IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG

CASE NO: 240/2019

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE 31/1/2024

SIGNATURE

In the matter between:

MAZIYA COMFORT ANDILE **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

Vele AJ

[1] The plaintiff issued summons against the Road Accident Fund (hereinafter referred to as “the RAF” or “the defendant”) for the payment of R2 160 000.00 as damages arising from the motor vehicle accident that occurred on 23 May 2017, at or near Secunda, in the Mpumalanga Province. The plaintiff was the driver of the motor vehicle bearing the registration numbers and letters F[...] 0[...] M[...] that collided with the vehicle bearing registration number H[...] 0[...] M[...], driven by an

unknown person (hereinafter referred to as “the insured driver”). Prior to instituting the proceedings, the plaintiff complied with the statutory requirements as set out in the Road Accident Fund Act 56 of 1996 (“the RAF Act”).

[2] In his summons, the plaintiff alleged that the sole cause of the collision was negligent driving of motor vehicle H[...] 0[...] M[...] by the insured driver, resulting in him sustaining the following bodily injuries: injury of the ankle, left knee and multiple bruises and abrasions, which resulted in him left disabled and disfigured. The RAF defended the action as it denied that it was liable to compensate the plaintiff, alleging that the sole cause of the collision was the plaintiff’s negligent driving.

[3] The RAF further raised two special pleas. The first special plea was that the plaintiff’s injury is not a “serious injury” as contemplated in section 17(1A) of the RAF Act read with the Regulations thereof. The second special plea was that the plaintiff has failed to submit a Serious Injury Assessment Report as contemplated in section 17(1A) of the RAF Act read with the Regulations thereof.

[4] During the pre-trial meeting, the parties agreed to proceed on the merits only as plaintiff’s quantum is not in dispute.

[5] The Plaintiff, Mr Maziya Comfort Andile, gave evidence that could be summarised as follows. On 03 May 2017, he was travelling from Embalenhle, in Secunda towards Standerton. Along the way he arrived at an area where the grass was burning causing dense smoke that affected the visibility on the road. The traffic along the road slowed down. As he was proceeding, it became so dense that he could only see a few meters in front of him but could not stop as it would be dangerous to other road users. A truck approached from the opposite direction, as he was about to pass it, another vehicle approached overtaking it. He swerved to the left to avoid the collision, but the other vehicle followed him and a collision occurred towards the shoulder of road. He applied brakes as he swerved to the left. There was nothing he could do to avoid the collision as the other vehicle travelled at high speed on his side of the road. He confirmed that the sketch plan on the Accident Report reflected the scene.

[6] He was cross-examined and confirmed that he was the person referred to as “Driver B” in the accident-report. He did not give a statement to the police at the scene, as when they arrived, he was already in the ambulance. He made his statement a few days later when he was discharged from hospital. He confirmed that a police docket was opened but was not discovered and no reason was given for such an action. He confirmed that it was a head-on collision. He was referred to the sketch plan on the accident report and it confirmed the vehicles’ resting position after the accident. He further confirmed that the only document that mention the truck was his section 19(f) affidavit. He stated that he reduced speed to between 30–40km/h and swerved to the left side of the road. He denied travelling in excessive speed in the circumstances. He did not flash the lights as they were on. He was acting within the cause and scope of his employment as a driver, going to collect his co-workers. He did not claim against the Workmen Compensation Commissioner. He was adamant that there was a truck.

[7] He further stated that the speed limit was either 60 or 80km/h, with him travelling at the speed of 70km/h. He did not know the details of the other driver, as he was encountering him for the first time.

[8] This was his evidence in a nutshell, and he concluded his case as he did not have any witnesses to call. The RAF also closed its case without calling any witnesses, nor giving any explanation as to why the insured driver was not available, as his details were on the accident report.

[9] The plaintiff’s claim arises from the negligent driving of the insured motor vehicle, which ended up in a collision with his motor vehicle, resulting in him sustaining personal injuries. It is a requirement of the RAF Act that in an instance where someone sustained injuries in a motor vehicle accident, a copy of the police docket with witnesses’ statements, the accident-report by the police officer who attended the scene, which include the sketch-plan of the scene must be part of documents lodged with form RAF1.

[10] The plaintiff did not call the police officer who attended the scene and drew the sketch plan. His evidence was that the collision occurred on the shoulder of the

road, with his vehicle coming to rest on the left side of the road, and consistent with the sketch plan. The said police officer, who drew the sketch plan could have explained what he found at the scene.

