


REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 2012/27618

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>05/09/2013</u> DATE	
 SIGNATURE	

In the matter between:

RAMOKONOPI, LEKHOTLA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

MBONGWE, AJ:

1. This is an action for damages in terms of the provisions of the Road Accident Fund Act no. 56 of 1996. The Plaintiff grounds his claim on an

accident which occurred on 22 March 2009 at or in the vicinity of Everton, Vanderbijlpark.

2. The Plaintiff is Mr Ramokonopi, Reuben Lekgotla, an adult male medical doctor who resides at 572025 Zone 3 Sebokeng, Vereeniging.
3. The Defendant is the Road Accident Fund, a statutory body duly incorporated in terms of the provisions of section 2 of the Road Accident Fund Act no. 56 of 1996, as amended and having its registered office or principle place of business at 29 floor Marble Towers, Corner Jeppe and Von Weilligh Street, Johannesburg.
4. The Plaintiff alleges that he was the driver of a motor vehicle, to wit, a white Honda Ballade with registration letters and numbers KBN 095 GP when a collision occurred between his vehicle and another vehicle, to wit, a silver grey Toyota Corolla with registration letters and numbers CJH 738 GP, then driven by one Mr I Moeti (hereinafter referred to as the insured driver). The said collision occurred on 22 March 2009 at approximately 22h00, near the intersection of Easton and Newman roads, Everton in the District of Vanderbijlpark.
5. There are two competing versions proffered by the parties with regard to the circumstances surrounding the occurrence of the collision. It is these two versions that this court has to consider to arrive at a decision on the merits in this case.
6. It is important at this stage to state that, while a formal application was not made to this court for the separation of hearing the issue of merits and of quantum, it became clear, after hearing evidence on the merits, that it will not be possible to commence with the hearing of evidence on quantum prior to this court determining the merits. Consequently, by agreement between the parties, the court postponed, *sine die*, the hearing on quantum, but subject to the outcome of the determination on the merits.

7. A further problem that the court was made aware of related to an accident report form that was submitted to the Defendant together with the rest of the Plaintiff's documents in pursuance of his claim. In this regard it was contended on behalf of the Defendant that this accident report form is fraudulent. The court was further informed that at the pre-trial meeting between the parties, the Defendant had indicated to the Plaintiff that it had engaged the services of a private investigator and that the private investigator had unearthed the original accident report that was compiled by the police officer who was first to arrive at the scene of the collision. It became an issue as to whether the defendant could hand in to court this latter accident report. It was agreed that the accident report be handed in provisionally and that the same would be validated once the author thereof testifies in court. It was then handed in as "Bundle A".
8. Bundle A consists of the following: the face of the docket from which appears, *inter alia*, the case number and the name of the investigating officer being inspector Mofokeng. It further appears on this page that the investigating officer was investigating a case of reckless and negligent driving in respect of a collision which occurred on 22 March 2009 near the corner of Newman and Easton roads at about 22h00. The document further contains another document entitled "Statement regarding interview with suspect"; on this page it appears that inspector Mofokeng conducted an interview with the Plaintiff on 3 April 2009 at 08h30. The names of the Plaintiff, his identity number, residential address, work address and occupation are indicated. At the bottom of this page appear the signatures of inspector Mofokeng, as the deponent, and a signature, purportedly of the Plaintiff, just above the word "suspect". This statement consists of a further three pages with each one of them signed as aforesaid. It also has a brief statement of the accident purportedly obtained by the investigating officer from the Plaintiff. The purported signature of the Plaintiff appears at the end of this statement.
9. Similarly, there is another statement entitled "interview with suspect" which again shows detective inspector Mofokeng as the investigating officer. The

names, identity number, residential address, work address and occupation of the insured driver appear on this page. It appears this interview took place on 1 April 2009 at 09h10. At the bottom of this page the signature of inspector Mofokeng appears above the word "deponent" and the signature of the insured driver appears above the word "suspect". There are three further pages in this regard signed at the bottom as aforesated. There is also a document marked "annexure A" which, on the face of it, appears to be a brief description of the accident. It is signed at the bottom by H.I Moeti, the insured driver.

