

SOUTH AFRICA / JUDGMENT

Senwamadi v Road Accident Fund (2022/2719) [2025] ZAGPJHC 129 (14 February 2025) [2025] ZAGPJHC 129

COURT

South Gauteng High Court, Johannesburg

BEFORE

Fisher

CASE / FILE NUMBER

2022/2719

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2022/2719

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER

JUDGES: YES

(3) REVISED: NO

14/02/2025

In the matter between: SENWAMADI PUTSOANE
JOHANNES
Plaintiff
And
ROAD ACCIDENT
FUND
Defendant
Summary: Claim against
the RAF. Plaintiff single witness – unknown third- party driver
alleged. Accident report probably a
fabrication. Copy of judgment to
be sent to Minister of Transport, Minister of Police and CEO of RAF

JUDGMENT

FISHER J

Introduction

- [1] This is a curious matter as to the merits. A patchwork of contradictions and evidence tendered as objective in the form of a police report which directly contradicts the evidence given by a single witness in the form of the plaintiff. It leads to much speculation as to how, and if, the alleged accident occurred. But that is not the work of the court. The court’s purpose is to attempt to make sense of the evidence.
- [2] The plaintiff pleads that the motor collision occurred at approximately 19h00 on 06 March 2021 on Houtkop Road, Vereeniging when he was driving his white Polo motor vehicle with registration number O[...].
- [3] The description of the accident pleaded is as follows: “an unidentified vehicle driven by an unknown driver disturbed the plaintiff’s vehicle and whilst taking evasive action “Plaintiff drove into lose control of his motor vehicle (sic) and it overturned.”
- [4] It is later pleaded in addition to the stock allegations of failing to keep a proper lookout/ driving at an excessive speed /failing to keep control /disobeying of traffic rules/failing to take steps to avoid the accident/driving without the requisite care and skill, that the insured vehicle was driven recklessly either intentionally or negligently and that the plaintiff whilst taking evasive action drove into a pothole which caused him to lose control of the vehicle and it overturned.
- [5] The injuries pleaded as being sustained were a left scapula fracture and “general body pains”.
- [6] The claim was for a total of more than R 5.3 million.

- [7] It was pleaded in relation to the past loss and loss of earning capacity that, at the time of the accident the plaintiff was “self-employed” as a roll preparer at Arcello Mittal earning a gross salary of R12 000 per month.
- [8] The plaintiff was a single witness and so the usual caution must be applied by this court in evaluating the evidence.
- [9] The most perplexing piece of evidence which was adduced, however, is a document discovered by the plaintiff which purports to be the formal accident report made to the police.
- [10] Before I delve into the report in issue, it is apposite to consider the role played by the accident report generally in cases dealing with motor vehicle accidents.

The structure and purpose of the standard Accident Report form.

- [11] The accident report form is a staple requirement in the realm of the law relating to motor vehicle accidents – which includes the law of delict, insurance law and criminal law.
- [12] It thus stands to reason that the recording of the accident is a matter of public interest.
- [13] The standard form provided for the recording of the details as to the accident is designed to elicit the relevant detail and provides for a checking and recording process to be undertaken by various interested office bearers.
- [14] The form is formulated on the basis that it solicits or prompts information from the officer who is completing it. There is also provision made for the form to be completed by the driver of a vehicle involved. The formulation is such that it is, on the face of it, designed to obtain a comprehensive and verifiable record of the accident.
- [15] It allows for the allocation of reference numbers which allow for a record to be placed on a system of record.
- [16] The form was designed by its draftspersons so as to solicit information describing all aspects of the accident which would be relevant to any interest or inquiry such as may be needed in a court case of this nature. The design of the form is such that it makes provision for the person completing it to fill in required fields and to tick various options which seek comprehensively to set out common variations as to accident types and circumstances.
- [17] The form begins with an instruction to “complete if applicable”. Next it has a field (by which I mean an indication of information required and a space provided to the compiler of the report or the police official concerned to insert the information in manuscript) for the capturing of a case number. It reads “CAS

/ /”. For further official use provision is made for the insertion of a “serial number” and a “capturing number”. These numbers seem to suggest a code which allows for sourcing of the report on the national data base.

