

SOUTH AFRICA / JUDGMENT

Meso v Road Accident Fund (11400/12)

[2014] ZAGPPHC 31 (17 February 2014)

[2014] ZAGPPHC 31

COURT

North Gauteng High Court, Pretoria

BEFORE

Khumalo

CASE / FILE NUMBER

11400/12

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION: PRETORIA

CASE

NO: 11400/12

DATE:

17 FEBRUARY 2014

REPORTABLE

In

the matter between:

MANAPE

ALFRED MESO

.....PLAINTIFF

and

ROAD

ACCIDENT FUND DEFENDANT

JUDGMENT

KHUMALO J

Date of hearing: 11 October 2013

INTRODUCTION

- [1] In an action instituted against the Road Accident Fund (“the Defendant”), a juristic person established in terms of the provisions of s 2 (1) of the Road Accident Fund Act 56 of 1996 (“the Act”) liable for compensation of victims of motor vehicle accidents in accordance with the Act, for damages for personal injuries sustained in a motor vehicle accident by the Plaintiff, the Defendant is challenging the cause of action to be inaccurate and raises prescription as a defence.
- [2] The Plaintiff is a 46 year old police officer holding the rank of captain in the South African Police Service (“SAPS”). On 4 May 2008 at about 8 o’clock in the morning, he was driving an SAPS motor vehicle with registration number V[...] along the Mongwadi-Polokwane Road at Mongwadi location towards Polokwane when he lost control of the motor vehicle. It overturned and tipped over the barrier on the left hand side of the road. He sustained serious bodily injuries.
- [3] Consequently, on 14 March 2011, he lodged his claim with the Defendant in accordance with the provisions of the Act.
- [4] On 23 February 2012, summons were on his behalf issued against the Defendant for a claim of an amount of R3 100 000.00 for damages for the injuries he sustained. In the particulars of claim, he alleges that the accident occurred as a result of the sole negligent driving of a motor vehicle bearing registration numbers L [...] (“the insured vehicle”) that obstructed him, driven by a driver (“the insured driver”) whose further particulars are unknown to him and whose sole negligent caused the accident in one or more of the following ways, he;
- [4.1] failed to keep a proper lookout;
- [4.2] drove his vehicle at a speed that exceeded the speed limit;
- [4.3] failed to apply brakes of the insured vehicle timeously, adequately or at all;
- [4.4] failed to give any/ or adequate clearance when attempting to pass Plaintiff, who was a pedestrian at the said time;
- [4.5] failed to avoid the collision when, by the exercise of reasonable care and consideration, he could and should have done so;
- [4.6] failed to give any /or adequate warning of his approach;
- [4.7] failed to keep the insured vehicle under proper and/or adequate control.

A mechanical recital of the standard averments that are usually mentioned in damages claims resulting from motor vehicle accidents.

Plaintiff was not a pedestrian at the time of the accident.

[5] Except for admitting to the name of the plaintiff, its own locus standi and the occurrence of the accident between the two vehicles mentioned by the Plaintiff, the Defendant in its Plea denied every other allegation in the Plaintiff's particulars of claim, particularly that the unknown driver was negligent as alleged by the Plaintiff or at all, putting the Plaintiff to the proof thereof and pleading that if the court finds that the accident occurred as alleged by Plaintiff, or at all but that insured driver was negligent, it denies that such negligence caused the collision and stated that the Plaintiff was the sole cause of the accident, in that he either:

[5.1] failed to keep a proper look out; and or

[5.2] failed to avoid a collision when by the exercise of reasonable care and skill he could and should have done so; and or

[5.3] failed to take the rights of the other road users, more particularly that of the insured driver into account; and or

[5.4] omitted to brake, alternatively brake timeously, alternatively brake at all, alternatively the braking system of the vehicle he was driving was defective; and or

[5.5] was travelling too fast under the traffic conditions; and or

[5.6] failed to keep control alternatively, keep proper control of the vehicle.

Pleading also contributory negligence as aforementioned and apportionment of damages, if the court finds the insured to have been negligent.

[6] The Defendant also pleaded in the alternative that, if the court finds that Plaintiff sustained injuries and suffered damages as a result of insured driver's negligence, then Plaintiff negligently contributed to causing the injuries sustained in that he failed to fasten, alternatively to properly fasten the safety seat belt and had he done so he would have either avoided injury or suffered injury to a lesser extent, as a result praying for Plaintiff's claim to be dismissed.

