

SOUTH AFRICA / JUDGMENT

Mahlangu v Road Accident Fund (26159/14) [2018] ZAGPPHC 312 (25 April 2018) [2018] ZAGPPHC 312

COURT

North Gauteng High Court, Pretoria

BEFORE

Sello

CASE / FILE NUMBER

26159/14

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE NO: 26159/14

25/4/2018

In

the matter between:

JACOB
KOOS
MAHLANGU
Plaintiff
and
ROAD
ACCIDENT
FUND
Defendant

JUDGMENT

SELLO,A J:

- [1] The plaintiff was involved in a motor vehicle accident on 30 June 2012 at approximately 01h50 as a consequence of which he sustained injuries and was hospitalised. The plaintiff instituted action against the Road Accident Fund for damages in the amount of R302 000.00 which quantum was subsequently increased to R652 000.00.
- [2] The Fund defended the action and delivered two special pleas and plea on the merits disputing liability. Both the special pleas sought the dismissal of the claim for general damages based on the provisions of sections 17(1) and 17(1A) of the Road Accident Fund Act 56 of 1996 ("the Act"). Section 17 prescribes that compensation for non-pecuniary loss is limited to serious injuries and s 17(A) stipulates that a medical practitioner shall assess the injuries

based on a prescribed method and a report filed in regard thereto in terms of the Regulations. Both these special pleas therefore relate to the question of quantum.

- [3] The parties had agreed on separating the determination of the merits and quantum. The trial proceeded on the merits only with quantum deferred for later determination.
- [4] In his particulars of claim, the plaintiff pleaded that on the date in question he was the driver of vehicle bearing registration number DVR[...] driving along R50 in Leslie in the Mpumalanga province when a collision occurred at around 01 h50 between his vehicle and another, the registration of which the plaintiff was unable to establish, as a result of which the plaintiff suffered certain injuries. The plaintiff has not been able to establish the identity of either the driver or owner of the vehicle. On the plaintiffs version, the driver of the other vehicle was the sole cause of the accident.
- [5] The defendant in its plea denied the collision, and in the alternative pleaded that in the event that this court were to find there had been a collision, that the plaintiff's negligence was the sole cause of

the accident, and further alternatively, that the plaintiffs own negligence contributed to the accident.

- [6] The plaintiffs claim as pleaded is one that falls within the purview of s 17(1)(b) of the Act.

Section 17(1)(b) of the Act provides that -

"subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising

from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.... ".

[7] The plaintiff testified on his own behalf and was the sole witness. He testified that on the night in question he was driving on RSO when he saw the headlights of a vehicle travelling in the opposite direction.

A second vehicle then appeared from behind this vehicle to overtake it, moving onto the plaintiffs side of the road. At this point both vehicles were a short distance away and the plaintiff was forced to apply his brakes and swerve his vehicle in an effort to avoid a collision. He lost control of the vehicle, veered off the road and landed in a ditch off the road. Neither of the two cars stopped to assist. He was adamant that he did not collide with either of the vehicles.

[8] The defendant closed its case without calling any witnesses.

[9] It is common cause between the parties that the plaintiff submitted a third party claim form, duly completed as prescribed in terms of s 24 of the Act, which was received by the Road Accident Fund ("the Fund") on 1 August 2013. The defendant neither upheld nor repudiated the claim. The plaintiff subsequently instituted the current action.

[10] The third party form requires that an affidavit be attached thereto describing how the accident occurred. The affidavit attached to the plaintiffs claim regarding the circumstances surrounding the accident states that, as the plaintiff was travelling from north to south a truck travelling from south to north attempted to overtake another and crashed head-on with the plaintiffs vehicle causing the latter to roll.

[11] During his examination in chief, the plaintiff was referred to this affidavit. He denied that the affidavit was his, he disavowed the version set out in this affidavit, he adamantly denied that his vehicle collided with another, or rolled, as stated in the affidavit and most importantly he disputed the signature on the affidavit purporting to be his. He concluded by stating that he had never given a statement setting out such facts to anyone. He maintained this stance during cross-examination. According to the plaintiff his testimony in court was consistent with the statement he gave to his attorney.

[12] The plaintiff also testified that a policeman had visited him in hospital the day following the accident and to take down his report of the accident. This report was subsequently discovered by the plaintiff as one of the documents he intended to rely upon in this matter. When the defendant's counsel however sought to cross-examine the plaintiff on this report, the plaintiff counsel objected on the basis that, as the policeman who had completed the report would not be testifying

the report constituted inadmissible hearsay. I provisionally admitted the report. In light of the decision I make in this matter it is not necessary for me to consider the admissibility of this report.

[13] The delivery of the form, duly completed, is a peremptory requirement in terms of s24. The claim form and the documents submitted to the Fund are pivotal to establish liability. Section 19(f) excludes liability on the part of the Fund in the event of a failure, inter alia, to provide an affidavit in which particulars of the accident that gave rise to the claim are fully set out.

