7 August 2000) Pillai visited the radio control centre together with his brother-in-law. They arrived there between 22h30 and 23h00. They stated that they were on their way to Howick and stopped to pay a visit to the people on duty that night. The witness was the Channel 41 radio operator that night and was stationed directly opposite the supervisor's office at the entrance of the radio room.
- [32] Beharie testified that when he saw the deceased and Pillai, both of them were under the influence of alcohol. He formed this opinion because their speech was slurred, they were in a jovial mood and the brother-in-law in particular was very unsteady on his feet as he leaned against the wall to keep himself upright. According to Beharie the deceased and Pillai were

at the unit for approximately an hour to one and a half hours. When they entered the room he saw them for about ten to fifteen minutes and thereafter he did not see them. He confirmed that they arrived in a red or burgundy BMW motor vehicle which was visible from a little window in the operator's room. He last saw them when they left the radio room and were walking towards the vehicle. Approximately ten to fifteen minutes later a telephone call came through to Warrant Officer Singh who was seated next to him regarding an accident.

- [33] Approximately three to four weeks later he accompanied Warrant Officer Singh to Pillai's house in order to check on his

medical condition and to report back to the Commander of the Unit. When he and Warrant Officer Singh arrived at Pillai's house, Pillai was seated in a wheelchair because of his injuries. When the witness questioned Pillai, Pillai informed that his brother-in-law who was driving the vehicle had bent down to light a cigarette and that was how he lost control of the vehicle which caused a collision on the highway.

- [34] When cross-examined the witness confirmed that the Hilton charge office is situated approximately ten metres away from the control centre. He indicated that he reported to Warrant Officer Singh, who was his supervisor, that the driver of the vehicle was under the influence of alcohol. He was still of the opinion that they were under the influence of alcohol when they left the control centre. He did not think that the deceased was going to be the driver of the car as Pillai was with him. According to the witness he had spoken to them for about two minutes when they initially entered the control room and he later saw them briefly when they left the control room and not when the vehicle had left the premises. Warrant Officer Singh accompanied them to the vehicle but he was not too certain about what happened after that as he did not see the vehicle leaving the premises. About ten minutes later Warrant Officer Singh returned and locked the gates.

- [35] According to Beharie when Pillai and the deceased arrived at the control room, his other colleagues were in the rest room having their supper at the time. He went on to state that he spoke to them for about ten minutes after they arrived. At that stage they were standing in the passage-way in front of the Channel 41 radio room and the supervisor's room. Although they were standing approximately five meters away from him he was unable to smell any alcohol on their breath. Apart from Pillai's slurred speech there was nothing to indicate to him that Pillai was under the influence of alcohol. He confirmed that Pillai was steady on his feet. However, from the five or six words that he spoke to Pillai he deduced that Pillai's speech was slurred. He agreed however that this was not an indication that somebody was under the influence of alcohol. He could not say whether the brother-in-law's speech was slurred as he did not speak to him and apologized for his earlier evidence where he said that the brother-in-law's speech was in fact slurred. He confirmed that he did not see them leave the room as he had no view of the room or the passage-way leading to the door and accordingly he could not see whether or not they were drunk when they left.

- [36] Beharie confirmed that being the Channel 41 radio operator that evening he had dispatched the vehicles to the scene of the accident. He further confirmed that a white gentleman from the Road Accident Fund had asked him for a statement. The witness confirmed that he accompanied Warrant Officer Singh between 02h45 and 03h00 that morning to the scene but they found that the scene had been cleared, however he was not too certain about this due to the poor lighting at the time.
- [37] He testified that he was seated next to Warrant Officer Singh when he received a call but that he could hear what was being said. Warrant Officer Singh was speaking to Mervin Pillai at around 00h30/35. Whilst Warrant Officer Singh was on the phone he dispatched the vehicles from Hilton and Howick. The witness knew Warrant Officer Singh very well as he was his superior officer. He also knew him to be a very reliable and honest man and was of the opinion that Warrant Officer Singh would not have allowed two drunk people to drive away from the control room. He was also of the firm opinion that Warrant Officer Singh would not make false entries.
- [38] He identified Exhibit 'C11' as an occurrence book entry. He was requested to read the entry alongside serial number 210 on 'C11' which he read into the record as follows:
- "Its entry 210 crossed over entry 211. Time at 04..25 that morning. Report. Inspector Singh reports that SAC-S Pillay and his brother in-law had visited R C. I cannot confirm the time (Its 22:00). SAC-S Pillay informed me that they are on their way to Mooi River. At about 02..00 we received a complaint of an accident on the N3 (N Howick). The driver of the motor vehicle SAC-S Pillay brother in-law died at the accident. He, SAC-S Pillay could not be found, entry for UC, SAC-S Pillay wife informed by SAC-Pillay at 04..15 and signed by Inspector N Singh".*
- [39] The witness admitted that the entry as read out by him was authentic and was different to his testimony regarding the time periods. He also conceded that the entry was made on the day in question. He agreed that the documentation was more reliable than his evidence. As far as his visit to Pillai's house was concerned, he confirmed that he never asked Pillai why he was in a wheelchair but merely assumed he was using a wheelchair because of his injuries. He was unable to confirm whether Pillai had either spinal injuries, or whether he was hit on his head or suffered hip or leg injuries.
- [40] The witness's attention was drawn to certain entries in the hospital records which confirmed that Pillai had walked into the hospital yet he persisted that he was not mistaken that Pillai was in a wheelchair when he visited him. He indicated that Warrant Officer Singh would have been aware that they were under the influence of alcohol but in spite of this he still informed Warrant Officer Singh of this fact because it was part of protocol and policy. It was also possible that Warrant Officer Singh had formed an opinion that they were not so drunk and would be able to drive. He was unable to dispute that they were not under the influence of alcohol when they left the control unit.