[7] Subsequently both parties amended their pleadings. The Plaintiff by notice delivered on 11 September 2013, increased his claim to R4 100 00.00, whilst the Defendant, three (3) days before trial, delivered his Plea as amended, setting forth a Special Plea of Prescription that "The Plaintiff" claims damages in terms of the Act for personal injuries allegedly sustained in a motor vehicle on 4 May 2008. The Plaintiff's claim was lodged on 14 March 2011, which is after the prescribed two

- (2) year period for unidentified claims. The Defendant pleads that it does not incur any liability in respect of the Plaintiff's claim as it has become prescribed in terms of the provisions of the Act."
- [8] The Defendant also amended its Plea to the effect that it admits to the accident involving only the motor vehicle driven by the Plaintiff, whilst persisting with the other denials. Also that, if the court found that Plaintiff's path of travel was indeed obstructed by another vehicle that was negligent as alleged or at all then it denies that the negligent driving of that other motor vehicle was the sole cause of the accident, and continued to claim in the alternative, contributory negligence and the apportionment of damages in terms of the Apportionment of Damages Act 34 of 1956, as amended.
- [9] It also persisted in its Plea that the Plaintiff was the sole cause of the accident in one or more ways as previously mentioned.
- [10] I have to mention that the formulation of the particulars of claim and both Pleas, to an extent, lacked clarity and order, signifying some kind of sloppiness.
- [11] In their pre-trial minutes dated 10th October 2013, the parties agreed that:
- [11.1] Plaintiff file a Replication to Defendant's Special Plea.
- [11.2] that the issue of merits, specifically whether or not there was another vehicle involved in the collision, remained to be decided, as well as that of the Special Plea.
- [11.3] if Plaintiff's claim is an unidentified claim as envisaged in terms of the Act then in that event the claim has become prescribed at the time it was lodged and if it is an identified claim then the Plaintiff's claim has not prescribed.
- [12] At the beginning of the trial, an agreement between the parties under rule 33(4) of the Uniform Rules, separating the issue of liability from that of the extent of damages was made an order of court and the latter issue postponed for later

determination.

The trial then proceeded on the issue of liability.

THE APPLICABLE LAW

- [13] In terms of s 17 (1) of the Act, the Defendant is obliged to compensate any person (the third party) for any loss or damage which a third party has suffered as a result of any bodily injury to himself or herself, or the death of or any bodily injury to any other person caused by or arising from the negligent driving of motor vehicles whether or not the identity of the owner or driver of the motor vehicle that caused the accident is established.

[14] The claims are generally differentiated and referred to as “identifiable claims” and “hit and run” or “unidentifiable claims”. The section provides, in respect of unidentifiable claims, for the claim to be made against the Defendant subject to any regulation made under s 26 and for those identifiable, the Act in s 24 provides for compliance before the right to claim can be exercised.

[15] Regulation 2 (1) (b) promulgated under s 26 of the Act prescribes that if the driver or owner of the negligent vehicle is unidentified,

the claim is to be lodged with the Defendant within two (2) years from the date of accident or resultant death. In terms of this

section, a claim instituted outside the prescribed time limit becomes extinct, that is non-existent. Therefore, notwithstanding anything to the contrary contained in any law, a claim for compensation shall be sent or delivered to the Fund within two years from the date upon which the cause of action arose, failing which the right to enforce the claim, terminates. See regulation 2 (2); *Msomi v SA Eagle insurance* 1983

(4) SA 592 at 597.

[16] It is of cardinal importance to note that in the case of an unidentified driver or owner of the negligent motor vehicle, it is the lack of establishment or proof of identity of the driver or owner of the negligent motor vehicle that determines the prescription

period applicable, notwithstanding any legal disability to which the third party concerned may be subject as provided in regulation 2(2).

[17] Also, strictly speaking, it is not the vehicle that is unidentified but the driver and owner thereof; see *H B Kloppe*, *The Law of Third-Party Compensation*, 3ed. accordingly, a person will not be regarded as prima facie identified:

[17.1] if only a registration number and the description of the vehicle is submitted;

[17.2] if only a registration number is submitted;

[17.3] if only a name is given.

[18] The identity of the negligent driver or owner of the negligent vehicle is established if his name and residential, postal or work address, are furnished at the time of lodging the claim, even without the vehicle registration number, however if known they should be furnished together with the identity number. The address can also be a telephone number, or a description of where the person may be found.