[11] Section 19(f)(ii) of the Road Accident Fund Act[1], reads as:

> "The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage –
> (f) if the third party refuses or fails –
> (i) …;
> (ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof." (own emphasis)

[12] The submission of a section 19(f) statement is compulsory for the consideration of the claim by the RAF. The plaintiff gave the short narration of the accident, which he alleged was the basis for his claim to be compensated by the Fund. His section 19(f)(i) statement and his evidence in court, mention the truck, which is inconsistent with accident report. In the section 19(f) statement, he stated that he was driving on the left side, about to pass a truck in the opposite direction, when a vehicle overtaking the truck encroached in his lane, this was repeated in his testimony. He saw the vehicle in the opposite direction when it was very close and attempted to avoid the collision by swerving to his left and collided with it on the shoulder of the road.

[13] In terms of section 19(f)(ii) of the RAF Act, it is mandatory for the claimant to provide the RAF or any agent with the copies of all statements and documents forming the basis of his claim within a reasonable time of being in possession thereof. The plaintiff confirmed that he made a statement to the police that was placed in the case docket. He also confirmed that the police docket was available but never provided to the RAF for consideration as required by section 19(f)(ii). This gives right to the fund to repudiate the claim. The accident report, which contains

[1] Road Accident Act 56 of 1996

both drivers' versions and the sketch-plan, is part of the core documents to be filed in support of the claim Form 1 in terms of section 24(1)(a) of the RAF Act. The accident report would shed some light into what the scene was like and give a short narration by both drivers and illustrates on the sketch plan, where the vehicles came to a standstill.

[14] The defendant also closed its case without calling the insured driver or any of the other potential witnesses. Both parties filed the heads of argument. The plaintiff's heads of argument submits that he has discharged the onus put on him on the balance of the probabilities, which was disputed by the RAF, as he failed to file the copies of the statements in the case docket, despite the case docket being available.

[15] The Fund is liable to compensate any third party injured in a motor vehicle accident caused by the negligent conduct of the insured driver, who is a person other than the plaintiff. The plaintiff must prove the causal link between the conduct of the insured driver and consequences he suffered. In the matter of *Lee v Minister for Correctional Services,*[2] causation was set out as follows:

> "[38] The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensure or whether the harm is too remote. This is termed legal causation.
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> [39] This element of liability is complex and is surrounded by much controversy. There can be no liability if it is not proved, on a balance of probabilities, that the conduct of the defendant caused the harm. This is so because the net of liability will be cast too wide. A means of limiting liability, in cases where factual causation has been established, must therefore be

[2] *Lee v Minister for Correctional Services* 2013 (1) SACR 213 (CC) para 38 and 39.

applied. Whether an act can be identified as a cause depends on a conclusion drawn from available facts or evidence and relevant probabilities."

[16] The plaintiff's version of what caused the collision is only contained in the section 19(f) statement, and it differs from the short narration of the insured driver in the accident report. His evidence is that he saw the insured vehicle approaching on his lane, overtaking a truck causing him to swerve to his left, resulting in the collision occurring on the left shoulder of the road. His vehicle on the sketch to the accident report, appeared on the roadway close to the centre line, with the other vehicle on his left.

[17] The plaintiff's Counsel referred to the decision of *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*.[3] For the party's testimony to be unchallenged, such testimony should be consistent with all the factors, which is not the position in the current matter, as the short statement of the insured driver contained in the accident report is different and the statement in the docket were not made available in support of his claim in compliance with section 19(f)(ii).

[18] In support of the above, the court refers to the decision of Raulinga, J in *N Felix v Road Accident Fund*,[4] wherein the following was stated:

"[T]he 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."

[19] The plaintiff is the only one who mentioned the presence of the truck that the insured driver was allegedly overtaking. The plaintiff was aware that the accident

[3] [1999] ZACC 11; 2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 at para 61.
[4] [2018] ZAGPPHC 439 para 28.

report filed does not support his case, but failed to call the officer who drafted same to come and clear the discrepancy. Although he confirmed that the docket was compiled, and a statement obtained from him, he did not make the docket available to the RAF for consideration and failed to advance any reason for the shortcoming. Rule 35(5)(a) of the Uniform Rules of Court provides that a party must discover all documents that tend to prove his or her case, that are in his or her possession.

[20] In paragraph 5 of the particulars of claim, the plaintiff alleges that the insured driver's particulars were unknown, which is not the case and denied by the defendant in its plea, putting plaintiff to prove thereof. Despite being aware that the contents of paragraph 5 were in dispute, the plaintiff took no action to remedy it. Mere perusal of the accident report would have cleared this position as the insured driver's particulars are recorded, with his full names, identity number, residential and his employment addresses. His employment address being at Sasol, the same as that of the plaintiff. The explanation that he did not take the insured driver's details due to his injuries is not good enough as the accident-report contained same.