[14] Section 19(f) of the Act provides that

“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) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he, or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(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

[15] In *Guardian National Insurance Co Ltd v Van der Westhuizen* (1990 (2) SA 204 (C) at 210B - 211F) the court distilled from a long line of cases a number of general principles which are applicable in determining whether the provisions of s 25(1) of the Compulsory Motor Vehicle Insurance Act 56 of 1972, the predecessor to the current legislation. Of importance to this matter are the following:

15.1. 'The submission of a claim form as required by s 25(1) is a peremptory requirement;

15.2. The prescribed requirements in regard to the completion of the claim form are directory;

15.3. A degree of accuracy in the information given in the MVA is required if the form is to serve its statutory purpose. This relates not only to the accident but also to other matters including the injuries and the loss caused thereby;

15.4. There must be information as to the identity of the claimant, the accident, the identification of the insured motor vehicle, the injuries and the loss caused thereby and the computation of the compensation claimed. This constitutes the minimum amount of information that will have to be supplied in the claim form to constitute sufficient compliance with its requirements'.

[16] These principles were confirmed by the SCA in *SA Eagle Insurance Co Ltd V Pretorius* [1997] ZASCA 107; 1998 (2) SA 656 (SCA). In *SA Eagle Insurance* the SCA stated that (1) the submission of a claim form is a peremptory requirement; (2) the prescribed requirements in regard to completion of the form are directory; and

- (3) what is required is substantial compliance with such requirements. The requirements for the submission of a claim are statutorily peremptory and require strict compliance for a claim to be valid. The content of the claim form are directory and the law requires only substantial compliance therewith.
- [17] Section 24 prescribes the procedure to be followed for a claim for compensation under section 17(1) and requires the submission of a prescribed form completed in all its particulars. The claim form prescribes that an affidavit be attached to the form describing how the accident occurred. Section 19(1)(f) enjoins a claimant to give full particularity of the accident and excuses the Fund from liability in the event of non-compliance with this prerequisite.
- [18] In *Pithey V Road Accident Fund 2014 (4) SA 112 (SCA)* [17] the SCA held that "[T]he affidavit and copies of statements and the documents mentioned in s 19(/) are required to provide details of how the accident giving rise to the claim arose. It is abundantly clear that the purpose of this provision is, inter alia, to furnish the Fund with sufficient information to enable it to investigate the claim and determine whether or not it is legitimate."
- [19] The plaintiff during testimony disavowed the affidavit attached to the claim form to the extent that he denied that the signature thereto was his. No witness was called to confirm whether or not the signature was that of the plaintiff and this testimony stands unrefuted. I have no basis in the circumstances to reject the plaintiffs testimony in this regard. No other affidavit signed by the plaintiff in compliance with s 19(1)(f) is on record.
- [20] The consequences of the foregoing is that the claim form was incomplete in that the plaintiff did not submit an affidavit setting out the details of how the accident arose, information which a claimant is statutorily obliged to supply. This is therefore not a case of substantial compliance but one of non-compliance with the requirements of the Act.
- [21] Flowing from the plaintiffs testimony, the plaintiff amended his particulars of claim to amend the paragraph setting out the circumstances in the accident occurred. The effect of the amendment was to delete the allegation that the plaintiffs vehicle collided with another and to replace it with an allegation that the plaintiffs vehicle was involved in a collision while avoiding an unidentified vehicle.
- [22] The defendant did not file a consequential amendment to its plea.
- [23] In argument, the plaintiff counsel contended that the plaintiffs version given during his testimony is the only version available, as the defendant did not advance a conflicting version, and on the basis of the best evidence rule this court must accept this version and uphold the plaintiffs claim. Further, that the plaintiff cannot be held to an affidavit he has disavowed.

- [24] Whilst it is correct that the plaintiffs version is the only version, the argument that it suffices to uphold the plaintiffs claim cannot succeed. The issue for determination is whether the Fund is obliged to compensate the plaintiff. It was argued on behalf of the plaintiff that the provisions of s 19(f) are not peremptory and it was open to the court to reject the affidavit and to determine the matter on the version given by the plaintiff in court.
- [25] The right to compensation arises when the provisions of the Act have been complied with. Section 19(f) absolves the Fund from liability where the claimant has failed to provide the affidavit setting out the particulars of the claim. As the plaintiff's own counsel argued, which argument I accept, the plaintiff cannot be held to an affidavit he has disavowed. I must find that on the plaintiffs own version therefore he did not provide an affidavit as contemplated ins19(f).
- [26] In Road Accident Fund V Monjane 2010 (3) SA 641 (SCA) the SCA held that in terms of s 19 the liability of the Fund, as contemplated in s 17 of the Act , is excluded altogether in certain circumstances (At [5]). Section (f) is the relevant subsection and it is one of the statutorily determined circumstances where the liability of the Fund is excluded.
- [27] The argument therefore that section 19(f) is not peremptory is flawed. As a prescribed part of the claim form it not only peremptory (See SA Eagle Insurance Co Ltd V Pretorius) it is key to found liability. Non-compliance therewith must have the effect of absolving the Fund.
- [28] I find that the plaintiff failed to comply with the provisions of s 19(f) of the Act and no liability against the Fund arises.
- [29] I accordingly make the following order: The claim is dismissed with costs.

M SELLO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

FOR THE PLAINTIFF: Adv L HARILAL

INSTRUCTED BY GSG ATTORNEYS

FOR THE RESPONDENT Adv L TYATYA

INSTRUCTED BY TAU PHAHLANE ATTORNEYS

DATE OF JUDGMENT

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