[19] For proper assessment of claims, strict and accurate compliance with the procedure prescribed by the Act is required to give the Defendant the opportunity to undertake the investigations necessary so as to safeguard its resources against fraud. See *Road Accident Fund v Thugwana* 2004

(3) SA 169 (SCA) and Moskovitz v Commercial Union Assurance Co of SA Ltd 1992

(4) SA 192 (W).

[20] The Defendant's liability is imposed in circumstances contemplated in the Act, only to a third party, it is not, under any liability to a negligent driver who inflicts loss or damage to himself or herself. Therefore a person who is solely responsible for their own injury does not have a claim, however a person whose injuries were caused partly by his own fault and partly by the fault of another motorist is entitled to compensation. See Smith v RAF [2006] ZASCA 15; 2006

(4) SA 590 SCA. Then again, if the identity of this other motorist is unknown or not established the claim is unidentifiable and should be instituted in terms of s 2 (1)

(b) within the prescribed 2 year period.

[21] In this matter on the two questions to be answered, that is, if there was another car that caused the accident? and whether it was identified? The second question does not arise if the answer to the first one is in the negative.

LODGMET OF THE CLAIM

[22] When Plaintiff lodged his claim with the Defendant on 14 March 2011, almost 3 years from the date of accident, it consisted, inter alia, of a Form 1 as per provisions of s 23 of the Act signed by the Plaintiff on 29 May 2009. On item 2 of the Form, the particulars of the motor vehicle from the driving of which the Plaintiff's claim arose are stated as "V[...]", which is the registration number of the SAPS motor vehicle that overturned driven by the Plaintiff. Further on, Plaintiff's details are completed where the particulars of the driver of the negligent vehicle are required. The question relating to the steps taken to identify the driver or owner was left blank. On Item 4 that requires the particulars of the other motor vehicle involved in the accident, the registration number "L[...]" was completed and the name of the owner stated as "unknown". The field in respect of the name and address of the driver and address and occupation of owner were left blank. The lodged documents

included a sketch, plan and key that was not disputed by the Plaintiff. It shows brake marks only from the Plaintiff's line

of travel to the left and off the barrier. The accident is described in the plan and key as only of a car as 'one car that lost control towards left side after the bridge and overturned.'

[23] Attached to the form was also Plaintiff's Affidavit made to the police a month after the accident on 15 June 2008. In the relevant part of the Affidavit he states the following: I was travelling +-110 km/h while a certain car I saw was coming to my direction. When that car was approaching me another vehicle overtook that said car and I had to avoid a head on collision then I swerved to the left hand side of the road whereby I lost control of the vehicle and my vehicle overturned.

[24] Consequently at the time when Plaintiff's claim was lodged with the Defendant, the message conveyed by the documents, particularly on Form 1, was that the motor vehicle from which the claim arose was the one driven by the Plaintiff and the name and address of the driver of the other motor vehicle involved was not known to the Plaintiff. The claim would therefore have been assessed by the Defendant as a non-liability claim since the driver of the motor vehicle from whose negligence the claim is lodged, is identified as the Plaintiff who is non-suited as a claimant. The Defendant repudiated the claim. It would have regarded itself as not liable on the basis that the Plaintiff is not a third party but the wrongdoer (according to Form

1) to whom a right of recourse against the Defendant is not extended.

[25] It is evident that Plaintiff's Form 1 was completed incorrectly.

[26] As a result when Plaintiff instituted the action for damages, he alleged in his particulars of claim that it was the negligent driving of the other motor vehicle with registration number L[...] (the insured motor vehicle) driven by an unknown driver that caused the accident. After delivering its Plea, the parties held a pre-trial meeting on 17 May 2012, the Defendant confirmed that it will investigate the identity of the driver or owner of the vehicle and indicate its position with regard to Plaintiff's claim on the merits. Defendant later amended its Plea denying that there was another car involved in the accident and adding a Special Plea that at the time of lodgement, the claim had prescribed as it was an unidentifiable claim.

[27] Regardless of what the Plaintiff pleaded in its particulars of claim, he persisted in alleging that his claim is an 'identifiable

claim' and also to challenge the proposition that no other motor vehicle was involved in the accident, but failed to file a Replication.

[28] On the other hand, irrespective of Plaintiff being bound by the cause of action set out in his particulars of claim, the parties agreed that on trial the onus was with the Plaintiff to prove that there was another car that was involved in the accident with its driver or owner identified to refute prescription as per Defendant's Plea.

