

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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

Signature: Date: 10/01/2022

CASE NO: 23724/2018

In the matter between:

LOUIS LUUS

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NICHOLS AJ

Introduction

[1] Mr Louis Luus (plaintiff) instituted an action against the Road Accident Fund (RAF) in which he claims damages as a result of the injuries he sustained in a motor vehicle accident that occurred on 22 July 2017.

[2] Although the action was defended, the RAF was unrepresented at the hearing before me, having cancelled the mandate of its attorneys.

[3] The issues of quantum and liability were separated in terms of Uniform Rule 33(4) and the plaintiff proceeded on the issue of liability only.

The plaintiff's case

[4] The relevant portions of the plaintiff's particulars of claim aver that he was involved in a motor vehicle collision at approximately 21h20 on 22 July 2017. The collision occurred at or near the intersection of Swartkoppies Road and Potgieter Street, Alberton, Gauteng. The plaintiff was the driver of a Volkswagen Polo with registration number: BM 58 PS GP, that was involved in the motor vehicle accident with a Ford Bakkie with registration number: LWG 539 GP and a further unidentified third motor vehicle, the particulars of which and details of the driver and / or owner are not known to the plaintiff.

[5] The driver of the Ford Bakkie was Tichaona Chataika (Chataika). The unidentified driver of the unidentified third vehicle caused the motor vehicle accident by, inter alia, entering Swartkoppies Road at high speed and thereby forcing the plaintiff to take evasive action that caused him to collide with the Ford Bakkie. As a result of the collision, the plaintiff sustained various injuries and was forced to undergo medical and hospital treatment at the Union Hospital and the Clinton Hospital, both of which are in Alberton.

[6] It is trite that the plaintiff bears the onus of proving the negligence of the insured driver on a balance of probabilities.¹

[7] The plaintiff was the only witness to lead evidence in support of his case. His evidence was brief and cursory. He testified that the collision occurred on Swartkoppies Road and Potgieter Street on 22 June 2017 at approximately 21h20. He clarified the date as being 22 July 2017 when led on this point by his representative, Mr Kok. He testified that he was travelling from his home to the hospital to pay a deposit because his wife was expecting their baby. He was driving a grey VW Polo motor vehicle on the right hand side of three lanes. He was in fact in the far right lane of these three lanes.

[8] The plaintiff testified that he approached a robot controlled intersection and the lights were green in his favour. He was looking forward at the intersection and then he

¹ *Arthur v Bezuidenhout and Miemy* 1962 (2) SA 566 (AD) at 576G; *Sardi and Others v Standard and General Insurance Co Ltd* 1977 (3) SA 776 (A) at 780C-H; *Madyosi and Another v SA Eagle Insurance Co Ltd* 1990 (3) SA 442 (AD) at 444D-F.

tried to swerve to avoid a vehicle that just came out of nowhere. As a result of this maneuver his vehicle went over the middle island and into oncoming traffic where it collided with another car. The unidentified vehicle came from his left and he tried to avoid it by swerving to the right over the middle island into oncoming traffic. He was travelling at under 70 km/h and he was looking forward at the time.

[9] On questioning by the court regarding whether the unidentified vehicle forced him to perform evasive action, his response was that he did not know what happened and it is a mystery to him. This unidentified vehicle just drove off after it caused him to swerve to the right as he did.

[10] This represented the totality of the plaintiff's evidence. No photos of the scene, videos or sketch plan was presented, nor were any corroborating witnesses called to adduce evidence in support of the plaintiff's version.

[11] In view of the dearth of evidence presented by the plaintiff, I considered the documentation lodged by the plaintiff, with the RAF, in support of his claim. The Officers Accident Report form (OAR) and the plaintiff's statutory affidavit in terms of s 19 of the Road Accident Fund Act 56 of 1996 (the Act) were two of the documents that were lodged with the RAF and again delivered to the RAF's attorneys in July 2018 in response to a Notice in terms of Rule 35 (14).

[12] The brief description of the collision provided on the OAR is the following: *'Driver A said he just saw m/v B coming in front of him facing oncoming traffic. He tried to avoid m/v B but there were cars on both sides as they collided. Driver B went to hospital with slight injuries.'* Driver B, according to this description and the details on the OAR is the plaintiff. There is no mention of the unidentified vehicle that the plaintiff referred to, nor is there any follow up counter statement provided by or from the perspective of the plaintiff.

[13] The plaintiff deposed to his affidavit in terms of s 19 of the Act on 2 November 2017. In it, he described the collision as follows:

'I was travelling along Swartkoppies Road when a motor vehicle with full and further particulars unknown to me approached Swartkoppies Road from the off ramp of the R59. This unidentified motor vehicle would have collided with my motor vehicle had I not taken evasive action. I swerved

to the right thereby losing control of my vehicle and ultimately colliding with a motor vehicle in the oncoming lane in Swartkoppies Road.'

[14] This description makes no reference to Potgieter Street or a robot controlled intersection. There was no mention during the plaintiff's evidence of the R59 off ramp. It may well be that a simple explanation exists for these discrepancies. Conversely, there may be no explanation for these discrepancies. Regardless, to reconcile these discrepancies and to try fill in the incomplete picture presented by the plaintiff will entail a fair amount of conjecture and speculation. It is not the task of this court to speculate on the manner in which the collision occurred because of the paucity of factual evidence adduced by plaintiff.

Evaluation and conclusion

[15] The plaintiff's evidence was uncontested and he was not subject to cross-examination. However, I have difficulty accepting the version presented by the plaintiff. I found it to be unsatisfactory and unreliable, notwithstanding the discrepancies referred to in this judgment. For example, it seems unlikely that a person would be travelling to a hospital at 21h20 on a Saturday night in order to pay a deposit for the delivery of a baby. The plaintiff's wife could have explained why this was of the utmost urgency at that time on that day or the plaintiff could have elaborated on this point. It was unclear where this unidentified vehicle actually appeared from and the plaintiff testified that he approached an intersection without considering any of his surrounds but for what was directly ahead. It is also not clear why no corroborating evidence was adduced to support the plaintiff's version.

[16] The brief, cursory and insubstantial nature of the plaintiff's evidence resulted in a paucity of facts being established that may be used in support of the plaintiff's duty to discharge the onus that rests upon him regarding the negligence of the driver of the unidentified vehicle. A plaintiff is not relieved of this obligation even if he is a single witness and his evidence stands uncontradicted.²

² *Minister of Justice v Saemetso* 1963 (3) SA 530 (A) at 534 G-H; *Denissova N.O. v Heyns Helicopters (Pty) Ltd* [2003] 4 ALL SA 74 (C) para 33.

[17] On a conspectus of the totality of the evidence and taking into account the concerns raised in relation to this evidence, I am not satisfied that the plaintiff has discharged the onus of establishing his case in respect of liability.

[18] In the premises, I make the following order:

(a) The plaintiff's case is dismissed with costs.

T NICHOLS

ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives via email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 10 January 2022.

HEARD ON: 19 May 2021
JUDGEMENT DATE: 10 January 2022
FOR THE PLAINTIFF: Mr R Kok
rudie@leonjjvanrensburgattorneys.co.za
INSTRUCTED BY: Leon JJ Van Rensburg Attorneys
rudie@leonjjvanrensburgattorneys.co.za
FOR THE DEFENDANT: Unrepresented