

SOUTH AFRICA / JUDGMENT

Sibongakonke v Road Accident Fund (1305/2021) [2025] ZAMPMHC 31 (13 June 2025) [2025] ZAMPMHC 31

COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

1305/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE

NO: 1305/2021

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE

13 June 2025

SIGNATURE

In

the matter between: NDLAZI PRINCESS ZANDY
 SIBONGAKONKE
 PLAINTIFF
 AND
 ROAD ACCIDENT FUND
 DEFENDANT

JUDGMENT

Coram Langa J

Introduction and brief

facts

- [1] This is a damages claim against the Road Accident Fund (“RAF”) resulting from a motor vehicle collision which occurred on the 14 October 2019. At the time of the accident the plaintiff was the driver of a Grey Toyota Yaris with registration numbers and letters N[...] on the road between Bethal and Clewer after the Kriel intersection when the Plaintiff lost control of the motor vehicle which consequently overturned.

Issues in dispute

- [2] Both the merits and quantum are in dispute in this matter as the claim has been repudiated by the RAF. On the quantum the general damages, future hospital/medical expenses and past and future loss of earnings are still to be determined.

Liability

- [3] In respect of liability, in addition to her evidence, the Plaintiff is relying on the so-called section 19(f) affidavit, her particulars of claim, hospital records, clinical notes, and accident report to prove her case on a balance of probabilities. The Defendant did not present any evidence on the merits.

Plaintiff’s testimony

- [4] The Plaintiff in short testified that on the 14 October 2019 around 16:30 pm she was driving her motor vehicle, a Grey Toyota Yaris with registration letters and numbers N[...] from Witbank travelling on the Bethal Road to Newcastle. After she took a turn at the Kriel four way stop where there were couple of speed humps, she was driving around ±40km per hour in her correct lane. While so driving an unknown truck approached from the opposite site descending downhill while she was ascending uphill. She said that truck encroached to her lane of travel when it was about a distance six meters away and the forced her to swerve to her right to avoid a head on collision. She then heard a bang and lost control of the motor vehicle which overturned. She could not identify the registration letters and numbers of the truck and it did not stop at the scene of the accident. That is all she saw.

Accident Report

- [5] According to the Accident Report by the police office, the Plaintiff's vehicle was driving from North direction to South and lost control and overturned. The driver sustained slight injuries on the arms and these injuries were not visible. The car was facing the North direction after it overturned.

Section 19(f) Affidavit

- [6] In her Section 19(f) (Road Accident Fund Act) affidavit, the Plaintiff states that on the 14 October 2019 around 16:30 pm she was driving the said car travelling from Witbank to Newcastle. After passing the four way intersection at Kriel driving towards Bethal Road, an oncoming truck approached driving on her lane of travel and she tried to avoid a collision with it by swerving to her right and lost control of her motor vehicle. She states that as a result of the aforesaid accident, she sustained injuries on her arm and multiple injuries and was admitted at Emalahleni Private Hospital for treatment as confirmed by medical records.

Medical Records

- [7] According to Plaintiff's Medical Records, at page 174 of the papers Dr E Dirker notes that "the patient was involved in a motor vehicle accident, was a driver, wore a seatbelt, swerved for cows, lost control walked on scene, Painful left chest, difficult to breath. Pregnant 7 months, from KwaZulu Natal..." (underlining my emphasis).
- [8] The paramedics who attended to the Plaintiff at the scene of the collision noted the following at page 178: "mechanism of injury is a motor vehicle accident, chief complaint is pain on the left side and general observation according to the patient was driving from Witbank to Newcastle his vehicle lost control went in the bush and overturned." The patient's clinical records on page 179 describes the reason for admission as follows: "Motor Vehicle Accident, driver, lost control car overturned, Witbank to Bethal Road at plus minus one hour ago. Found her outside the car walking around..."

Plaintiff's Particulars of Claim

- [9] According to the Plaintiff's Particulars of Claim, the Plaintiff was driving the said vehicle travelling from Witbank to Newcastle. After passing the four way at Kriel driving towards Bethal Road there was an oncoming truck driving on her lane. She tried to avoid a collision with it and swerved to her right and lost control of the motor vehicle. It is alleged that the sole cause of the accident was the negligent driving of the insured driver of the truck in one or more or all of the following ways:

9.1 S/he drove at an excessive speed under the prevailing circumstances;

9.2 S/he failed to keep a proper outlook;

9.3 S/he failed to keep her/his motor vehicle under proper control;

9.4 S/he failed to drive with caution whereby reasonable and exercise of reasonable care, s/he could and should have done so;

9.5 S/he failed to apply brakes of the motor vehicle of which s/he was the driver timeously;

9.6 S/he omitted to drive with due skill, diligence, caution and/or
circumspection;

9.7 S/he failed to take into account the actions of the other users of the road and more in particular of the users of the road and more that of the Plaintiff.”