[29] In *Cf Pretorius v SA Eagle Versekeringsmaatskappy Bpk; Pretorius v Multilaterale Motorvoertuigongelukfondse* 1998

(1) SA 33 (T) at 46I-47E, the judgment was upheld on appeal on [1997] ZASCA 107; (1998

(2) SA 656 (SCA)) though this particular aspect was not discussed, Swart J held that:

"in deciding whether liability under the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 lay with the insurance company or the Fund, the question whether the owner and driver were unidentified had to be decided at the time of the trial, not at the time the claim form was lodged."

EVIDENCE

- [30] On trial, evidence was submitted on behalf of the Plaintiff, by the Plaintiff himself and one Mamathiki Lodwick Mphaho ("Mphaho"). The defendant did not put forward its version, leaving the merits to be decided on the basis of Plaintiff's evidence.
- [31] According to the Plaintiff, during that period he worked as an enforcement officer and a fieldworker. On the day of the accident he was driving from Dendron going to Pietersburg to meet with an informer. He placed himself on duty. It was an early sunny morning and the tarred road was in a good condition. He was driving at a speed of 110 km/h and approaching and about to enter a bridge, when a motor vehicle from the oncoming traffic that was overtaking moved into his lane from a distance of about 500 metres. The accident happened near the bridge when he had already entered the bridge. He tried to swerve to the right hand side then lost control. There are cross bars on both sides of the bridge. It happened very quickly and the car capsized. He sustained injuries and was trapped in the car.
- [32] Under cross examination his evidence was that he received the information about an informant on that Sunday morning. The previous night he slept at Dendron with family, having travelled with them from his home in Mamelodi and arrived at Dendron on Saturday morning. He stayed with family until Saturday night. He then turned around and said he received his first call on the informant on that Friday whilst still in Mamelodi. Even though it is standard procedure to make an entry in the Occurrence Book ("OB"), he did not make an entry when he took the state motor vehicle as he was supposed to be discreet. The standard protocol is not to reveal the identity of the source or reason for going out. He wanted to contact his boss the Station Commissioner Mothle first and could not locate him on his phone. He normally phones and inform him that there is a possibility he might go out because when they work with informers they don't disclose the whole information. At the time he ran intelligence and made arrests. His family was with him in the motor vehicle when the accident occurred and they also made statements about the accident, but he did not tell them anything and they were not going to assist him with the arrest.
- [33] Further on, still under cross examination he testified that he received the calls from an informant before he took the motor vehicle and placed himself on duty that Friday afternoon. He then drove straight to Dendron, but because the informant and the people shifted from where they had the dagga to another place, he then on Sunday early in the morning drove to Pietersburg where they were supposed to be at a house with the drugs with the informer
- watching, to make the arrest but they moved to somewhere else that is when he passed on to Dendron. The informer was in Pietersburg, slept at Dendron that night.
- [34] When he was confronted with the inconsistencies in his police statement, evidence in chief and during cross examination, namely,

inter alia, the day he received information on the informant and placed himself on duty if it was on Sunday, as in accordance with his evidence in chief and police statement, or Friday, as testified under cross examination. His response was that he made the police statement whilst he was paralysed, so he could not read the statement after it was written by the police, however he told them that he took the car on Friday afternoon and placed himself on duty. He subsequently gave the following version to explain the other inconsistencies:

[35] A blue sedan came into his lane at about 500 metres, trying to overtake 5 cars in front of it. He saw that it was going to collide with him head on so he swerved to the right and when he went back to the left lane that is when the car capsized. There are 2 lanes on each side going the opposite direction (dual carriageway). There was no space on the side. There are barriers and he did hit a barrier on the left side of the road and tipped over. In front of the five cars that the blue sedan was overtaking was a Quantum Kombi. He went to the right first as the brake marks show on Makgabo's report as he was trying to give the overtaking car a chance to pass without colliding with the 5 cars. His affidavit to the police is not correct that he only swerved to the left. The car was a Toyota sedan, when they were facing each other he swerved to the right and the insured car passed him on the left, that is, when he swerved back to the left. He was very close to the wall 8 to 10 metres away from the oncoming cars. He swerved back to the left and hit the iron bars after all the cars have passed on the left. He did not collide with any of the oncoming cars. He did not contact any of the cars as he was hospitalised for nearly a year and on discharge on 28 August 2008, he was charged with negligent driving. The charges were later withdrawn. He does not dispute the sketch, plan and key of the accident but could not explain why it had only break marks of his car and why the accident report by Inspector Seanego states that only 1 car was involved.