[41] The next witness called by the defendant was Mr Anand Kumen Purdessi. He too was employed by the South African Police Services at the Radio Control Centre in Hilton since 1993 as a chief administration clerk. He was tasked with answering the 10111 calls and to attend to other duties in the control Centre. Purdessi confirmed that he knew Pillai who was a colleague of his.

[42] Regarding the collision he indicated that at first he had a “blurred vision” in that when he was interviewed by the “CID guy” he could not remember anything at that stage but as things were told to him he was able to remember what happened in the

radio room. According to the witness Pillai and his brother-in-law arrived there between 22h00 and 23h00. Both of them were speaking very loudly and it looked as if they had a couple of “shots” because they were not steady on their feet. The brother-in-law’s eyes were blood red and he was unsteady on his feet as he seemed to be moving up and down. Pillai on the other hand looked as if he had a couple of “shots” but he was still sober at that stage.

[43] According to the witness Pillai and his brother-in-law were in the control room for about five minutes and then proceeded into the kitchen. He later saw them in the kitchen when he went to have his supper. He was with them for about five minutes in the kitchen and they were seated directly across from him. He described their demeanor in the kitchen as talking loudly to Warrant Officer Singh and they were discussing the new car that the brother-in-law had purchased. The witness got the smell of alcohol in the kitchen. This smell was coming from both of them. He testified that as far as he was concerned, nothing had changed from the first time that he had seen them in the control room to when he saw them again in the kitchen. He regarded Pillai as being still sober in the kitchen. He noticed a 2litre plastic Coke bottle lying on the table and he asked them if he could have some of the Coke. He fetched a polystyrene cup and one of them poured Coke for him into this cup. However, when he tasted the Coke he got the taste of alcohol in it. He nonetheless drank the Coke and went outside.

[44] He later returned to the radio room and continued with his duties. When he next saw them they were in the passage leaving the control room. As they were leaving they were accompanied by Warrant Officer Singh. Pillai was holding his brother-in-law who was hardly able to stand and was holding onto the wall. He got the impression that the brother-in-law had something more to drink since they had arrived at the control room. He was asked to express an opinion on the state of their drunkenness on a scale of 1-10 with 1 being a state where a person is just happy and 10 when a person is so drunk that he is unconscious. He placed the level of the brother-in-law’s drunkenness on the highest scale while that of Pillai, he estimated to be between 5-6.

[45] He testified that he heard about the collision about fifteen minutes to half an hour after Pillai and the brother-in-law had left the control centre. He contacted Sergeant van Heerden and asked if Pillai was 'ok'. He presumed that Pillai was the driver as Pillai was sober when he left. He confirmed making a written statement to a white gentleman who came to interview him. He was not sure if he made this statement four months previously or a year previously.

[46] Under cross-examination the witness testified that the call was received in the control room at 00h00. No one informed him that it was Pillai who had telephoned. The incident was discussed in the control room and if someone had mentioned to him that Pillai had phoned he would have informed van Heerden about this. He testified that when the person taking down his statement asked him if he could remember the accident he said that he could "barely remember anything". However when things were explained to him he began remembering parts of the story.

[47] With regard to his observations in the control room, he testified that when Pillai and his brother-in-law arrived, the brother-in-law

was swaying but was not falling, and when he left he was not holding the wall or leaning against the wall in any way. According to the witness when he heard the call on the radio he did not inform the others as he believed that they would have heard it on the radio as the radio was loud.