10. A further component of Bundle A is an accident report form. Under particulars of driver A, the document contains the names and residential address of the insured driver. Further below those particulars, it contains details of the insured motor vehicle. On the right hand side under particulars of driver B, it contains the names and residential address of the Plaintiff and further down, are details of his vehicle.
11. On paginated page 16 of this document appears a sketch of the scene of the accident. It depicts the directions of travel of the two vehicles involved prior to and after the collision. Just underneath this diagram is a brief description of how the collision had occurred. On page 17 and at the bottom right thereof, appear identification particulars of one inspector Raluswinga. He is described as the person who completed this form. On page 18 appears the sketch of the scene of accident. This sketch depicts one of the vehicles, the Plaintiff's vehicle, being stationary in the middle of the road. Page 19 shows a sketch almost identical to the one on page 16, but turned upside down. This sketch depicts another vehicle, marked "unknown car", being overtaken by "vehicle B", the Plaintiff's vehicle. Page 20 of this document consists of measurements taken between the various points at the scene. Pages 21 to 23 contain a sworn statement by inspector Raluswinga relating to his observations and findings at the scene.

12. I now turn to consider the evidence relating to the merits. Two witnesses testified for the Plaintiff namely, the Plaintiff himself and Mr Matafeni who was said to be an independent eye witness. Mr Matafeni testified that he had been a passenger in a blue Golf driven by one Oupa Maphiri travelling along Easton road from the direction of Beverley Hills towards Everton. They were travelling approximately 18m behind a white Honda Ballade, the Plaintiff's vehicle. Mr Matafeni said that he noticed a silver grey Toyota Corolla (hereinafter referred to as the insured vehicle) travelling in the opposite direction. He testified that the insured vehicle was overtaking another vehicle and had encroached onto the lane of travel of the white Honda Ballade. He said that he then noticed the Honda Ballade swerve to the left, that is, towards the gravel surface on the side of the road. A collision occurred between the Honda Ballade and the insured vehicle.

13. Mr Matafeni testified that him and Oupa stopped in time and that he then saw the insured driver and some three to four people coming out of the insured vehicle. At that stage him and Oupa, whom he said has since passed on, attended to the driver of the Honda Ballade. He testified that Oupa was a male nurse and that together they freed the Plaintiff who was unconscious and trapped behind the steering wheel. The Plaintiff was alone in the vehicle. According to the witness they laid the Plaintiff on the ground on the side of the road. Mr Matafeni testified that at this stage he had seen the late Oupa talking on the phone, ostensibly to medical emergency personnel and thereafter to the police. He further told the court that the paramedics were the first to arrive at the scene. According to this witness he saw the paramedics cover the Plaintiff's body with a silver foil, except the head.

14. Mr Matafeni further told the court that he never spoke to anyone at the scene of the accident; more specifically he did not speak to the paramedics or to the police. He stated that he never gave his personal particulars to anyone and has never been contacted by the police regarding this accident to date. He stated that he did not know the driver of the Honda Ballade and had only met him again during either July or

August this year at the offices of the Plaintiff's attorneys. It was his evidence that he had received a letter requesting him to call in at the Plaintiff's attorney's offices, in connection with the Plaintiff's claim. Under cross examination, Mr Matafeni could not tell how the Plaintiff's attorneys got his name or his personal particulars.

15. Mr Matafeni was questioned on the alleged removal of the unconscious driver from the Honda Ballade as well as the risk involved in doing what seems to have been the domain of trained paramedics. He insisted that him and Oupa rescued the injured Plaintiff. It was further put to him that the insured driver was alone in his vehicle; that it was the Honda Ballade that had been overtaking the unknown vehicle and encroached onto the insured driver's lane of travel. He was shown a sketch drawn by inspector Raluswinga, the first police officer to arrive at the accident scene. Mr Matafeni denied the positioning of the vehicles before and after the collision. He stated that he did not know what ultimately happened to the vehicles that had been involved in the collision.

