

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 2010/44082**

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

**[11 FEBRUARY 2021]**

.....  
SIGNATURE

In the matter between:

**DE VRIES, JOHANNES JACOBUS**

**APPELLANT**

And

**ROAD ACCIDENT FUND**

**RESPONDENT**

---

**J U D G M E N T**

---

**MUDAU, J:**

- [1.] This is an appeal, with leave of the Supreme Court of Appeal, against an order of this court (Johnson AJ), dated on 8 March 2019, dismissing the appellant's claims against the Road Accident Fund ("RAF") with costs. The claims arose from an accident, which occurred on 30 December 2008 at 17h15, on Gerrit

Maritz, a two-way street in Brakpan. The appellant was the driver of a motorcycle bearing registration number CBG [...].

- [2.] Prior to the commencement of the trial, the quantum of damages was separated for later determination, and the trial therefore proceeded only on the issue of negligence.
- [3.] The issue that arises for determination in this appeal is whether the trial court erred in its assessment of the evidence of a single witness presented on behalf of the appellant. In dismissing the claim, the trial court found the version of the appellant's witness to be improbable that another vehicle caused the accident.
- [4.] The appellant called an eyewitness - Mr Vernon Rudolph ("Mr Rudolph"), to substantiate his claim for negligence. The appellant also testified. He, however, had no recollection of the accident.
- [5.] Mr Rudolph was married to the appellant's sister, but they divorced in 2007. According to the evidence of Mr Rudolph, between 3 and 4 pm on 30 December 2008, he went to the appellant's house on his motorcycle to see his son whom he had not seen for close to a year. His ex-wife and son had just arrived from Port Elizabeth and were attending the appellant's daughter's birthday party at the appellant's house.
- [6.] The appellant, who was on his way out, approached Mr Rudolph and asked to borrow his motorcycle to go to the shop as his motor vehicle was parked in. Later, while standing on the grass on the pavement adjacent to the appellant's property together with Tyron, (the appellant's brother-in-law), and the appellant's five-year-old daughter whose birthday party it was, Mr Rudolph purportedly witnessed the accident which the appellant was involved in. Shortly before the accident occurred, he noticed the appellant at a distance of approximately 10 to 20 m from the intersection of Kirkland and Gerrit Maritz Streets. He estimated the motorcycle to be travelling at a speed of between 60 to 80 km/h in a 60 km/h zone.
- [7.] Mr Rudolph furthermore testified that another motor vehicle, traveling from north to south on Kirkland Street, that appeared to him *"like a minibus taxi or something like that ...looked... as if he just clipped him, at that moment he lost control, it looked like, it is like a speed wobble, but not a speed wobble, he lost*

*control... swerved over to the right-hand side, and hit the pavement and then he hit a lamp pole and a tree".* Later in his evidence in chief, he said: "*it looked like a minivan, taxi, Midas taxi or in that line...*" which never stopped after the incident. When asked to explain which part of the motorcycle the other vehicle clipped, he explained that, "*it looked like the back tyre or the backside of the motorcycle, the tailpiece*". The appellant was dislodged from the motorcycle.

- [8.] As to what became of the motorcycle, he explained that, it "*carried on crashing, rolling*" past him and eventually came to stop about 120 m from the intersection. The Metro Police and the ambulance arrived approximately 30 minutes to one hour after the incident. The appellant was airlifted to hospital. Mr Rudolph did not make a statement to the police on the day of the accident but made one approximately a year later at the request of the appellant. He felt sorry for the appellant, which is why he did not seek compensation for his motorcycle that was damaged beyond repair.
- [9.] Mr Rudolph made a written statement, under oath, on 4 January 2020. This was the first statement that he made relating to the events of the accident. The statement which was in his own handwriting reads in relevant part: "*I saw Johan De Vries [the appellant] riding on a motorcycle as he drove past me and I saw a white car looking like a taxi nick him on the side of the motorcycle and crashed into a concrete pole and got badly injured*" (own emphasis). Mr Rudolph pointed out in his evidence in chief that the words "*as he drove past me*" in the written statement were incorrect and should have read: "*as he drove towards me*". He attributed this to an error on his part as he was in a rush to go to work.
- [10.] During cross-examination, it became apparent that there was no reason for him to have rushed with writing out his statement, as the appellant did not require it on that day, but only a few weeks later. The unsatisfactory feature of the witness's evidence in this regard was fittingly identified by the trial court, which observed the witness giving testimony and was better suited to assess his demeanour and credibility. The trial court was of the view that the inconsistencies in the witness statement that he sought to explain away in his evidence in chief was a material contradiction. During the hearing of the

appeal, it was conceded on behalf of the appellant that the trial court was correct in arriving at this finding.