[48] He testified that eventually everyone came to know about the collision and there was a discussion about where Pillai was as

everyone was worried about him. He still maintained however that no one informed him that Pillai had in fact been found. He admitted that he never mentioned in his statement that the deceased was holding onto a wall. He confirmed that Warrant Officer Singh was a strict person and did not allow any alcohol on the premises. He further admitted that he never mentioned in his statement that Pillai was holding his brother-in-law when they left the control room. He confirmed that there was a sign in the control room which prohibited any alcohol on the premises. He confirmed that Pillai was sober both when he came in to the control room and when he left. However, he then went on to state that when they came in both of them were smelling of alcohol and when they left Pillai was also staggering about but not as much as his brother-in-law.

[49] The next witness to testify on behalf of the defendant was Mr Roy Nadesan who was also employed at the call unit from about 1996 until 2003 as a call-taker and radio operator. He testified that Pillai arrived with his brother-in-law at the radio room between 22h00 and 00h00. Pillai walked into the radio room whilst his brother-in-law stood at the doorway but inside the radio room. The witness spoke to them and they indicated that they were taking a BMW motor vehicle for a "spin". Pillai's speech was slurred and he was in a very jovial mood. The witness got the smell of alcohol on him. He estimated that Pillai was approximately one and a half metres away from him whilst his brother-in-law was between six and seven metres away from him. He then went on to say that the brother-in-law was between the

passage and the doorway which was between three and four metres away.

- [50] According to the witness both of them were unsteady on their feet, both of them were in a jovial mood but the brother-in-law was far more intoxicated than Pillai. According to the witness the two of them moved from side to side trying to keep their balance and the brother-in-law in particular held onto the wall in order to keep his balance. After a while they went into the kitchen and once there the witness could not see what was happening. He later saw them shortly after midnight when they were leaving and their state was much worse than when they first arrived. They consumed more alcohol in the kitchen (which he did not see) but in his opinion their speech was much louder and they were unsteady on their feet. Pillai was in fact holding onto his brother-in-law.
- [51] The witness became aware of the accident as the call was received by Warrant Officer Singh who spoke to the Channel 41 operator saying that Pillai had been involved in an accident. This call came in shortly after they left which was estimated to be about half an hour to forty five minutes later.
- [52] The witness confirmed that it was Sergeant Reddy from the Howick SAPS who found the scene of the collision. He further confirmed that he was interviewed by a certain 'Mr Francois' from the Fund regarding the accident in 2010. He testified that he was unable to recall everything until he was shown a photograph of the vehicle and thereafter things started "registering". He could not remember everything else as it happened twelve years ago. According to the witness everyone in the control room heard that Pillai had been involved in an accident which caused all of them to wonder what had happened. They were also concerned that Pillai may have died in the accident. He presumed this because when the Howick vehicle reached the accident scene Pillai was nowhere to be found.
- [53] The witness admitted that Warrant Officer Singh was a senior person in the unit and was in charge of the occurrence book. He also admitted that Warrant Officer Singh was a competent policeman who was very strict when it came to his work. He identified the writing on Exhibit 'C11' as being that of the late Warrant Officer Singh and confirmed that it recorded the time of complaint as 02h00. This was not fifteen minutes after they had left the control room as per previous witnesses who testified. The witness denied that the time of 04h25 was accurate but then went on to say that it was made at 04h25. He agreed that Warrant Officer Singh did in fact receive a call at 02h00. He admitted that he was wrong when he stated that the call came in half an hour to forty five minutes after midnight. He conceded that he had no reason to doubt Warrant Officer Singh's entry in the occurrence book.
- [54] The witness confirmed that Pillai's brother-in-law did not speak when he was in the doorway of the passage and that he only spoke to Warrant Officer Singh when they were proceeding to the kitchen. He could hear Pillai's brother-in-law speaking in the kitchen and because they were talking loudly he was of opinion that his speech was slurred and that they were boasting about a BMW motor vehicle. However, he could not catch all the other parts of the

conversation as the door was slightly closed. He conceded that Pillai and his brother-in-law were in a jovial mood as they were happy about the vehicle. He also admitted that Pillai was not as drunk as his brother-in-law but rated his level of drunkenness to be 7 out of 10. He then went on to say that when Pillai arrived he was drunk but he was alert as the witness was able to comprehend what he said although his speech was slurred. He did not see anyone of them carrying anything and Warrant Officer Singh was with them in the kitchen at all times until they left.