- [18] The form requires the accident date; day of week; number of vehicles involved; time of accident; and information as to the location. It proposes options relating to whether the accident occurred in a built-up area and the speed limit on the road in issue.
- [19] The particulars of the driver of the vehicles are to be supplied with prompts including options such as to the race and gender of the drivers.
- [20] The form provides for the ticking or checking of various options as to road type (example freeway, dual carriage and junction type (e.g. T-junction or crossroads)).
- [21] In relation to the details of the accident there are prompts with various options as to key details of a typical accident such as vehicle type (e.g. bus or station wagon); the type of road (e.g. tar gravel); condition of the road surface (e.g. bumpy, good; potholes); light (e.g. daylight , dusk); weather conditions; position of the road on which the vehicle was travelling before the accident (e.g. road shoulder or wrong side of the road); the manoeuvre being performed (e.g. U- turn); the vehicle damage sustained (for example right front, rolled) and the type of accident (e.g. head-on, side swipe).
- [22] As to the indication of damage there is also a stock diagram of a vehicle provided which allows for marking so as to indicate position of damage.
- [23] The form also makes provision for a sketch plan and a brief description of the accident.
- [24] There are also fields relating to the capturing of injuries and deaths and the details of persons involved and witnesses.
- [25] It hardly needs to be stated that the accident report is a crucial piece of evidence in a claim against the RAF.
- [26] The primary purpose of the accident report from the perspective of a plaintiff in a claim against the RAF is to prove that a motor vehicle accident occurred; that it was reported by an interested person; that it was recorded and placed on the police and/or other relevant national systems and is thus a matter of public record which can be accessed by all interested parties; and that the relevant details of the accident have been set out in the detail required for the record.
- [27] In the absence of such a report it would be difficult for a plaintiff to provide independent evidence of the occurrence of the accident. This is especially the case when he is a single witness.
- [28] The reporting of an accident is required by law and the failure to report would, in the absence of a compelling explanation as to this failure to make the accident report be an obstacle to a plaintiff's case being proved.
- [29] With these parameters as to purpose and formulation of an accident report, I move to set out details of the accident report relied on by the plaintiff.

The accident report discovered and relied on by the plaintiff

- [30] The plaintiff discovered the accident report and hospital records. These documents were admitted on the basis that they are what they purport to be. It was agreed that the production of copies of the documents would suffice.
- [31] The plaintiff confirmed that he had attended at the Vereeniging police station where he had made the report.
- [32] He confirmed that he had participated fully in the compilation of the report by the police officer, even to the extent of having his brief description of the accident as represented on the form which was in English - being translated by the police officer into Sesotho so that he could understand it.
- [33] The form in question on the face of it appears to reflect that it was completed by a police officer whose name service number and rank are all illegible. In fact, the “service number” provided does not resemble a number at all. It is simply and obviously a scribble. It is unsigned by the person completing it although a signature is required.
- [34] The form bears a stamp with the date 06 March 2021. The other details such as the police station from which the report was issued which should reflect on the stamp are illegible.
- [35] There is a space on the form which solicits the details of the office where the accident was reported and name of the police department – the options given being Metropolitan, Municipal, Traffic or South African Police Services. The field for this information is blank.
- [36] A space that solicits an “occurrence book no.” is also blank. This portion of the form also requires a signature by the officer or person completing it which is blank.
- [37] The accident register number is given as 123/ followed by a number which could be 2 or 3/2021.
- [38] Significantly, the portion for the allocation of a case number is blank.
- [39] There is a further check solicited as to a person who inspected the report. Initials, rank, surname, service number are solicited and this portion of the form also requires a signature of the person concerned. There is an illegible stamp across this portion of the form. None of the information is provided and there is no signature.
- [40] The provision for a capturing number is also blank suggesting that there was no capturing of the document on the system.
- [41] There is no indication of official registration of this accident on the system.
- [42] In relation to the options provided to assist in the details the options chosen are marked. The province option marked is GP. The location is provided in manuscript as “Houtkop” and the suburb as Vereeniging and the city /town also Vereeniging.