- [11.] The trial court alluded to a number of other inconsistencies or contradictions in Mr Rudolph's testimony. The first of these related to whether he was in the house or outside when he gave the keys of the motorcycle to the appellant. Under cross-examination, when asked whether he had gone into the house when he met with the appellant, he explained thus: *"I had got in and then I came out again, yes my Lord"*. As to the question of how long he spent inside the house, he responded that it was not long, as he had just arrived and the accident happened not long thereafter. Upon being pressed in this regard by counsel for the respondent, who asked why he rushed outside whereas the purpose of his visit was to see his son, his version changed. He explained that they were not inside the house, but were all outside in the backyard contradicting his earlier evidence that he went inside the house.
- [12.] In cross-examination, Mr Rudolph was unsure of the type of vehicle that had clipped the motorcycle, which the appellant was riding. Referring to his affidavit, he said it looked like a minibus taxi but it could have been a van or anything and that he could not be sure. When asked by the trial court what he meant by van, he said like a minibus van, taxi. When he was further pressed in that regard, he explained that it happened so fast, he could not be hundred percent sure what type of vehicle was involved.
- [13.] Mr Rudolph could also not explain in cross examination why he felt the need to watch the appellant (approaching from his right) from the moment he saw him, whilst in conversation with Tyron who was standing to the left of him. He was later constrained to concede that he did not watch the appellant "all the time" as he drove towards them, as he was facing Tyron who was to the left of him while they chatted.
- [14.] When asked which direction the motor vehicle that clipped the motorcycle took, he explained thus: *"My lord, it looked like it carried on to Kirkland Street. So it came across the intersection and carry on straight, up in Kirkland Street or down in Kirkland Street."* Mr Rudolph was also quite clearly unsure which part of the unknown motor vehicle nipped the motorcycle. Neither could he dispute a suggestion that the appellant was most probably driving over 80

km/h, as he was not riding with him. He seemed to remember explaining to an unknown Metro police officer what had happened in the accident, but could not recall whether the statement was taken down.

- [15.] The appellant confirmed, in his testimony, that he was not licensed to drive a motorcycle. All he could remember was asking Mr Rudolph if he could use his motorcycle to go to the shops to buy cool drinks and cigarettes as he had more visitors for the party than anticipated. He could only remember leaving the shop and taking “*the right lane on Gerrit Maritz*”. By his own admission, this was on the wrong side of the road. Ninety nine percent of his experience on a motorcycle was off-road and in quad biking. He spent approximately two months in ICU. On his version, he had little experience driving a motorcycle on a public road.
- [16.] It was submitted on behalf of the appellant that the trial court was unduly critical of Mr Rudolph’s evidence in circumstances where his evidence was for the major part uncontradicted, plausible and unchallenged. This court, on appeal, will only interfere where the court *a quo* misdirected itself on the facts and that it had reached a decision, which in the result, could not reasonably have been made by a court directing itself to all the relevant facts and applicable principles.
- [17.] It is trite that civil cases are decided on a balance of probabilities. However, probability and credibility are often intertwined.<sup>1</sup> The onus of proof rested on the appellant.
- [18.] In *Stellenbosch Farmers' Winery Group Ltd And Another V Martell Et Cie and Others*<sup>2</sup> it was aptly put thus:

*“The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in*

---

<sup>1</sup> See *National Employers' General Insurance Co v Jagers* 1984 SA 437 E at 440; *Road Accident Fund v Maseng* 2017 JDR 0914 (GJ) at paragraph 17.

<sup>2</sup> 2003 (1) SA 11 (SCA).

*the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail".*

[19.] The trial court did not err in concluding that the version of Mr Rudolph was unreliable and untruthful. As found by the trial court, the probabilities did not favour the appellant. If the accident happened in the way the witness testified it did, then he would have been expected to mention it to the Metro police officers at the scene at the first opportunity he had. On the probabilities, if he had given the police a statement and they had reduced it to writing, then he would have had no difficulty remembering this. Moreover, as the injuries suffered by the appellant were life threatening, it beggars belief that no report of the mystery motor vehicle was made to the police for investigation. It is inconceivable as the trial court found, that the police would not have enquired as to how the accident happened, especially if there was an eyewitness account of what had transpired. Had Mr Rudolph given the police his account of what he witnessed, they would have recorded it. So too would they have recorded their findings.