- [55] The next witness to be called by the defendant was Mr Pregasen Naidoo. He testified that he was acquainted with Mervin Pillai as a result of his work. He confirmed that he was on duty on the 8 August 2000 and as such he became aware of the accident when they received a call from the Howick SAPS at approximately 02h00.
- [56] According to the witness he saw Pillai earlier that evening but could not recall exactly when that was. He testified that both Pillai and his brother-in-law were in a jovial mood but he could see that they were both under the influence of alcohol. He was able to make this observation because they were a bit unsteady on their feet as they were swaying from side to side and they were not very 'firm'. He testified that other members of the radio room at some stage came into the kitchen where they were for approximately an hour. He next saw them when they exited the kitchen in order to leave. When they left they were still under the influence as they were unsteady.
- [57] He identified the SAP297 Form and confirmed that the writing on the back of the document was his hand writing and bore his signature. He confirmed that the SAP297 Form was an authentic document prepared at the control room. He further confirmed that the particulars on the SAP297 Form were as follows:

"Date reported: 2000.08.08

Time reported: 22h00

Complainant being the person who called in the complaint: Sergeant Reddy

That Inspector van Heerden was called."

- [58] According to this witness, Pillai and his brother-in-law did not enter the control room and he asserted that if anyone were to say that they in fact entered the control room, that person would be lying. He himself did not smell any liquor on them. Nor could he recall that they were slurring or that their eyes were blood-shot. These are things he would have noticed. He testified that their condition when they left the control room was the same as when they arrived.
- [59] The next witness to testify was Amardeep Dayanand Beekarun. It is common cause that Beekarun is an admitted attorney of this Court having been re-admitted after he was struck-off the roll because of theft and fraud.

- [60] Beekarun is currently employed as an assessor serving on the panel of the Road Accident Fund. He is the sole proprietor of his business known as Trackem Assessors since 1994.
- [61] Beekarun was instructed by the Road Accident Fund to investigate the merits as well as the quantum of the claim submitted by the plaintiff's and Pillai. To that end he obtained a copy of the docket from which he established that the police officer who attended the scene was Sergeant Christopher Eric Reddy. However, he was unable to get hold of Sergeant Reddy as he was under suspension. Beekarun further ascertained from the docket that the scene of the collision was at road markings 6.60 on the N3 northbound carriageway and he visited the scene.
- [62] According to Beekarun it took him approximately five to six months to get hold of the plaintiff's witness Mr Mervin Pillai.

Pillai had made an affidavit which was contained in the police docket. Beekarun visited the SAPS at Impendle on several occasions in order to meet with Pillai but was always told that Pillai was on sick leave. He eventually met him on a certain

Monday. Pillai informed him that he had no real problem in going out with him to the scene and conducting an in loco inspection as well as providing him with a statement but that he needed to get advice from his attorney, Mr Sarawan, because he (that is Pillai) had also instituted a claim with the Road Accident Fund.

- [63] Beekarun testified that on a Monday which was the 11 March he met Pillai at the Impendle SAPS and the arrangement at that stage was that Pillai would seek the consent of his attorney and that Beekarun would contact him either on that Thursday or Friday when he would meet him at his home at 224 Mysore Road, Northdale. According to Beekarun when he visited Mr Pillai at Mysore Road, Pillai informed him that he had no problem in providing him with a statement nor did he have any difficulty in accompanying him to the scene although he could not recall precisely where the collision had occurred.
- [64] Beekarun testified that he then took Pillai to road marking 6.6 on the N3 northbound carriageway where Pillai informed him that he was not certain precisely where the collision occurred because it was dark at the time and he was in a state of shock. They then proceeded to road marking 4.2 which is near Peels Honey Store.
- [65] Pillai then provided him with an account of the collision and the evidence in this regard went as follows:

"Where was it that he gave you that account? --- Well, he said somewhere between road marking 4.2 and road marking 6.6 north, at a bend.

Did he describe to you how the accident happened? --- Yes. He told me his brother in-law was the driver of the maroon BMW. He was a front seat passenger. They both had their seatbelts on. They were proceeding to Howick to visit friends.

How did the collision happen? --- He said at a bend they were proceeding on the fast lane. A white 10 ton truck then flashed lights at them. His brother in-law then moved out of the fast lane into the slow lane. The truck then began overtaking them. When the truck had passed, it drew parallel to them. The truck left its lane of travel, the fast lane and came onto their lane and struck their motor vehicle on the right rear side, causing the rear bumper of the vehicle to fall onto the road surface. Their motor vehicle then lost control and went towards the left of the road, hit into the armco barrier, went through it and then began somersaulting several times. He was thrown out of the vehicle, together with his brother in-law.

Did he say anything to you about any liquor that the two of him and the driver may have consumed on that evening? --- Yes, he said before, just prior to the accident, his brother in-law, who was the driver, Sagren Manikum, and himself had consumed a bottle of spirits between them.