[36] He met the witness Mpheho, a day before trial when he called him as he was told that Mpheho has to come to court. They discussed the matter on their way to court. He could not explain why when he was charged with reckless driving 7 months later he did not point out that there was another vehicle that caused the accident, even when he was making a statement to the police and said he never thought of doing so. He also could not explain the inconsistencies of his testimony with the police statement on how the accident occurred. On re-examination he explained that the description of the accident scene on the report is what Inspector Seanego observed on his arrival at the scene. Seanego did not ask him anything, and could not explain the inconsistency with his testimony.

[37] Plaintiff's statement to the police stated that on Sunday 2008-05-04 at about 8h30 he was off duty when he received sensitive

information from a registered informer who happened to stay in Polokwane and he decided to place himself on duty as he had to follow

that particular information. He was driving the state owned motor vehicle. He decided to place himself on duty as a result of the

unavailability of the station commissioner who was out of town, knowing that if he was available he could have placed him on duty and allowed him to use the state vehicle for the purpose of visiting the registered informer. He was travelling +-110 km/h when he saw a certain car travelling to the opposite direction approaching. When that oncoming car was approaching him another vehicle overtook that car and he had to avoid a head on collision so he swerved to the left hand side of the road whereby he lost control of the vehicle and his vehicle overturned.

- [38] Mphaho, testified that he was employed at Imvula Quality Production in Polokwane as a security officer at the time and patrolling Telkom sites between Dendron and Polokwane. On 4 May 2008 while on patrol and driving behind a white Toyota Corolla on a speed limit of about 100 to 110km/h at a 120km/h zone on the Mongwadi Road, a blue golf from the oncoming traffic moved into their lane, whilst overtaking. They were going to collide with it head-on as it was heading towards the white Toyota and him. He took his foot off the accelerator and reduced speed. The blue golf was overtaking the cars in front of it and these cars were not giving it a chance to go back to the lane. He realised that the car was going to collide with the Toyota in front of him and the Toyota driver saw that the blue car was close and tried to swerve to the right a little bit and swerved to the left. He was already out and used the brakes. If the blue car missed the Toyota it was going to collide with him on the wrong lane. The blue golf did not stop, it drove off. He managed to quickly take the number plates of the golf that was passing and the white Toyota fell into a ditch.
- [39] Since the day of the accident he saw the Plaintiff the day he came to see him at his work. Plaintiff phoned him and asked him about the accident. After he told him the story he then asked for permission at his work to come with the Plaintiff to court. He did see the car falling over the bridge but he did not stop. Since then he could not stop wondering what happened to the passengers. It bothered him, so on 30 December 2010, 2 and a half years later he went to the police to find out if the people in the car survived. He gave the police the date and the registration number of the blue golf that was involved to the investigator, Mr Moraka.
- [40] He testified under cross examination that he was driving a 1400 Nissan bakkie and several cars were behind him. There were about 4 cars that the blue golf was overtaking and could not go back to its lane. When it moved into their lane it was not far, it was clear that it was going to cause an accident. He reduced speed and moved out of the road, not sure of the distance of the blue golf at the time. The Plaintiff swerved slightly to the right and then left, afraid of the head on collision, the blue golf was passing at the time that is when he got a chance to write down the number plate. The total number of the people in the SAPS motor vehicle was about 5 and 2 out of the 5 were trapped in the vehicle. There was another vehicle, a combi, whose occupants started helping. He did not wait for the police or the paramedics, when cars started stopping at the scene, he went to work. There was no way he could have helped them and he also did not help the police that is why the whole thing was troubling him. He realised that the car was not going to stop and quickly memorised the number plates and wrote them down after the accident on an occurrence book. He did not

have the idea to help because he was still on duty. Always when he passed the place of accident he wondered about the people in the accident.

- [41] He could not explain why Plaintiff's version was that the insured vehicle passed first and then he swerved to the ditch,

although he could see what was happening all around him. When he went to the police station he was going to enquire about the lives of the people involved and not to report the accident. The number he wrote is the registration number he saw on the motor vehicle that was overtaking. He could not explain how he could have avoided the accident if he was 20 metres behind the Plaintiff and with several cars behind him and why the number plates reported in the particulars of claim are of a Ford Corum that has been reported stolen and driver not involved.