The Plaintiff's Contentions

[10] As appears from her evidence the Plaintiff essentially allege that she was not the cause of the accident and that it is the unknown truck which caused the accident. She denies the correctness of the versions in the accident report and the medical reports. It is argued that she did not even speak to the people who were at the scene including the person who used her phone to call her husband and the ambulances. She further denies having spoken to the ambulance paramedics and even any medical practitioner and this includes Dr Dirker. She says the reason she could not speak was short breath or she could not breath properly.

The Defendant's contentions

- [11] The Defendant contends that from the statements presented by the Plaintiff, there are different versions of how the collision occurred and what caused the collision. In the present case the Plaintiff has failed to plead in her particulars of claim and section 19(f) affidavit that the insured driver of the unidentified truck was negligent by suddenly encroaching in her path of travel when it was not safe to do so thereby causing the collision, yet that is the version of her testimony.
- [12] The Defendant argues that Plaintiff changed the versions during cross examination and her evidence is contradictory, inconsistent and thus unsatisfactory. It is further alleged that the Plaintiff was evasive witness who kept on telling the court that she was unable to speak after the collision due to difficulty in breathing therefore she did not communicate with any of the people who attended her at the scene of the collision even though the evidence suggest otherwise. The Defence in canvassing that the evidence of the Plaintiff be rejected relied on the unreported case of Shongwe Johannah Duduzile v Road Accident Fund, Case Number 2760/2020 delivered in this court on 19/12/2024. The court in dismissing the claim held that ‘Her three versions make it difficult to rule in her favour, as she failed to prove negligence on the part of the insured driver.’

- [13] Further the Defendant relies on the matter of *Minister of Safety and Security v Slabbert* [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) at para 11, in which the court held the following: “[a] party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case”.
- [14] The Defendant argues that accident report has shed some light into what the scene was like and the position in which the motor vehicle was found on the side of the road. It contends that although the Plaintiff has the onus to ensure that all the witness statements in the docket and medical records are made available in order to paint a clear picture of what transpired, the Plaintiff however failed to call crucial witnesses such as the traffic officer who took statements and reduced them into writing in the accident report together with the draughtsman of the sketch plan and the paramedics who attended to the scene.

Legal Principles and

analysis

- [15] It is trite that the onus rests on the Plaintiff to prove on a balance of probabilities that the defendant was negligent. As stated in *National Employers’ General Insurance Co. Ltd v Jagers* 1984 (4) SA 437 (E) in order to discharge the onus, a plaintiff must adduce credible evidence in support of its case.
- [16] In this case the Plaintiff’s version according to her particulars of claim, her testimony and her section 19(f) affidavit is that she was confronted by a situation where an oncoming truck drove in her correct lane of travel and she took evasive action by swerving her vehicle to the right hand side of the road. She however lost control of her vehicle which overturned. This version is however not consistent with what she is reported to have told the doctor who was treating her. According to his report the Plaintiff was avoiding cows on the road when she lost control and the accident happened. The Plaintiff denies the notes by the doctor relating to this issue but admits everything else noted by the doctor including that she was the driver, was 7 months pregnant, wore a seatbelt, she is from KwaZulu Natal and had painful left chest and difficulty in breathing. Her story is that she could not have spoken to the doctor as she had difficulty in breathing. (underlining my emphasis).
- [17] Likewise, the Plaintiff denies the notes by the paramedics at page 178 of the record as well as the eMalahleni Private Hospital Patient Clinical Records both of which essentially state that she lost control of her vehicle. The Paramedics report specifically states as follows. History/mechanism of injury – MVA: Chief complaint – Pain on the left side: General - According to the Pt was driving from Witbank to Newcastle his (sic) vehicle lost control went to the bush and overturned. MEDICATIONS – ARV’S: ALLERGIES – NIL: EXAMINATION – O/A Found 40 years old female seven months pregnant who was involved in MVA – Pt c/o pain on the (L) side below the breast and also presents with bruises.