Did he say anything about their state of sobriety? --- He said they were drunk”.

[66] Beekarun testified that from the scene they proceeded to Pillai's house where a statement was minuted in Beekarun's handwriting. After he completed the statement he read it back to Pillai. However, when he read paragraph 3 of the statement he noticed that he had omitted to say how drunk Pillai was or what alcohol he consumed. He then inserted under paragraph 11 that immediately before the collision Pillai and his brother-in-law had consumed a bottle of spirits. He testified that Pillai signed each page of the statement and requested a copy to be made available to him which Beekarun did. He went on to state that he took photographs without Pillai being present and these photographs were given to the Road Accident Fund together with his report.

[67] He denied that he was accompanied by anyone else when he spoke to Pillai. When Pillai was requested to affix his signature to the statement Pillai's wife was present in the house. He conceded that the statement could have been witnessed by Pillai's wife or by a junior assessor if one was present. According to Beekarun it was possible that a junior assessor was in fact present. He testified that he was aware when he recorded the statement that it could be used against Pillai in his claim against the Road Accident Fund and although he explained this to Pillai at the time it did not occur to him to insert this caution in the statement. It also did not occur to him that he should minute in the statement that Pillai had a right to consult with his attorney before he said anything or before he accompanied Beekarun to the scene. He conceded that he knew that when he took Pillai's statement that Pillai's attorney was Mr Sarawan and that he (that is Beekarun) knew Mr Sarawan, knew where his offices were and knew his telephone number but in spite of all of this he did not contact Pillai's

attorney. The reason for this was that he was not working with Pillai's matter and it was up to the Fund whether they wanted to use the statement against Pillai in his matter or not.

[68] Beekarun suggested that whenever he conducted an investigation he did not know whether that matter would result in any litigation.

However, in the present matter he was aware of the possibility that the matter would end up in litigation on both the merits and

quantum. However, he did not record anywhere in the statement that he had apprised Pillai fully on his right to consult his

attorney before making a statement to him.

[69] Although Beekarun was first admitted as an attorney in 1986, he conceded that he was not sure if an attorney acting for a claimant

against the Road Accident Fund would consent to him obtaining a statement from his client without that attorney being present.

He further conceded that he did not question Pillai as to how he knew that their vehicle was struck by a “10 ton truck”. He admitted that when he consulted with Pillai he was in possession of the statement made by him to the police but failed to ask him why he was giving a different version from that given to the police. When pressed for an answer on this he conceded that the version given to him was different to the statement which Pillai made to the police.

[70] According to Beekarun Pillai told him that they consumed a bottle of spirits when they left the Hilton radio control room. However, he did not note this at the time nor was he able to answer the Court’s question as to why he did not make a note of this. When it was suggested to him that Pillai does not mention the Hilton radio control unit in his statement at all Beekarun testified that it was only after he had made his report to the Fund that Pillai had informed him of this. It was never told to him during the course of the investigation. According to Beekarun Pillai mentioned that he had consumed spirits immediately before the accident. However, Pillai did not know how much he consumed or how much the driver consumed and neither did he know that what they consumed was either Brandy or Whiskey etc., and that is the reason why he simply wrote “spirits”.

[71] Beekarun testified that Pillai declined to make a statement under oath and saying that he had already made an affidavit to the South African Police Service but that he had no objection to provide another statement. Beekarun admitted that in his report to the Fund he pointed out the discrepancies which appear in Pillai’s statement to the police and the statement that he was now or making to him. However, he admitted that he did not tell the Road Accident Fund that he went with Pillai to the scene Pillai was unable to point out the place where the collision took place.

[72] The last witness called by the defendant was Mr Michael John Irving who is a forensic document examiner, having practiced as such for the past sixteen years. His area of expertise lay mostly in the field of comparing signatures, handwritings and examination of documents in order to determine their authenticity.

[73] The witness then dealt with the contents of his report (Exhibit 'G') and explained how he concluded that the signatures on the statement dated 16 March 2006 made to Beekarun were those of Pillai. He stated however, that after furnishing his report he subsequently received further documents comprising four specimen signatures which he dealt with in an addendum to his report at page 7. He indicated that he was of the opinion that the new documents given to him were authored by the same person who had authored the statement dated the 16 March 2006 and at that time he was in no doubt about his

conclusion.