[21] One is inclined to believe that the insured driver, who also sustained injuries, will have made a statement to the police that was contained in the police docket. Yet this crucial information was not brought before court and no reason whatsoever given. The plaintiff does not allege compliance with section 17(1)(b) of the RAF Act, which reads as follows: "[t]he fund or an agent shall – subject to any regulation made under section 26, the case of a claim for compensation under this section arising from the driving of a motor vehicle where identity of neither the owner nor driver thereof has been established." The plaintiff does not state as to what steps he took to comply with the said regulation made under section 26 of the RAF Act.

[22] The general approach to follow in an instance where the vehicle travelled on the incorrect side of the road is *prima facie* proof of negligence on the part of the said driver, unless an explanation is given for such an action. HB Klopper,[5] has the following view:

[5] HB Klopper *The Law of Collisions in South Africa* 7 ed (LexisNexis Butterworths, 2003) at 78.

> "(a) Collision on the incorrect side of the road – If there is irrefutable proof of a collision on the incorrect side of the road, such collision constitutes *prima facie* negligence on the part of the driver who was found to be on his incorrect of the side of the road at the time of the collision. Once the plaintiff has established that the collision did in fact occur on his side of the road, the defendant has to explain his presence on the defendant's incorrect side of the road. If the explanation is insufficient to dispel the inference of negligence arising from his presence on the incorrect side of the road, the defendant will be held negligent."

[23] Klopper's statement above is in support of provisions of Regulation 296(1) of The Regulations to the National Road Traffic Act[6], which reads as follows:

> "(1) Any person driving a vehicle on a public road shall do so by driving on the left side of the roadway and, where such roadway is of sufficient width, in such manner as not to encroach on that half of the roadway to his or her right: Provided that such encroachment shall be permissible–
> (a) where it can be done without obstructing or endangering other traffic or property which is or may be on such half and for a period not longer than is necessary and prudent and provided that it is not prohibited by a road traffic sign."

[24] The plaintiff's evidence is that he was driving on the left side of the roadway with his headlights on, due to the road conditions at the time that forced him to reduce his speed. He was confronted by the insured driver, who was attempting to overtake a truck and had encroached on his side of the roadway, forcing him to swerve to his left and a collision occurred on the shoulder of the road, as the insured driver also swerved there. In *Marais v Caledonian Insurance Co Ltd*,[7] the court held that proof that a vehicle was travelling on the incorrect side of the road is accepted as *prima facie* proof of driver's negligence.

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[6] National Road Traffic Act 93 of 1996
[7] *Marais v Caledonian Insurance Co Ltd* 1967 (4) SA 199 (E) at 202F.

[25] Though the RAF pleaded contributory negligence, it was not pursued at the trial stage, as the insured driver was not called in support thereof, without any explanation. The principle that he/she who alleges a fact bears the onus to prove is also applicable in this instance.

[26] The plaintiff's version is the only one before the court, and it is riddled with imperfections, as he failed to comply with the provisions of section 19(f)(ii), which require that all statements and documents be provided to the RAF for perusal in consideration of the claim. There is sufficient proof of negligence on the part of the insured driver as the collision occurred on the plaintiff's side of the road, as supported by the accident report, meaning the plaintiff should succeed 100% on the merits. The only obstacle is non-compliance with section 19(f)(ii). The extent of the plaintiff's injuries as reflected in the particulars of claim, referred to facial disfigurements that are not aligned with those reflected on the Form J88, the medical records and the expert reports, as the filed documents do not refer to facial and head injuries.

[27] The onus is on the plaintiff to prove negligence on the part of the insured driver. The plaintiff's version is inconsistent with the short statement of the insured driver contained in the accident report. Both parties and any witness' statement contained in the docket could have been of great assistance in this regard. In the plaintiff's version, the collision occurred as the insured driver encroached on his side of the road, when overtaking a truck. His version in the section 19(f)(i) statement and the accident report contain different information. In the absence of statements in the docket, as provided for in section 19(f)(ii) or evidence of the person who compiled the accident report, the plaintiff's claim cannot succeed for non-compliance with the RAF's liability requirement as provided for in section 19(f) (ii) the RAF Act.

[28] Having considered everything, I am convinced that Mr Maziya has failed to prove his claim and make the following order:

The claim of Mr Maziya is dismissed, each party to pay their costs.

SO VELE
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

On behalf of the plaintiff:	Adv. M Mbedzi
Instructed by:	Nxumalo & Radebe Attorneys
	C/O Zondo Attorneys
	Middelburg
On behalf of the defendant:	Mr Mgwenya
Instructed By:	The Office of the State Attorney
	Mbombela
HEARD ON:	23 OCTOBER 2024
DELIVERED ON:	31 JANUARY 2025