- [43] The part of the form where Particulars of Driver A are required are filled out on the basis that the ID number is written as 0[...] and further numbers which are illegible. The country of origin is said to be RSA. The name is stated as Senwamadi; the address is given merely as Zone 12 Sebokeng; the cellphone number is recorded and the options of “Black” and “Male”.
- [44] The type of driving licence held is not specified although this is required by the form.
- [45] The plaintiff testified that he had a driver’s licence but produced no evidence of this.
- [46] The injury was indicated as “slight”. The vehicle details were provided as - a white Polo Vivo with registration number DS 56 UKG.
- [47] The details required for Driver B are designated as unknown between two solid tramlines written diagonally across the portion of the form designated for such details.
- [48] The portion of the form is marked ‘yes’ in relation whether there was a seatbelt fitted and ‘yes’ in relation to a seatbelt being used.
- [49] It was indicated that there was no liquor or drug use and that there had been no evidentiary testing of this condition.
- [50] The statement was indicted with a check mark on the basis that the following options among the obvious were marked as instructed by the form:

Vehicle type – motor car; Light condition - night / unlit; weather conditions and visibility – clear; road surface type - concrete; quality of road surface- good; road surface -dry; Road marking visibility- NA; obstructions – None; Overtaking control-None (the options were barrier line, road sign, NA and None); Traffic control type – barrier line; road signs clearly visible – yes; condition of road signs – good; direction of road- straight; flat or sloped – flat; position before accident- not indicated (the options being correct road lane, wrong road lane but right side of road, wrong side of road, road shoulder, on road parking bay and off road parking bay); the vehicle manoeuvre- unknown (among options which included travelling straight and swerving).

- [51] The damage is indicated as to “left front”, “right front” and “front centre” from a list which includes “rolled” and “roof”.
- [52] Recall there is also stock diagram which allows for graphic indication. It was marked on the basis that the damage was to the front of the vehicle. No indications were given on any other part of the vehicle.
- [53] There was no sketch plan produced, although it is sought by the form.
- [54] A brief description of the accident was provided in the field in which it was required and reads verbatim as follows:

“I was about to be Hijacked, I tried to avoid the car (MAZDA Sting) that was chasing me, then I lost my focus on avoiding potholes, then it hap during the chase w the thieves that I hitted a pothole with front left wheel, after 5 seconds the tire of my car wheel bursted and then I lost control, then I got hurt ”.

- [55] Thus, in sum, with the aid of the format provided by the form, the version which the plaintiff apparently gave to the police on his discharge from hospital is as follows. He was travelling on Houtkop road in Vereeniging in a motor car with registration number OS 56 WK GP. It was night and unlit. The visibility was clear. The road surface was concrete and the quality of road surface was good and dry. There were no obstructions. The traffic was controlled by a barrier line. The road signs were clearly visible, and their condition was good. The direction of road was straight and it was flat. The vehicle manoeuvre was indicated as being a “sudden start”.
- [56] A person driving a Mazda Sting motor vehicle was chasing him with the intention of hijacking him. He tried to avoid the Mazda and in doing so lost focus during the chase. He hit a pothole with his front left wheel and lost control of the vehicle. His vehicle sustained damage to the right front and left front and front centre.
- [57] Apart from the lamentable lack of detail as to the persons compiling, checking and capturing of the report, central conundrum is that it is reflected as having been taken down by the police officer who compiled it at 10h00 on 06 March 2021 when on the plaintiff’s version, it had not yet happened at that stage.
- [58] The anomaly as to the date stamp of 06 March 2021 and the date reflected by the person who purportedly took down the statement is inexplicable and indeed the plaintiff was not able to give any cogent explanation as to how he is reflected as having made the statement on 06 March 2021 whilst, on his testimony, at that time the accident had not yet occurred. According to the pleadings the accident took place on 06 March 2021 and on the evidence of the plaintiff it occurred at approximately 19h00. This accords with the date of admission on the hospital records.
- [59] The plaintiff’s pleaded case is that he remained in hospital for three days. The evidence given by the plaintiff is that it was more than a week.
- [60] The plaintiff testified that, on his discharge from hospital on about 15 March 2021, he attended the Vereeniging police station where he made the statement. But, on the face of it, the report was made on 06 March 2021 at 10h00. The plaintiff was unable to explain this discrepancy.
- [61] Then there is the version which was made to the plaintiff’s attorney on 07 July 2021 and filed in accordance with section 19(f) of the Act. In this the plaintiff states under oath that
- “an UNKNOWN motor vehicle there and then driven by an UNKNOWN DRIVER attempted to hijack me in that the vehicle was trying to collide with my vehicle. As I was trying to avoid the collision I lost control of the vehicle, hit a pothole and the vehicle swerved off the road and collided with an object on the road.”*