[74] Under cross-examination the witness stated that he was now doubtful that the signatures on the statement of the 16 March 2006 were in fact those of Pillai. He explained that when he arrived at Court to testify he was presented with three further documents which are referred to in Mr Greenfield's report, Exhibit 'H' (Greenfield was employed as a hand writing expert by the plaintiff) at page 26. Having subjected these documents to an examination and having consulted with Greenfield both he and Greenfield discussed the possibility of auto forgery but "at this stage I have to concur with Mr Greenfield's report, with his findings". He conceded that the disputed signatures on the statement purportedly made to Beekarun on the 16 March 2006 were definitely not the signatures of Pillai. This meant that whoever signed the statement had committed a fraud.

[75] In light of Mr Irving's concessions there was no need for the plaintiff to lead the evidence of Mr Greenfield. With no further evidence to call, the cases for the plaintiff and defendant were effectively closed.

FINDINGS

[76] The essential issue in this matter is whether the collision in question was caused as a result of the negligence of the driver of an unidentified vehicle or through some other factor as alleged by the defendant. As I mentioned at the commencement of this judgment the evidence relied upon by the defendant was highly circumstantial in nature and was adduced in an attempt to controvert the plaintiff's version of how the collision occurred. Against the defendant's case, however, there are certain pieces of objective evidence emanating from the control centre itself which tend to support Pillai's version in certain material respects. I will deal with this evidence in due course.

[77] In analysing the evidence led on both sides I take cognisance of the useful guidelines set out by Nienaber J in Stellenbosch Farmers Winery Group Ltd and Another v Martell Et Cie and Others 2003(1) SA 11 SCA at page 14. Para [5], and these are the following:

"The technique generally employed by courts in resolving factual disputes where there are two irreconcilable versions before it may

be summarised as follows. To come to a conclusion on the disputed issues the court must make findings on (a) the credibility

of the various factual witnesses, (b) their reliability, and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression of the veracity of the witness. That in turn will depend on a variety of subsidiary factors such as (i) the witness' candour and demeanour in witness-box, (ii) his bias, latent and blatant, (iii) internal

contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, and (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v), on (i) the opportunities he had to experience and observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised, probabilities prevail. (Paragraph

[5] at 14I - 15E.)”

[78] In contending for the acceptance of the evidence led on behalf of the defendant Mr Crampton submitted that since Pillai was the sole survivor of the collision he could quite easily fabricate his evidence regarding the involvement of the other vehicle and for this reason his evidence should be approached with some caution. He submitted that Pillai was not telling the ‘whole’ truth and that his evidence raises the following ‘suspicions’: the first is that he did not remain at the accident scene and was found approximately two kilometres away. It was suggested that three possibilities arise from this, namely

(i) he either went to look for help although he does not say that he did; or (ii) he was so affected by ‘post-traumatic amnesia’ which caused him to simply walk away, or (iii) he removed himself from the scene because he was drunk. The second suspicion is that Pillai and the deceased were out ‘jolling’, in other words, they were out drinking and having fun according to the defendant’s witnesses. The third suspicion is that no corroboration could be found for the involvement of another vehicle. These factors, so it was submitted, render Pillai’s version unreliable and improbable in the circumstances. For the reasons that follow I do not believe that any of these submissions bear any merit.

[79] In assessing the defendant’s version I consider that a useful starting point would be to look at the evidence of Mr Beekarun, the assessor appointed by the Fund to investigate both the merits as well as the quantum of the claim. Pillai was quite emphatic about his denial that he never made a written statement to Mr Beekarun. This is the handwritten statement which appears at pages 8-10 of the defendant’s bundle (Exhibit ‘C’).

When this statement was shown to Pillai he not only expressed surprise at its contents but emphatically denied that it is his signature which appears on the statement. A cursory examination of the signature with the naked eye is enough to tell anyone that the signatures appearing on this statement are not the same. I commented as much when the document was first introduced. The evidence of Mr Irving and the report by Mr Greenfield conclusively establish that the signature is a forgery. If this is so it means that it could only have been perpetrated by Mr Beekarun and no one else. It further lends credence to Pillai's version that he never made a written statement to Mr Beekarun in the first place.