16. The next witness to take the stand was the Plaintiff himself, Mr Ramokonopi. He testified that on the night of the accident he was travelling along Easton road from the direction of Beverley Hills towards Everton. While approaching the intersection with Newman road, he noticed the insured vehicle which was travelling in the opposite direction. The Plaintiff said that the insured vehicle was overtaking another vehicle and encroached on his side of the road. This witness initially told the court that he had swerved to the left to avoid the collision, but that was in vain. Later he told the court that he did not swerve, but had only thought of doing so at the time the collision occurred. The Plaintiff testified that he could not recall what happened further as he lost consciousness soon after the collision. Under cross examination this witness denied that he was ever contacted by the police or that he ever made a statement to them regarding this accident.

17. Asked why he did not report the accident as required by law, the witness told the court that he had no knowledge of such a requirement. Asked further why he did not report the accident so that he could claim for damages to his vehicle, this witness told the court, firstly, that his attorneys advised him that his claim in respect of damages to his vehicle and a claim he intended to institute against the hospital for medical negligence, would all be included in his claim for bodily injuries against the Defendant, the Road Accident Fund. His second version was that after he had concluded that the police would not contact him, he had then decided to buy another vehicle and never thought of taking his claim for damages to the vehicle any further.
18. With regard to the position of his vehicle after the collision, the Plaintiff maintained that his vehicle remained on the lane he was driving on prior to the collision. It was revealed during cross examination that this witness did not have a driver's licence at the time of the accident. He however told the court that he was in possession then of a learner's licence. He conceded that the law required that he be accompanied by a licenced driver when driving. It was put to the Plaintiff that, as a learner driver, he would not have had the necessary experience to react appropriately to avoid a collision. The Plaintiff further told the court that he was visited three days later, in hospital, by Oupa, who told him how the accident had occurred. He told the court that he had met Oupa prior to the date of the accident when Oupa had brought his father to the Plaintiff for medical examination. As at the date of his testimony the Plaintiff had not been aware that Oupa had since passed on.
19. At the conclusion of the evidence of this witness, the Plaintiff's counsel indicated that the Plaintiff intended to call Plaintiff's attorney as a witness to testify on how the attorney had got to know about the alleged eye witness, Mr Matafeni. The Defendant objected to this proposition citing prejudice to the defence on the ground that the Plaintiff's attorney had been sitting in court throughout the proceedings. After a short adjournment Plaintiff's counsel informed the court that the Plaintiff had thought better of

its earlier proposition and that the Plaintiff had instead decided to seek that the matter stands down to the following day in order to allow the Plaintiff an opportunity to call the late Oupa's widow as a witness. The Defendant further objected for the reason that the insured driver had been allowed two days to attend court by his employer and that this particular day was his last. The Defendant emphasized its prejudice if it were to lose its valuable witness. In this regard the court was reminded that the Plaintiff had actually already called more witnesses than was agreed upon in determining the duration of the trial and that, in any event, the Plaintiff knew the previous day that they would need to call Oupa's widow. The Plaintiff's application was refused and the Plaintiff closed its case.

20. The defence called Mr Moeti, the insured driver, as its first witness. Mr Moeti testified that on the night of the accident he had been the driver of the silver grey Toyota Corolla, travelling along Easton road from the direction of Everton towards Beverley Hills. He told the court that he had stopped at a stop sign at the four way stop, being the intersection of Easton and Newman roads. He was on the other side of the intersection, when he noticed lights from vehicles that were travelling in the opposite direction. He was about 15m on the other side of the intersection when he suddenly saw lights coming from behind a vehicle that was about to drive past him. These were lights of the Plaintiff's vehicle which was overtaking. The witness testified that he swerved to the left to avoid the collision. However, it was too late as his vehicle was hit by the Plaintiff's vehicle on the right front headlamp through to the driver's door. He testified that he approached the driver of the vehicle that had collided with his, but received no response when he talked to him. A police vehicle that was passing by stopped while he was talking to his brother over the phone. He further testified that the police arrived about 15 minutes after the collision and, not long thereafter, the paramedics also arrived in three ambulances.

