REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 63711/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

30 October 2024 [redacted]

In the matters between: -

DECEMBER BOY MOLOI **PLAINTIFF**

And

ROAD ACCIDENT FUND **RESPONDENT**

JUDGMENT

THERON AJ

INTRODUCTION

[1] The matter came before me on a default judgment basis. The Plaintiff claims damages due to injuries he sustained in a so called “hit and run” pedestrian accident. The Court is aware that in cases where the insured driver (the negligent

party) is unidentified, there is no evidence that can oppose the version of the Plaintiff and therefore there is some scope for false claims to be instituted. The Court will therefore be prudent in making sure the physical evidence and surrounding factors provide corroboration for the personal testimony of the Plaintiff, or at least not contradict the version of the Plaintiff.

[2] The Plaintiff is a 46-year-old male who claims that he was walking home from a vigil he attended through the night, when he was struck down by an unidentified vehicle on the pavement, next to the road. The insured vehicle came from behind and it happened at around 02:11 in the morning. He was taken to hospital for treatment.

THE EVIDENCE

[3] The Plaintiff applied in terms of Rule 38(2) of the Uniform Rules of Court for evidence to be given on affidavit and for documentary evidence to be considered in terms of section 34(2) of the Civil Proceedings Evidence Act 25 of 1965. The Court was satisfied that it would be cost effective and sensible for the affidavits by the merits witnesses and expert witnesses be placed before me on affidavit and for the Court to consider documentary evidence uploaded on Caselines. The application made from the bench is granted.

[4] Several affidavits were uploaded onto Caselines for this purpose under section 008. Furthermore, documentary evidence was uploaded under section 003 “MERITS” and section 007 “HOSPITAL RECORDS”. The hospital records were

properly discovered (Caselines page 004-5) and notice was given in terms of rule 35(9) for it to be proven during the trial. During evidence by the Plaintiff, counsel for Plaintiff presented the witness with a copy of the hospital records. The Plaintiff confirmed that it is the hospital records in relation to his treatment after the accident. The hospital records were thus proven.

[5] The Plaintiff's counsel further referred the Plaintiff, during evidence, to a copy of the Accident Report Form ("AR"). He confirmed under oath that he did in fact report the accident to the police and that this document is the AR completed by the police on the day he reported it. The AR is therefore also accepted into evidence. The required RAF1 claim form was lodged with the Defendant on the 12th of April 2016 (Caselines page 003-1). What is of importance is the date of accident mentioned in the RAF1 claim form (003-2), paragraph 5, as 13/07/2015. The accident report ("AR") mentions the date of accident as 30/07/2015 (003-13). According to the stamp on the last page of the AR (003-17) the accident was reported by the Plaintiff on 22/10/2015. The founding affidavit of the application for default judgment states in paragraph 4 (00-9) that the accident occurred on 28/06/2015.

[6] In an attempt to clarify the confusion regarding the date of accident, the Plaintiff deposed to an affidavit on the 5th of April 2024 (8 years and 10 months post-accident) stating that: "*On 30 July 2015 I reported the accident at the Mzinoni Police Station. The accident date is incorrectly reflected as the date on which I reported the accident*". This explanation does not hold water as the accident was in fact reported on the 22nd of October 2015, as is evident from the stamp by the police officer completing the report.

[7] As eluded to above, the Plaintiff was called as witness to testify under oath. This was done due to the request by the Court for his evidence to be lead to clarify some contradictions in the documentary evidence in relation to the version of the Plaintiff in his affidavits. There was some confusion with the Plaintiff in relation to the accident date as evidenced by his affidavits and the dates mentioned in the hospital records and AR, which were all different.

THE MERITS (LIABILITY)

[8] The RAF1 form indicates on page 003-2 in paragraph 5 of the document that the date of accident was 2015/07/13. The Court is unsure whether the Plaintiff's section 19(f) affidavit is in fact the affidavit uploaded on page 003-13, as it is described as a "SUPPLEMENTARY AFFIDAVIT" which suggests there was a previous affidavit by the Plaintiff. It was deposed to on the 16th of March 2016 and thus could have formed part of the claim documents lodged. The heads of argument states that the claim was lodged on the 12th of April 2016 (paragraph 2 on 0-1). The RAF stamp on the RAF1 confirms this date.

[9] The AR indicates the date of accident as 30/07/2015 at 02:11 in the morning. This contradicts the information in the affidavit mentioned above as well as the date given to the Defendant on the RAF1 claim form. The hospital records from Bethal Hospital confirms that he visited the hospital on 2015/06/28 at 04:13 (007-3). The records for the same visit to hospital states on page 007-6 that "A 37 yrs old male patient came in with the history of injured right ankle – drunk – condition stable but painful and swollen, doctors assessment". It also states "…condition under

the influence of alcohol…". It was further indicated on the same record that the Plaintiff refused admission and further treatment.

[10] Counsel for the Plaintiff argued that the Court should not take any cognizance of the report in the said records of the condition of the Plaintiff at the time, as it is not proper evidence before Court. I disagree. The records were shown to the Plaintiff during his evidence and he confirmed that the records reflect notes made of his visit to hospital. Counsel further submitted that he referred only to the page where the date of his visit is indicated and not the remaining pages of the set of records. Thus the Court should not place any weight on the contents of the remaining pages. Again the Court disagrees. The Plaintiff chose to use the records as evidence in the hearing and also properly gave notice of the said records as mentioned above. The records was thus admitted as evidence and the Court should consider the whole record and not only a portion the Plaintiff feels would assist its case.