- [80] An examination of this statement reveals that there is a huge difference in the version provided by Pillai in his affidavit dated 5 October 2000 (pages 16-17 of Exhibit 'A') and which is consistent with his evidence in this court to that contained in the statement prepared by Mr Beekarun. Bearing in mind that Pillai has also instituted a claim with the Fund, it is highly improbable that he would jeopardise his claim in this manner. It seems more probable in my view that Mr Beekarun, having received an oral explanation from Pillai and having gathered bits and pieces of information from his own investigations, fabricated a version in order to suit the Fund. The allegations relating to the consumption of alcohol no doubt perpetuated themselves amongst the other witnesses who testified on behalf of the Fund.
- [81] The important role played by an assessor in the position of Mr Beekarun in matters of this nature has long been recognized by our courts. In this regard Van Collier J in *Madumise v Motorvoertuigassuransiefonds* 1983(4) SA 207 OPA found that an assessor investigating an accident in which the plaintiff had been injured on the instructions of the Motor Vehicle Assurance Fund (the defendant) testified that he had approached the plaintiff and interrogated him as to the circumstances which gave rise to his claim for damages. The assessor was aware that the plaintiff, an untutored Black, was represented by an attorney, but he nonetheless did not advise the attorney that he intended interrogating the plaintiff. The court expressed its disapproval of such conduct, branding it as undesirable and expressing the view that it might result in irregularities.
- [82] In the present matter the 'irregularities' committed by Mr Beekarun went beyond just consulting with Pillai who he knew was represented by an attorney but he then proceeded to concoct a version and went on to append signatures to the document which Mr Greenfield describes "are, in all probability, freehand simulated forgeries", a view confirmed by Mr Irving when he testified.
- [83] Insofar as the witnesses (Beharie, Purdessi, Nadesan and Naidoo) from the control centre are concerned, I agree with Mr Moola that no useful purpose would be served in meticulously trying to analyse their evidence in order to list each and every contradiction or unsatisfactory aspect thereof. I have already set out their evidence in some detail hereinbefore and do not intend repeating

same. None of them, in my view, were impressive witnesses. Purdessi in particular was a singularly bad witness who on his own version had little recollection of what transpired at the control room.

[84] The collision in question occurred in the year 2000 and these witnesses were requested in 2010 (ten years later) to recall what transpired in the control centre during the late night of 7 August 2000 and the early morning of 8 August 2000. In my view the recollection was nothing more than the product of the fiction concocted by Mr Beekarun and a Mr Francois, an otherwise undisclosed investigator from the fund. The case sought to be presented by the Fund through these witnesses was (i) that the deceased and Pillai arrived at the control unit in an intoxicated state at approximately 23h00; (ii) that they stayed there for approximately one hour where they consumed more alcohol and left at midnight in a far higher state of intoxication, and (iii) that approximately fifteen minutes after leaving the control unit they were involved in the collision because the driver was intoxicated. This evidence in my view is in direct contradiction of the objective evidence in the form of the pocket book entry by Van Heerden and the SAP297 form which confirm that the report to the control centre came in at 02h00 and not at 00h15 as the witnesses would suggest.

[85] The evidence of these witnesses to the effect that Pillay and his brother-in-law (the deceased) arrived at the unit intoxicated and left more intoxicated is not borne out by the probabilities. On Pillai's version their reason for going to the call centre was that the deceased wanted to pay a visit to his friend the late Warrant Officer Navin Singh who was the supervisor in charge of the unit at the time. Warrant Officer Navin Singh was consistently referred to by the witnesses as being a competent policeman, a man of integrity who was honest, strict and meticulous in his work and one who would not permit the consumption of alcohol on the premises. There was in fact a sign in the control room which prohibited the consumption of alcohol on the premises. Having regard to these facts it is highly improbable, in my view, that Warrant Officer Singh, coming into contact with two drunks at the control centre would not only entertain their presence there but then go on to permit them to consume more alcohol on the premises and thereafter allow them to leave in a much more inebriated state than when they first arrived. Given the person he was it is highly unlikely that he would have allowed the two of them to leave the unit in a drunken state assuming of course that on the defendant's version they were in fact drunk. None of the witnesses questioned the authenticity of Warrant Officer Singh's entry in the occurrence book (see para 38 supra) which stands as objective evidence regarding the collision itself and when the call was received. They conceded that his entry was far more reliable than their recollection of the events.

[86] In my view, the evidence of the various witnesses from the control room was highly unsatisfactory – they not only contradicted

each other but at times their evidence was self-contradictory; it was also inconsistent with the objective evidence; material aspects of their evidence were not to Pillai, for example, the fact that Pillai was alleged to have telephoned the call centre to report the collision was never suggested to

him for his comment; nor was it suggested to him that when he and the deceased arrived at the call centre they had a 2litre Coke bottle with them. They also contradicted each other in certain material respects – these relate to the relevant times when Pillai and the deceased arrived at the call centre; who reported the collision – some said it was Pillai while others said it was Sergeant Reddy; what condition Pillai was in when they arrived at the call centre – some said he was sober whilst others suggested he was just as drunk as his brother-in-law; in what condition the deceased was – some said he was so drunk that he was leaning against a wall while others suggested that he was merely unsteady on his feet.