21. Mr Moeti told the court that the paramedics attended to the Plaintiff who was still trapped in his vehicle, rescued him and took him to the ambulance. The witness testified that he was at that stage busy with

inspector Raluswinga, who was taking a statement from him as well as drawing a sketch of the scene of the accident. He told the court that he later left the scene of the accident in a tow-truck that transported his vehicle to his home. He received a letter from the police the next Tuesday advising him to call in for an interview with investigating officer Mofokeng. He duly went to Mafatsane Police Station where investigating officer Mofokeng obtained the insured driver's particulars as well as details of the accident. In court, this witness was shown Bundle A. He confirmed that the details given on page 8 thereof are his as are the signatures appearing on subsequent pages relating to him. The witness also confirmed the correctness of the statement he signed during his interview with officer Mofokeng. The only area of difference in his testimony is in respect of the position of his vehicle after the collision. According to the witness, his vehicle became stationary on the edge of the road with two front wheels out of the road, whereas the sketch drawn by Raluswinga depicts the insured vehicle positioned across the lane the Plaintiff's vehicle is said to have been travelling on.

22. Asked why he did not try to recover damages to his vehicle, the witness told the court that he had requested the investigating officer, Mofokeng to facilitate a meeting between the insured driver and the Plaintiff. He noticed after some time that nothing seemed to be happening in that regard and decided to sell his vehicle as it was. He had bought this vehicle for R25 000 two years earlier but sold it for R7000 after the accident.

23. The next defence witness was Constable Raluswinga who testified that he had been on his way from investigating a complaint when he noticed, from a distance, that something had happened ahead of him. He was travelling along Easton road at the time and when he arrived at the scene, he noticed that a collision involving two motor vehicles had occurred in the vicinity of the corner of Easton and Newman roads. Constable Raluswinga testified that this was outside his area of operation, but as a police officer he could not have ignored an accident particularly where someone had been injured. He said that he approached a few people who were at the

scene and enquired from them who the drivers of the vehicles were. He then spoke to the insured driver who was standing outside his vehicle talking on the phone. He also established that the other driver was trapped inside his vehicle. He testified that he approached the Plaintiff and managed to obtain his name as well as his residential address. He noticed that the Plaintiff had been finding it difficult to communicate. Constable Raluswinga decided not talk to him any further. He however kept an eye on the Plaintiff while at the same time talking to the insured driver. He testified further that paramedics arrived and attended to the Plaintiff whom they removed from the driver's seat and into the ambulance.

24. Constable Raluswinga testified that at this stage he had continued to take a statement from the insured driver, drew a sketch of the road depicting the vehicles as they were positioned on the road and further took measurements between the various points. He was firm in his testimony that the sketch drawn by him correctly depicts the various positions and that, while he had obtained some information from the insured driver, the sketch, particularly that appearing on page 16 of Bundle A, was based on his personal observation. He conceded with regard to the directions, that although he referred to the vehicle as one moving from east to west and the other from west to east, he was not sure which side was the eastern side and which the western side was. For this reason the court indicated that it would be convenient that it be maintained that the one vehicle was travelling from the direction of Beverley Hills towards Everton and the other vice versa. This seemed to be better understood by all parties.

25. With regard to the marking of the vehicles, Constable Raluswinga conceded that in some instances he mistakenly referred to motor vehicle A when he meant vehicle B, and vice versa. In this regard it was decided that the vehicles be referred to as either the vehicle of the injured driver or the insured vehicle. For determining the point of impact, Constable Raluswinga testified that he was guided by the presence of some spilled liquid and broken glass found on a particular area on the lane for vehicles travelling from Everton towards Beverley Hills. He further told the court

that other police officers who work in this particular area had arrived later. He advised them that he had done much of the initial investigations and that he would continue to complete the investigations and assist them later if need be. He testified further that he had managed to contact the Plaintiff's wife, advised her of what had happened and escorted the tow truck as it took the Plaintiff's vehicle to his house. He testified that the reason for him escorting the tow truck was to prevent the Plaintiff's vehicle being taken to a compound where it could later be expensive for the Plaintiff to release it.