[20.] Inexplicably, the accident occurred reportedly at 17h15, yet Rudolph testified that the incident occurred shortly after his arrival between 3 and 4 pm. He, furthermore, had difficulty in explaining the origin of the insured (unidentified) motor vehicle at the time of the alleged incident and the direction it drove in after the incident. Notably, the evidence presented by Mr Rudolph did not

sustain the appellant's case that another vehicle was involved in the accident, and was to blame for it.

[21.] Significantly, in this regard, the witness was also vague in his description of the insured motor vehicle that, on his version, caused the accident, and would not commit to whether it was a minibus taxi or not, but kept on saying that it looked like a minibus taxi or a van. And eventually, when pressed, said that he was not certain. As already alluded to above, the witness deposed to an affidavit on how the "collision" occurred when asked to do so by the appellant approximately a year later. However, nowhere in that affidavit does he say that the insured driver caused the collision. This is a crucial omission.

[22.] The appellant did not call the Metro police officers to testify. There was also no evidence of a point of impact. He also did not call Tyron, who was standing with Mr Rudolph when the accident occurred, to testify. If Mr Rudolph was able to witness the accident, then Tyron would have as well. Based on the scene of the accident and the facts found by the trial court, it seemed more probable that the appellant, an inexperienced motorcycle driver who through his own fault, lost control of the motor cycle and then crashed.

[23.] Counsel, on behalf of the respondent, submitted that Mr Rudolph wanted to give the impression that his whole reason for being at the appellant's house was to visit with his son. Yet it made no sense that he barely spent any time with his son before leaving to conveniently place himself in front of the appellant's house, at the very moment when another vehicle clipped the motorcycle and the appellant lost control of it. I am inclined to agree.

[24.] The trial court's finding that the appellant's witness was not credible cannot be faulted when one has regard to the unsatisfactory and unconvincing version, which he presented to the trial court - alluded to above. In the final analysis, the question on appeal is whether we are at liberty to interfere with the conclusions of the court *a quo*. In this context the remarks of Brand JA in *Fourie v Firstrand Bank Ltd and Another* NO<sup>3</sup> at 210A–C are apposite:

*"The time honoured approach by this court is, in sum, that, absent any misdirections on the part of the trial court, a court of appeal is not permitted to interfere with findings of fact (see, for example, R v Dhlumayo and another*

---

<sup>3</sup> 2013 (1) SA 204 (SCA) at 210A-C.

*1948 (2) SA 677 (A) at 705–706). In the event I find it unnecessary to restate the detailed reasons given by the court a quo for its factual findings . . . , which should, in my view, be endorsed by this court."*

[25.] Weighing all the evidence, I am satisfied that the appellant had not established on a balance of probabilities that a second vehicle was involved in the accident. On the contrary, it was established on the evidence that this was a single vehicle accident, and that the claim for damages flowing from it was an afterthought. In the circumstances of this case, it is apparent there is a link between driving without a license and lack of skill and experience, and it was the appellant's lack of skill and inexperience driving a motorcycle on a public road that caused the collision on a balance of probabilities. Accordingly, in assessing the probabilities, the conclusion in this appeal seems to me to be inescapable - that the version placed before the trial court is improbable.

[26.] The appellant, nonetheless, contends that the trial court erred because it applied the cautionary rule, reserved for criminal cases, in assessing the testimony of Mr Rudolph; a single witness. There is no merit in this contention. The trial court weighed all the evidence before it and considered its merits and demerits. Having done so, it concluded that the evidence of Mr Rudolph was not credible and reliable. It then evaluated the probability and improbability of the appellant's version (as testified to by Mr Rudolph), and concluded that the appellant, on whom the onus of proof rested, failed to prove on a preponderance of probabilities that there was a causal link between the injuries he sustained and the actions, if any, of the insured driver.<sup>4</sup> So although the trial court approached Mr Rudolph's evidence with a degree of caution and common sense, it did not apply the wrong test.

[27.] For these reasons, the appeal against the dismissal of the appellant's damages claim falls to be dismissed. On the question of costs, there is no plausible reason why the costs of the appeal should not follow the result.

[28.] In the result, it is ordered that:

1. The appeal is dismissed with costs.

---

<sup>4</sup> See: *Road Accident Fund v Maseng Olsile* (above) at para16-18.

---

**T P MUDAU**  
**Judge of the High Court**

I agree.

---

**Kathree –Setiloane J**  
**Judge of the High Court**

I agree.

---

**VUMA AJ**  
**Acting Judge of the High Court**

Date of Hearing: 1 February 2021

Date of Judgment: 11 February 2021

**APPEARANCES**

For the appellant: Adv. D J Combrink

Instructed by: Du Toit Attorneys

For the Respondent: Ms J L Khan

Instructed by: Mohulatsi. Attorneys