

SOUTH AFRICA / JUDGMENT

Msibi v Road Accident Fund (5136/2022)

[2025] ZAMPMBHC 51 (4 June 2025)

[2025] ZAMPMBHC 51**COURT**

Mbombela High Court, Mpumalanga

BEFORE

Mashile

CASE / FILE NUMBER

5136/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA

CASE NO: 5136/2022**(1)****REPORTABLE:NO****(2)****OF INTEREST TO OTHER JUDGES: YES****(3)****REVISED: YES****DATE 04/06/2025****SIGNATURE**

In the matter between:

SKHUMBUZO
MSIBI
PLAINTIFF
and
ROAD ACCIDENT
FUND
DEFENDANT

This judgment was
handed down electronically by circulation to the parties and/or
parties' representatives by email. The date
and time for
hand-down is deemed to be 04 June 2025 at 10:00.

JUDGMENT

Mashile J

- [1] This is a personal injury claim arising from a motor vehicle accident involving the Plaintiff. The accident occurred on 9 March 2020 when an unknown vehicle (“insured vehicle”) driven by an unknown driver (“insured driver”) left its path of travel and collided with the Plaintiff who was on the side of an unknown street in Piet Retief. Believing that the accident was caused by the negligent driving of the insured driver and that his injuries were a result of the accident, the Plaintiff instituted this claim against the Defendant (“the Fund”).
- [2] When the matter served before this Court, the parties applied to court in terms of Uniform Rule of Court 33(4) that the issues of liability and quantum be determined discretely. Having had regard to the parties’ respective submissions on why it was pragmatic to do so, I directed that the issues be so separated as contemplated in the rule. In consequence of the separation of the issues, this Court is tasked to determine whether it can find for the Plaintiff on the evidence levied before it. This is significant because the only person who witnessed the accident did not testify.

- [3] The instances concerning the way the insured driver was negligent are articulated at paragraph 6 of the particulars of claim and are as follows:

“6. The accident was caused by the negligent driving of the driver of the insured motor vehicle in one or more of the following respects:

6.1 he drove at an excessive speed in the circumstances

6.2 he failed to keep a proper look out

6.3 he failed to keep the vehicle driven by him under proper control

6.4 he failed to avoid the collision when by exercise of reasonable care he could and should have done so

6.5 he failed to give any or adequate warning of his approach at a time when he could and should have done so

6.6 he failed to pay due attention and regard to other road users and in particular the Plaintiff when ought to have done so

6.7 he drove on incorrect lane.” (sic)

- [4] These allegations, without evidence positively confirming their occurrence, are not sufficient to sustain this claim. Thus, the Plaintiff needed to take the stand, supported by other witnesses or not, to elaborate. The Plaintiff's account of the accident pertains to events prior to the accident and in fact, he admitted under oath that he did not see how the collision happened. His friend, Mr Sibusiso Shongwe ("Mr Shongwe"), witnessed how the accident happened but the Plaintiff elected not to call him to testify.
- [5] In the circumstances, the Plaintiff will stand or fall by his evidence alone. His testimony was that he was standing on the side of the road when he noticed a heavy motor vehicle approach, indicating that it would be coming to a halt somewhere next to where he stood. He lost interest in the heavy vehicle before it stopped and turned his focus on his friend who was shopping near where he was. The next moment, he felt his body encountering some object and he lost consciousness.
- [6] He assumed that it ought to have been the heavy-duty motor vehicle that he observed before the impact that collided with him. His suspicion was confirmed by Mr Shongwe who told him that indeed it was the heavy duty motor vehicle that collided with him and drove away. However, Mr Shongwe's evidence is clearly hearsay and therefore not admissible. In short, the Plaintiff does not know how the accident occurred, nor can he positively indicate that he collided with the heavy duty motor vehicle that approached the spot where he stood shortly before the impact.
- [7] These are the alleged facts on which I must determine whether there was any negligent driving on the part of the insured driver, which caused the accident and therefore, the resultant injuries of the Plaintiff. While assessing the Plaintiff's evidence, I will decide the weight, if any, to give to the hearsay evidence of the Plaintiff concerning Mr Shongwe. Related to the aforesaid is, should this Court make any adverse findings against the Plaintiff for his failure to call this important witness, Mr Shongwe?
- [8] The evidence levied by the Plaintiff is inadequate to impute blame to the insured driver. In view of his failure to call Mr Shongwe, this Court cannot be certain that the injuries that he claims to have sustained were caused by the heavy duty motor vehicle that is so shrouded in mystery. It must be born in mind that in the absence of a witness stating that the Plaintiff indeed collided with the heavy duty motor vehicle that he saw shortly before he was hit, the injuries could have been the result of any other unknown incident, which this Court cannot speculate.
- [9] The burden of proving that an injured person collided with the vehicle is more onerous in the case of "hit-and-run" collision. The court was not furnished with ambulance records, which would normally confirm that they conveyed a person from a particular alleged scene of accident to a Hospital or Clinic. Nothing of the sort was provided here. The medical personnel from the Hospital were not called to confirm that the injuries were consistent with those of a motor vehicle accident.

- [10] It is not without significance that the Road Accident Fund Act 56 of 1996, as amended, requires that an injured person who neither knows the identity of the driver nor the vehicle should, within 14 days of his discharge from Hospital or as soon as it is practically possible after discharge from Hospital, compile an affidavit setting out the steps he took to establish the identity of the driver. This is to reduce the possibility of fabricated accidents that are intended to defraud the Fund.
- [11] The next question that arises is, mindful that he did not know how the accident happened, why would the Plaintiff not call Mr Shongwe to assist? Here the Court is left to speculate because no answers were forthcoming from the Plaintiff. The possibility is that Mr Shongwe, if he exists, refused to be part of these contrived facts or he is a fictional character. The injuries were caused by some other event not motor vehicle accident related. Failure to call Mr Shongwe in this case, in fact, should attract an adverse inference that the Plaintiff deliberately refrained from calling him because he would expose the hollowness in his evidence.
- [12] In the circumstances, I am unable to find for the Plaintiff, in consequence of which I make the following order:

The claim is dismissed with costs.

B A MASHILE

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff: Adv AZ Cassiem Instructed by: TK Machitele Attorneys Inc C/O Meintjies & Khoza Inc Counsel for the Defendant: Adv V Mukwevho Instructed by: The State Attorney, Mbombela Date of Judgment: 04 June 2025

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Prepared on 10 October 2026 · Esheria