26. The real challenge in this case is centred around the origins of the accident report that was submitted by the Plaintiff to the Defendant. The defence maintains that the said accident report is fraudulent. Mr Raluswinga noted his particulars reflected thereon and that he is being identified as the officer who first attended the scene of the accident. Comparing the two reports, except for the particulars pointing at him as a person who attended the scene of the accident, he disavowed the contents of this report in relation to the circumstances of the occurrence, including the handwriting thereon. He insisted that the report and sketch reflected in Bundle A is the report that was compiled by him at the scene shortly after the accident.

27. A brief description of the sketch compiled by him is as follows: he shows motor vehicle A, the insured vehicle, travelling on Easton road approaching the intersection with Newman road. Just on the other side of the intersection, he shows vehicle A still driving in the same direction on the left lane of the road. On the right thereof, that is on the lane for traffic moving from Beverley Hills towards Everton, he shows vehicle A standing across the lane with the front facing the lane it had been travelling on prior to the collision. Right in front of vehicle A and still on the lane for vehicles travelling from Everton towards Beverley Hills, is the letter X, denoting the point of impact. A little ahead of this letter X, but on the opposite lane is a motor vehicle marked B, the Plaintiff's vehicle prior to the collision. Further, but on the lane in which the insured driver had been travelling, is a vehicle

marked B. This, according to Raluswanga, depicts the position of the Plaintiff's vehicle after the collision. This witness disputed the insured driver's version that the insured vehicle had remained on the lane it had been travelling on after the collision, but facing left with the front wheels off the road.

28. The third witness called by the defence was Andries Mofokeng. He told the court that he is a detective and has been in the employ of the South African police since 1988. He has been stationed at the Everton police station for the past 20 years. This witness was mainly referred, in his testimony, to Bundle A. He confirmed that the particulars given on page 2 were completed by him in his own hand writing. He also confirmed that the signature appearing at the bottom of the page is his. He further confirmed that the personal information of the interviewees contained on this page was obtained by him from the people he was interviewing namely, the Plaintiff and the insured driver. He referred to these people in his evidence as the victims of the accident. He told the court that he could not recall exactly where he conducted the interviews, that is, whether the interviewee came to the police station or he had visited the interviewee. He was however positive that the insured driver came to the police station for the statement to be taken.

29. He confirmed that the personal details of both the insured driver and the Plaintiff were obtained from them. In particular, he also recalled that the Plaintiff did not have a driver's license. He told the court that prior to the interview of the insured driver and the Plaintiff, respectively, he had never met either of them. In respect of the Plaintiff, the statement that was taken down by this witness reads as follows:

"On 2009-03-22 at about 22:00 I was driving motor vehicle reg no KBN 095 GP from west to east at Easton road Evaton. Suddenly my vehicle collided with another vehicle that was travelling to the opposite direction. It was when I tried to overtake and that vehicle's lights were off. I was taken to the hospital by an ambulance".

30. The other statement taken by this witness from the insured driver reads as follows:

"On 2009-03-22 at about 22:00 I was driving motor vehicle reg no CJH 785 GP from east to west at Easton road Evaton. I was driving on the left side when my vehicle collided head on with a vehicle that was travelling to the different direction. That vehicle was overtaking without observing".

31. As can be seen from the above, there are two competing versions with regards to the circumstances leading to the accident. That in essence calls upon this court to consider and weigh the evidence with a view to arriving and identifying the most probable version. In this regards it is necessary that the court looks at the evidence of each witness, the demeanour as well as the probability of the witness's version. In respect of the first witness for the Plaintiff's case (Mr Matafeni) the following remarks can be made: he spoke confidently when giving his evidence in chief. However there are aspects of his testimony that are improbable and left such a void that one cannot, but disbelieve him. Amongst others, that he never spoke to anyone at the scene of the accident and did not give his particulars to anyone and has never subsequently made a statement to the police or gave his personal details. Despite all this the Plaintiff's attorneys had been able to contact him by letter four years later for him to call in at their office in connection with the accident of 22 March 2009.