ANALYSIS

OF THE EVIDENCE:

- [42] The Plaintiff's evidence had material inconsistencies which remained unexplained or got more bewildering as he tried to explain them and continued to testify. He entangled himself in incomprehensible explanations, making it difficult for anyone to understand as to which version he was exactly standing by. The version he finally chose is so improbable to can be conceived as the truth. In certain instances during cross examination he was so obviously untruthful that it is difficult to imagine any word that he said to be true.
- [43] It is obvious that he took the SAPS motor vehicle without permission, whilst on leave and when he got involved in an accident, he fabricated a story about the informant, to explain his possession of the vehicle at the time, which explains the inconsistencies in his version, namely, inter alia, the exact day that he got the information about the informant and placed himself on duty and what he did when the motor vehicle alleged to have been overtaking was approaching, which were too many and serious. It further explains his changing story on how exactly the accident occurred that his whole evidence could not be held to be credible. It is not necessary to repeat all of the inconsistencies since his evidence is dealt with at length.
- [44] Mphaho's evidence, regrettably carries not much weight either, since he not only contradicted the various versions by the Plaintiff on how the accident happened, and on the make of the motor vehicle alleged to have been overtaking, which he said was a blue golf whilst Plaintiff identified it as a blue Toyota sedan. The explanations he gave also for his irrational behaviour did not make sense.
- [45] His reason for not stopping and assisting the injured or submitting the registration number of the alleged offending motor vehicle when in accordance with his testimony, he was aware that the people in the Plaintiff's car could have been dead, dying or seriously injured is unconvincing. It therefore begs the question as to what was his reason for writing down or memorising the registration number if he was not going to tender it to the police or the

people involved? Since it is also his testimony that his visit to the police station, 2 and a half years later, was not to hand over the registration numbers but to check whether the people died or survived. The alleged conduct was highly irrational. Furthermore, the occurrence book wherein he wrote the number was not discovered, neither submitted as evidence in court nor was much said about it.

- [46] Furthermore, according to them the move of the motor vehicle that was overtaking into their lane was inopportune, and Mphaho was 20 metres behind the Plaintiff with other motor vehicles behind him, it is therefore highly improbable that he could manage to manoeuvre a move so quickly to avoid the accident, as the situation required, and at the same time stop and memorise the registration number, if the overtaking motor vehicle did not stop or reduce its speed. There was also no indication of how long after the accident occurred did he then write the memorised number in the OB, to allay the fear of falsification, fabrication or error. He also could not explain how he managed to preserve or keep the information for all those years seeing that the OB belongs to the company and unlikely that he would have his own OB to keep as he alleged.
- [47] Plaintiff had 4 other passengers in his motor vehicle who were injured when the accident happened, who could have corroborated his story but he suspiciously left these witnesses out. Whilst Mphaho's sudden change of heart after 2 and a half years the accident occurred to respond to a sense of morality and go to the police station and supply the missing link is very opportunistic. His conduct is not only inexplicable but his evidence leave many questions unanswered that the truthfulness and genuineness thereof is questionable. Besides, the contradiction between Plaintiff and his version make the credibility of their evidence doubtful and therefore unreliable.
- [48] The evidence therefore put forward by the Plaintiff lacks credibility and cannot be relied on to determine the issues between the parties. Plaintiff has as a result failed to prove on a balance of probabilities that the accident was caused by another motor vehicle. The second question therefore does not arise.
- [49] Mr Wastenbaar's submission, that the evidence that was led before court by the Plaintiff is the direct opposite of what is alleged by the Defendant, as the driver of the guilty vehicle was duly identified by the independent witness and there is no evidence to the contrary to dispute that. In consequence this means that the Plaintiff's claim has not prescribed and its duly identified thus lodged within period of three years, is way off the mark. The evidence was an unsuccessful attempt to put the blame on the other car. Then again, the registration number of the car does not identify the driver or owner.
- [50] This validates the concern that Bertselman J sitting as a full bench, raised when he encouraged compliance with the Act facilitating the ability of the fund to be able to identify deserving claims in *Pithey v Road Accident Fund* (A375/2010)
- [2012] ZAGPPHC 158; 2013 (5) SA 226 (GNP) (10 August 2012); opining that:

“the respondent is funded by and administers public funds obtained from the taxpayers' pockets. It must therefore take care that it is not duped by dishonest plaintiffs or greedy legal representatives prepared to fraudulently enrich themselves from the funds intended to compensate road accident victims, the majority of whom are poor. It must also guard against honest but mistaken claims advanced by persons who may not be entitled to any award because they cannot bring their claim within the ambit of the Act and the Regulations promulgated thereunder.”

[51] Under the circumstances, the following order is made:

[51.1] Plaintiff's claim is dismissed with costs.

N V KHUMALO J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

Appearing for Plaintiff: Advocate D E Westebaar

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Appearing for Defendant: Advocate S G Maritzl

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