- [18] The accident report by the police is also not clear. It suggests that she was driving when she lost control of the vehicle. The reports starts with ‘It alleges that vehicle...’ The affidavit of Captain Patrick Mbutho Nhlambo who completed the report was filed to apparently clarify the matter. This affidavit however does not clear the issues but leaves them even muddier. In paragraph 7 thereof he states that version of the driver’s description of the accident is essentially that she was driving her vehicle when an oncoming truck came driving in her direction and she swerved to the right to avoid it and lost control of her vehicle which overturned.
- [19] However when one considers the report of the paramedics the accident report and Captain Nhlambo’s evidence cannot be correct. As stated in paragraph [16] above, the paramedics categorically state that they spoke to the Plaintiff who not only explained how the incident happened but also gave them personal intimate information such as the facts that she was 40 years old, seven months pregnant with no allergies and on ARV treatment. They also reported on the pain she complained about which is confirmed by other reports and her evidence. There is no way the paramedics would have known about the Plaintiff’s personal and intimate details if she was unconscious and unable to speak as alleged by Captain Nhlambo.
- [20] What is even more confusing is that in paragraph 8 Captain Nhlambo says that after the accident she managed to get out of the vehicle but was thereafter “out of circulation until she realized everything while she was in the hospital”. It is not clear what out of circulation means. Although Captain Nhlambo says that the Plaintiff managed to get out of the vehicle after it overturned, he seems to be suggesting that she was thereafter unconsciousness and could not talk to the police. Nhlambo was however not called to clarify the matter.
- [21] As if these contradictions were not enough, the reports by the experts are also not consistent with the Plaintiff’s testimony and the police or paramedics who attended to the scene. For instance, in his report Dr Kumbirai states in paragraph 1 that the Plaintiff reported to him on 20 September 2023 during their consultations that she was involved in an accident as a driver of a motor vehicle but does not have further details about the accident apparently as she lost consciousness and only woke up in hospital.
- [22] Dr Kumbirai’s report is not only contradicting the evidence of the paramedics and Dr Dirker, but it also contradicts the reports by other experts such as Ms M Sekele, the Occupational Therapist. In her report Ms Sekele states that on 20 September 2023, the same date she consulted with Dr Kumbirai, the Plaintiff reported to her that “She was a driver when she collided with a truck”. On the same date (20 September 2023) she consulted with the Industrial Psychologist Mrs Babitsang Selepe who in paragraph 4.4.1 of her report stated that the Plaintiff informed her that the accident happened as she was attempting to avoid a collision truck that was driving in her lane of travel and “the impact the occurred”. Further, on 8 November 2023 the Plaintiff reported to the pulmonologist Dr M Chohan that she lost control of her vehicle whilst trying to avoid a truck that was veering into her lane but said she did not lose consciousness. She was assisted on the scene and taken to the Emalahleni

Private Hospital. (underlining my emphasis). This contradicts her evidence and the report of Dr Kumbirai.

- [23] In the light of the above, the Defendant argues that it cannot be concluded that the Plaintiff has discharged the onus and that she has therefore failed to prove on a balance of probabilities that the insured driver was negligent and was therefore the sole cause of the accident.
- [24] The manner in which the accident or incident happened is obviously important in the determination of the merits. It is clear in this matter that although the Defendant did not call witnesses to testify on the merits, the Plaintiff has serious hurdles to navigate in respect of her own version. Her case, as is clear from the above paragraphs, is not only contradictory but consists of various irreconcilable versions regarding how the accident happened. All these versions are directly attributed to her. For instance, in her testimony, she makes no mention of the collision with the truck, but she told Ms Sekele and Ms Selepe respectively that she collided with the truck or had an impact with it. She further claims that she lost consciousness as stated in Dr Kumbirai's report and Captain Nhlambo. She, however, told Dr Chohan specifically that she did not lose consciousness.
- [25] In *Ninteretse v Road Accident Fund*, [2018] ZAGPPHC 439 para 28 the court in dealing with whether the evidence of the Plaintiff was sufficient to prove the negligence of the insured driver made the following relevant remarks at paragraph [28]: "[28] The plaintiff bears the onus to prove on a balance of probabilities that the insured driver was negligent and that the negligence was the cause of the collision from which he sustained the bodily injuries. There is no onus on the defendant to prove anything. Even in the instance where the defendant has not tendered evidence to rebut the evidentiary burden of the prima facie case presented by the plaintiff in this case, the plaintiff may not succeed with his claim depending on the nature and weight of the evidence so tendered."
- [26] It is trite that the standard of proof in a civil case is the well-known preponderance (balance) of probabilities. This requires of the party on whom the onus lies, in order to be successful, to satisfy the court that he is entitled to succeed on his claim. *Pillay v Krishna* 1946 AD 946 952- 953. The onus of establishing a case in accordance with this standard is on the party who makes the assertion since if a person claims something from another in a court of law, he has to satisfy the court that he is entitled to it (*Pillay v Krishna* supra 951; and *Van Wyk v Lewis* 1924 AD 438 444). He who asserts, proves, and not he who denies, since a denial of a fact cannot naturally be proved, provided that it is a fact that is denied and that the denial is absolute." The person who makes the claim, and accordingly bears the onus of proof, is invariably the plaintiff.

[27] Even though the Defendant has not tendered any evidence to rebut the case presented by the Plaintiff in this case, the Plaintiff cannot succeed with her claim because of the serious discrepancies which undermine weight of the evidence so tendered. Based on the nature of the discrepancies which are irreconcilable, it is not clear how the accident happened and who caused it. Whether she

was avoiding cows, or a truck and whether she actually collided with a truck is unclear. The Plaintiff's evidence is not credible to say the least and she has basically failed to discharge the onus on her. She has thus failed to prove on a balance of probabilities that the insured driver negligently caused the accident and the injuries she sustained. The Plaintiff's claim consequently ought to be dismissed with costs.

Order

[28] In the result the Plaintiff's claim is dismissed with costs.

MBG LANGA

JUDGE OF THE HIGH COURT

MIDDELBURG

Appearances

For the Plaintiff: Advocate N Mthombeni For the Defendant: Mr N B Mhlanga Date of hearing: 24 February 2025 Date of judgment: 13 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 13 June 2025 at 14h00.

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Prepared on 9 October 2026 · Esheria