32. It is to be noted that the defence argued that Mr Matafeni was a so called rented witness and did not personally witness this particular accident. It is by no means strange that, under cross examination, he could not explain how he had been identified by the Plaintiff's attorneys as an eye witness to this particular accident. Secondly it was Raluswingwa's unchallenged testimony that he had spoken to the people present at the scene, seeking anyone who might have witnessed the collision, but no one came forward. This situation was compounded by the Plaintiff's failure to call a witness who could form the nexus between the witness, Matafeni, and the Plaintiff's attorneys. This failure necessarily gives credence to the Defence's argument refuting Mr Matafeni as a witness. The application by

the Plaintiff to have the matter postponed to the following day for the Plaintiff to call the late Oupa's widow as a witness was successfully opposed. In my view, if the reason for seeking to call the late Oupa's widow was to form the lacking nexus between the Plaintiff's attorneys and the witness, Matafeni, such evidence would have been nothing but hearsay and, therefore, unacceptable. The principle regarding failure to call a witness was laid down in the case of *Brand v Minister of Justice* 1959 (4) SA 712 (A) as follows: "*when a litigant fails to adduce evidence about a fact in issue, whether by not giving evidence himself or by not calling witnesses, it goes without saying that he runs the risk of his opponents version being believed*". In the present case the Defendant maintained its argument that Matafeni did not witness the accident and that his evidence was the fabrication of a rented witness. This argument finds support from the following:

- i. The two main aspects relating to Oupa that boggle the mind are: firstly, according to the Plaintiff, him and Oupa had known each other prior to the accident and Oupa had visited the Plaintiff in hospital three days after the accident. Oupa told the Plaintiff about the occurrence of the accident. I find it highly improbable that Oupa would then fail to go and make a statement to the police. Secondly, despite having been allegedly assisted by Mr Matafeni to remove the entrapped and unconscious Plaintiff, whom Oupa knew, Oupa never advised Mr Matafeni that he knew the injured Plaintiff. This is a highly improbable scenario and deserves rejection especially in the circumstances of this case.
- ii. Mr Matafeni's allegation that Oupa was a male nurse and that him and Oupa had removed the entrapped and unconscious Plaintiff from the vehicle and laid him on the ground next to the road was correctly challenged. This version, considering the alleged qualifications of Oupa, is unlikely to have occurred for various reasons; Oupa would have known that the situation of the Plaintiff at the time warranted the attention of skilled emergency personnel

and, further, the risk of placing the unconscious Plaintiff on the ground on the side of the road would not have been ventured into by a qualified nurse unless if, for instance, the vehicle had been on fire. Matafeni in this regard could not answer the defence's question whether the alleged late Oupa had the qualifications of a paramedic and, therefore, was equipped to deal with the situation of the unconscious and entrapped Plaintiff.

33. Further, throughout his testimony, Mr Matefani did not even once state that his friend, Oupa, had mentioned to him that the Plaintiff, whom they allegedly rescued, was known to Oupa. This I find highly improbable. Further his evidence that the Plaintiff had been unconscious when they allegedly rescued him from the vehicle is contradicted by the evidence of Constable Raluswinga, who told the court that when he arrived at the scene, *inter alia*, he checked on the entrapped driver, the Plaintiff, and managed to obtain the Plaintiff's name and residential address.

34. It is to be borne in mind in this respect that Raluswinga testified that he used this information later that night to communicate with the Plaintiff's wife. This testimony by Raluswinga completely refutes the allegation of the Plaintiff's earlier unconsciousness as alleged by Matafeni. Further Mr Matafeni testified that just prior to the collision he had seen the Plaintiff's car swerve to the left with a view to avoiding the accident and that the vehicle of the Plaintiff finally came to a standstill with only two side wheels on the road and the other two off the road, but facing the direction it had been travelling in prior to the collision. Again, this witness's version competes with other versions particularly that of the Plaintiff himself. In this regard, the Plaintiff testified that swerving to the left had only been a thought that he never executed. In this regard Constable Raluswinga, in his sketch of the scene, shows the plaintiff's vehicle first on the one side of the road and then encroaching on the path of travel of the insured driver. It also shows the point of impact which, again, is on the path of travel of the insured vehicle and finally, it shows the final resting point of the Plaintiff's

vehicle as being in the middle of the lane on which the insured vehicle had been travelling, that is, on the Plaintiff's incorrect side of the road.