[87] The witness Van Heerden was equally unimpressive. Whilst little fault can be found with his evidence-in-chief, he was shattered under cross-examination and conceded whatever was being suggested to him – for instance, he conceded that he did not conduct a proper inspection along the N3 for signs of any debris; he conceded that he could have gone back to the scene later that day to conduct a proper inspection; he conceded that there could have been skid marks present; he could not dispute that the deceased's motor vehicle was struck from the back; he conceded that debris could have been blown away by passing vehicles; he admitted that he had prepared Exhibit 'D' and according to this document he had received the call at 02h02; and most importantly he admitted that while he initially noted in his pocketbook that the driver was 'Manikum' and noted on Exhibit 'D' that it was 'S Manikum', he took no steps to correct this when he later believed that the deceased was not the driver.

[88] In my view, a witness such as Van Heerden who claims to be somewhat of an expert in motor vehicle collisions could have played a far greater role in the collation of evidence to disprove the plaintiff's version of how the collision occurred rather than adopting a supine approach from the outset and thereafter resorting to sheer speculation on what may or may not have happened.

[89] All in all I have not been impressed with the caliber of witnesses called by the Fund and the quality of the evidence given by them. In relying on such witnesses the Fund has in this instance and in my view, comprised its integrity, responsibilities and efficiency. In an unreported judgment of the SCA in *Road Accident Fund v Roman Klisiewics*, Case No.192/2001, handed down on 29 May 2002, Howie JA set out the extent of the Fund's responsibilities, saying the following in paragraph [42]:

"The [Road Accident Fund] exists to administer, in the interests of road accident victims, the funds it collects from the public. It has the duty to effect that administration with integrity and efficiency. This entails the thorough investigation of claims

and, where litigation is responsibly contestable, the adoption of reasonable and timeous steps in advancing its defence. These are not exacting requirements. They must be observed."

- [90] Given the extent of Mr Beekarun's involvement in this matter as well as that of the investigator [Mr Francois] from the Fund who spoke to the witnesses from the control centre, I find it shocking that the Fund could rely on a fabricated version to persist with its defence of this claim.
- [91] It leaves me finally to comment on Pillai as a witness. In comparison to the Fund's witnesses I find Pillai to have been an exemplary witness whose version has a ring of truth about it. His version of events was clear, detailed and consistent throughout. Notwithstanding the lengthy cross-examination he was subjected to and the number of theories he was requested to comment on, his version remained free of contradictions and consistent not only with the objective evidence but also with the expert evidence that was tendered.
- [92] If demeanor is anything to go by he was an impressive witness who answered all questions put to him without hesitation. There were several occasions when he unhesitatingly made potentially adverse statements, for instance, that he consumed alcohol, albeit very early that evening before meeting with the deceased; nor did he deny that the deceased may have consumed alcohol but not in his presence. He was firm when the occasion called for him to be firm, for instance, he insisted that Mr Beekarun met him at his residence and not at his mother's house, a position which the defendant later retracted.
- [93] Having regard to the number of hypotheses that were being suggested to him by Mr Crampton, Pillai was prepared to make concessions when it was appropriate to do so even when at times these were potentially adverse to his version. A few examples will suffice: he conceded that it was possible that there would have been sand on the road if the vehicle left the road on the right and entered the median; when it was suggested to him that there will be evidence from a witness who will say that he looked for but could find no evidence of a collision because of the absence of shattered glass, paint and skid marks, Pillai conceded frankly that he was unable to explain this but did not retract his version of what happened. Additionally, he conceded as a possibility that the deceased's vehicle could have left the road to the right nor did he reject the possibility that the vehicle could have ended up in a ditch. He stated that he was unable to comment on the proposition that a large truck would have been involved further after colliding with the deceased's vehicle. When it was suggested to him that it was unlikely that the truck would have just disappeared, he did not argue but simply maintained his version. All in all, in my view, Pillai displayed all the hallmarks of an honest witness whose version was reliable. Unfortunately, this cannot be said of the defendant's witnesses. I accordingly find that the plaintiffs' version of the accident is the only one which rests on direct evidence from Pillai which, in my view, is not inherently improbable and which I find to be satisfactory in all respects.
- [94] In my judgment the probabilities support the plaintiff's version of how the collision occurred. It follows that the defendant's version, built on lies and speculation, falls to be rejected.
- [95] I make the following order:

- (a) The defendant is liable to compensate the plaintiffs for their agreed or proved damages arising out of the death of the deceased, Mr S Manikum, in the collision which occurred on 8 August 2000.

Date of Judgment : 19 September 2013

Date of Hearing : 12 August 2013

Counsel for Plaintiffs : Adv. FM Moolla SC

Instructed by : Sarawan & Company

Counsel for Defendant : Adv. DP Crampton

Instructed by : Messrs Mastross Incorporated

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