[11] The Court asked the Plaintiff a number of questions in relation to these notes on the hospital records which referred to him being under the influence, in order to allow the Plaintiff to clarify such statements and to indicate to the Court that those observations were incorrect. Counsel for the Plaintiff objected to the Court's questions and submitted that the Court was in fact cross examining the Plaintiff. This cannot be further from the truth. The Court had an obligation to allow the Plaintiff to provide the Court with his version of the facts in relation to his soberness.

[12] The Plaintiff was asked whether he was under the influence at the time of the collision. He answered that he was "*as sober as a judge*" as he was from a night vigil. The Court then referred him to the notes on the records that indicated that he was under the influence of alcohol and asked his comment. He replied by stating that there was a flue going around and he was taking medication. When asked why he refused treatment and discharged himself on the 28th of June 2015, he explained that there was no one at his house and he wanted to go home for security reasons. It is further important to note that after discharging himself, he only went back to hospital on the 13th of July 2015 (003-19) according to his affidavit. No explanation was given for the two weeks where he did not seek medical attention. This begs the question as to what extend his unwillingness to receive treatment, exacerbated his ultimate injuries and sequelae or whether he in fact suffered those injuries (later confirmed) on that same day.

[13] The Plaintiff testified that just before the insured vehicle collided with him, he tried to jump out of the way, but it was too late. He was walking on the pavement next to the road. He further testified that he heard the vehicle approaching as he heard it go onto gravel. He did not see it.

EVALUATION OF THE EVIDENCE

[14] The Plaintiff bears the onus to prove on a balance of probabilities that he was injured due to the negligent driving of a motor vehicle, causing injuries and as a consequence, damages. In considering the evidence, the Court must be satisfied that the version of the Plaintiff, through the evidence presented, is on a balance

of probabilities true. As mentioned earlier, the Court considered whether the material evidence supports the *viva voce* evidence of the Plaintiff or at least does not contradict his version.

[15] The Plaintiff did not supply a plausible explanation for the difference in dates as reflected in his claim form, the AR and supporting affidavit. His proposition that the date on the AR incorrectly reflected the date when he reported the accident does not coincide with the material evidence, in that the AR indicates the accident was reported by the Plaintiff around 4 months later in October 2015 and not on the 30th of July 2015. Secondly it is clear from the hospital records (007-19) that he had surgery to his ankle (ORIF) on the 29th of July 2015 and I find it highly unlikely that he reported the accident the following day.

[16] In most cases the hospital records would stipulate that the injuries suffered by a road accident victim is categorised as “MVA” (motor vehicle accident) or “PVA” (pedestrian vehicle accident). The records in this case do not mention that the injuries suffered were due to a “MVA” or “PVA”. The Court is conscious of the fact that it could have been omitted by mistake but such absence could be regarded as corroboration for the conclusion that no motor vehicle accident occurred, if other material evidence supports the same conclusion.

[17] The explanation provided for the notes on the hospital records that the Plaintiff was intoxicated and under the influence of alcohol, similarly, was not convincing. The Plaintiff suggests that he acted as an intoxicated person due to medication he used for the flue. Then he refused treatment because he was concerned about his house not having anyone to protect it. There was no one at home and he

wanted to get back to his house for security reasons. This explanation does not seem reasonably possibly true and in fact the refusal to be treated fits the version that he was intoxicated and not acting rationally.

[18] The Court is baffled by the suggestion that the Plaintiff would suffer a serious fracture to the ankle and wait two weeks before seeking treatment without any attempt to explain this strange behaviour. According to his own version, he was not intoxicated and merely wanted to make sure his house is safe. Why would it take two weeks to make a plan for someone to watch his house before being able to go to hospital? In absence of a reasonable explanation I cannot find this, on a balance of probabilities, to be true. It is clear that the Plaintiff did not take the Court into his confidence and his evidence was highly improbable.

[19] There is the need for special caution in scrutinising and weighing the evidence of a single witness (as part of the accepted cautionary rules), especially in a case where there is a real risk of fabricating evidence, for instance in “hit-and-run” cases. The cautionary rules were devised mainly for criminal matters but, where appropriate, they are also applied in civil cases (*Woji v Santam Insurance Co Ltd 1980 2 SA 971 (SE)*). In the end, when the Court considers and scrutinises the evidence before it, the exercise of caution should not be allowed to displace the exercise of common sense.

[20] The Court weighed the *viva voce* evidence and evidence by affidavit against the material evidence, surrounding circumstances and probabilities, applying, where necessary, common sense. After careful consideration of all the factors mentioned above and the probabilities, the Court finds that the evidence of the

Plaintiff (both *viva voce* and by affidavit), in relation to the issue of liability, stands to be rejected as false and therefore find that the Plaintiff did not prove on a balance of probabilities that he was injured due to the negligent driving of a motor vehicle as pleaded in his particulars of claim. The Plaintiff's claim is therefore dismissed.

ORDER

The court therefore orders as follows:

The Plaintiff's claim is dismissed.

H W THERON
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

On behalf of the Plaintiff: Surita Marais Attorneys

Counsel for the Plaintiff: Adv J de Beer SC

Date heard: 3 October 2024

Date of judgment: 30 October 2024