35. If one looks closely at the above analysis of evidence it becomes clear that the version of the insured driver, namely, that the Plaintiff had been overtaking and Raluswinga's detailed sketch, are more probable. This is further confirmed by the statement detective Mofokeng had obtained from the Plaintiff as cited above. The court notes in this regard that while that statement taken was meant to form part of a commissioned statement of detective Mofokeng, such was not commissioned. I find the evidence of Matafeni improbable and, therefore repel it.

36. The evidence of the Plaintiff himself did not add any value to these proceedings, save that he was in court to state improbabilities. I now refer to some of those improbabilities. Firstly that at his age, being a medical doctor and in possession at the time of a learner's license, he did not know that he was by law obliged to report the accident to the police. If his evidence is anything to go by, to date, more than four years since the accident, he has not made a statement to the police regarding the accident. This flies in the face of the documentation that was completed by detective Mofokeng, who obtained all relevant personal details relating to the Plaintiff, including the statement which the Plaintiff had signed. The court noted the denial of the Plaintiff that the signature was his. In this regard, the Plaintiff stated that "the signature is almost like mine, but it is not". He could not explain how such detailed personal particulars could have been obtained by detective Mofokeng. Mofokeng stated that he did not know this witness prior to the collision and had only met him when he was investigating the case and obtained a statement from him. In my view detective Mofokeng had no reason to implicate the Plaintiff. The Plaintiff alleged further that when he was approached by his initial attorneys he had told them that he wished to claim for damages to his car and to sue the hospital for medical negligence. According to him, he believed his attorney's advice that all his three claims, namely, for damages to the vehicle, for medical negligence against the hospital to which he was

admitted and for bodily injuries to himself, would all be lumped in one claim against the Road Accident Fund. I find it highly unlikely that a person of the Plaintiff's qualifications would have believed such advice, if it was indeed ever given.

37. Generally I find that Mr Matafeni was jittery, evasive and tended to take time smiling instead of responding to the question asked during cross-examination. This prompted the court to ask him for reasons for frequent delays and smiles. He repeatedly responded to questions by saying he was not going to change his version even in circumstances where the question never suggested that he change his version. He was very evasive in his answers. With regard to the Plaintiff himself, clearly this witness had come to deny knowledge of all that mattered with regard to the accident and this included his pleas of ignorance whenever it suited him. This does not in any way suggest a denial of the fact that he did lose consciousness at some stage after the collision. On the other hand, I find that the defence's witnesses were honest and credible even during gruelling cross examination. Except for the discrepancy as to the position of the insured vehicle after the collision and the issue of the corner of Easton and Newman roads being a four way stop, there has not been any competing aspect in the evidence of the insured driver and Raluswinga. In fact they corroborated each other. The statement that was taken by detective Mofokeng from the Plaintiff corroborates the evidence of both the insured driver and Constable Raluswinga.

38. In the circumstances I find that the Plaintiff's alleged eye witness has not been a credible witness. I cannot fault the defence for its arguing that Matafeni was a rented witness who never actually witnessed the collision himself. His evidence as well as that of the Plaintiff himself, to the extent that the Plaintiff had been aware, prior to the collision, is nothing but a calculated fabrication to get compensation from the Defendant. The evidence of these two witnesses is accordingly rejected. Consequently I make the following order:

1. The Plaintiff's claim is dismissed.
2. The Plaintiff is to pay costs.
3. It is recommended that the Plaintiff and his witness, Mr Matafeni, be investigated by the South African Police Services for possible attempt to defraud the Defendant, Road Accident Fund, of the total amount R3 100 000.00 claimed by the Plaintiff.

MBONGWE, AJ 

Acting Judge of the South Gauteng High Court

Date of hearing: 26 – 30 August 2013

Date of Judgment: 05 September 2013

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