- [62] Thus, in this version there was one vehicle trying to collide with his vehicle; he hit a pothole; lost control and collided with an object on the road. There was no indication that the vehicle rolled in this version.
- [63] On the day of the hearing, the plaintiff deemed it necessary to make another statement in terms of section 19 (f). In this statement there were two motor vehicles driving behind him when “suddenly a Mazda Sting then aggressively changed lane to the right side and then the other vehicle behind me accelerated as if it wanted to bump my vehicle.” He continued:
- “I also accelerated so that the one behind me doesn't dump my vehicle, in the process, the Mazda Sting then tried to bracket me - it drove too close to my vehicle and to now avoid being collided by the Mazda sting I continued to accelerate and, in the process, hit a pothole, lost control on my vehicle and it overturned.”*
- [64] The three extra-curial versions of this car chase and collision thus differ in salient respects. In the accident report and the first section 19(f) statement there was only the Mazda Sting; in the second section 19(f) statement there were two vehicles. The pleaded version has only one vehicle and the overturning. In the first section 19(f) statement there is no overturning but there is a collision with an object on the road which is not in any of the other versions.
- [65] The version given in evidence was elaborate. The plaintiff testified that on Saturday 06 March 2021 he was on his way to pay a visit to his cousin who resides in Vereeniging. He was on a two-lane road driving in the slow lane. Two vehicles were following him. The one was a blue Mazda Sting but he had forgotten the make of the other vehicle. It was maroon in colour. The Mazda flicked its lights at him. It left the slow lane and proceeded to the fast lane. It was driven with the intention of blocking his path of travel. He thought that the maroon vehicle wanted to collide with him. The road has a lot of potholes but he knew it well and normally knew how to avoid the potholes. He had to travel fast because of the chase and was unable to navigate the potholes. He hit a pothole and the wheel burst. This caused him to lose control of his vehicle, and it overturned.
- [66] In cross examination he could not explain the contradictions in the various statements and the inconsistency of the purported real evidence in the form of the official accident report.

Discussion

- [67] To my mind the inchoate accident report is explicable only on the basis that it is a fabrication.
- [68] There is an obvious avoidance of any identification of any person who was responsible for its completion. There is also a failure to provide a case number or any other feature which can be traced to a recording on the police system of this alleged motor vehicle accident.
- [69] The pleaded case for the defendant was that there was no accident. Unsurprisingly, the defendant could tender no evidence.

[70] To come to a conclusion on the disputed issues, a court must make findings on the credibility and reliability of a witness and the

probabilities. The court's finding on the credibility of a particular witness will depend on its impression about the truthfulness of the witness which, in turn, will depend on a variety of factors including the witness' candour and demeanour in the witness-box, his bias, internal contradictions in his evidence, external contradictions with what was pleaded or with his own extra-curial statements or actions, and the calibre and cogency of his performance.[1]

[71] The plaintiff was a singularly unimpressive witness. The distinct impression created by his testimony was that he was making up the alleged car chase. Either the accident did not happen at all or there was no other vehicle involved. Either way, he must fail.

[72] I deem it necessary, because of the probable fabrication of the accident report, that this judgment be brought to the attention of the relevant authorities.

Order

[73] I make the following order:

1. The action is dismissed with costs.
2. The registrar is directed to deliver copies of this judgment to the Minister of Transport; the Minister of Police; and the Chief Executive Officer of the Road Accident Fund.

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 14 February 2025.

Heard: 29 October 2024 & 26 November

2024

Delivered: 14 February 2025

APPEARANCES:

Applicant's counsel:

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Respondent's Counsel:

Ms P Nziyanziya

Respondent Attorneys:

State Attorney

[1] Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others 2003

(1) SA 11 (SCA) at para 5.

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