

SOUTH AFRICA / JUDGMENT

Makhubela v Road Accident Fund (8150/2022) [2023] ZALMPPHC 29 (6 June 2023) [2023] ZALMPPHC 29

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago

CASE / FILE NUMBER

8150/2022

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 8150/2022

REPORTABLE: YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

Date:

6/06/2023

In the matter between:

MARIA

FLORA MAKHUBELA

PLAINTIFF

And

ROAD

ACCIDENT FUND

DEFENDANT

JUDGEMENT**KGANYAGO J**

- [1] The plaintiff has lodged a claim against the Fund for a claim that allegedly occurred on 7th July 2020 at Lydenburg road, Tzaneen Town CBD. When the Fund failed to settle the claim, the plaintiff proceeded to issue summons against the Fund claiming R2 500 000.00. The Fund did not defend the plaintiff's action. That led to the plaintiff setting the matter down for a default judgment.
- [2] According to the plaintiff's particulars of claim, at the time of the accident the plaintiff was a passenger in a motor vehicle with the unknown registration numbers and letters. This unknown vehicle was a taxi and its driver was also unknown to the plaintiff. As the plaintiff was alighting from said vehicle, the driver drove off at a high speed which resulted in the plaintiff falling, rolling, lost consciousness and regained her consciousness at Van Velden hospital.
- [3] However, in the accident report it has been recorded that the plaintiff was the driver of the unknown vehicle and also a passenger that was injured at the time of the accident. Where date of accident has to inserted, it has been recorded that the date was unknown. Where the accident sketch plan was supposed to have been drafted, it has been recorded that the scene has been not visited. The accident has been reported to the police two years after the date of the alleged accident. In the hospital records, the nurse who was the first to attend to the plaintiff, in her clinical notes has recorded that the plaintiff was brought to the casualty with a history of falling. The first doctor who attended the plaintiff, in his clinical notes had recorded that the plaintiff fell while walking after she felt dizzy and sustained injuries on her left wrist.
- [4] The plaintiff took the witness stand and testified under oath. She testified that on the date of the accident she was a passenger in a white taxi. The taxi stopped at Tzaneen Mall in the CBD for her to alight from the taxi. As she was alighting from the taxi with one leg on the ground, and the other leg still on the steps of the taxi, the taxi driver drove away and she fell to the ground, and the taxi did not stop but drove away. When she fell she got injured on her wrist, knees and lost some of her teeth. She was taken to Van Velden hospital. She reported the accident to the police soon after her son had enquired about the accident as he wanted to assist her.
- [5] As there were some discrepancies between the plaintiff's oral evidence and the hospital records, the court requested the plaintiff's attorneys to subpoena the hospital superintendent to come and clarify the court about the hospital records as some on the documents were illegible. Lucas Cornelius Prinsloo came and testified under oath. He testified that he is the acting head of institutions at Van Velden hospital in Tzaneen. That according to the hospital records, plaintiff was brought to the hospital on 7th July 2020 by EMS paramedics. According to report of the EMS, the plaintiff was picked up at Spar

complaining of a fracture of the left hand after she fell. In the hospital records the first nurse who had attended the plaintiff had recorded that the plaintiff's

injuries were a result of her falling. The first doctor who attended to the plaintiff had recorded that the plaintiff fell whilst she was walking after she felt dizzy. The witness was briefly cross examined.

- [6] The plaintiff called Kongkong Agelina Sapi as her witness. She testified that the plaintiff is her mother-in-law. She has been staying with the plaintiff for the past 18 years. The plaintiff never had a history of epilepsy. She did not visit the plaintiff after she was admitted at Van Velden hospital, but only saw her after she was discharged from hospital. The plaintiff was complaining that her left hand, teeth and ribs were injured. The plaintiff was also on plaster of paris on her left hand.
- [6] At that time the plaintiff's matter was not reported to the police. The plaintiff told her (witness) that she was been assisted by someone from the Road Accident Fund. They waited for a year and when they saw that nothing was happening, they decided to go and consult a lawyer. When they went to the police station after a year, they were told that the case was never reported. The police officer who assisted them incorrectly completed the accident report. They took that accident report to their lawyer incorrectly completed as it was. That concluded the plaintiff's evidence. Counsel for the plaintiff submitted in his closing address that the Fund should be held liable 100% for the damages suffered by the plaintiff as a result of the negligent driving of the insured driver.
- [7] It is trite that RAF is obliged to compensate the claimant for bodily injuries caused by or arising from the driving of a motor vehicle. The casual link that is required is essentially the same as the casual link that is required for Aquilian liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering harm. Whether an act can be identified as a cause, depends on a conclusion drawn from the available facts and relevant probabilities. The important question is how one should determine a causal nexus, namely whether one fact follows from another. (See *Grove v The Road Accident Fund*[1]).
- [8] From the principle stated in the *Grove* case, what is clear is that for the claimant to succeed with his/her claim against RAF, he/she must prove that the loss or damage he/she had suffered was as a result of bodily injuries caused by or arising out of the driving of the insured motor vehicle, and that the bodily injuries were due to the negligence or other unlawful act of the driver of the insured vehicle or the owner thereof or his servant.
- [9] In the case at hand, according to the plaintiff she fell from the taxi that had pulled off whilst she was still alighting from it. However, this version contradict the clinical notes of the hospital records and the report of the EMS who had transported the plaintiff to hospital. According to the clinical notes of the 7th July 2020 as recorded by the first doctor who had examined the plaintiff, the plaintiff fell whilst she was walking after she became

dizzy. That corroborates the clinical notes of the nurse who had attended the plaintiff on her admission to hospital, and also the report of EMS. The 7th July 2020 is the date which according to the plaintiff's papers, the accident had occurred. Throughout the whole of the hospital records, there is nowhere it has been recorded that the plaintiff's injuries were as a result of a motor vehicle accident. The plaintiff has failed to call any witness to corroborate her version that on the date in question she was involved in a motor vehicle accident. The witness called by the plaintiff was not helpful as she was not present at the scene of the accident, and also did not visit the plaintiff in the hospital.

[10] The acting head of institutions at Van Velden hospital was called by the court and he verified the correctness of the hospital records, and went further to present the report of EMS which was not contained in the hospital records. The report of EMS also corroborate the clinical notes found in the hospital records. The accident report is also not helpful as according to that report, the alleged accident was reported to the police two years after the alleged incident, it had been incorrectly completed as it refers to the plaintiff as both the driver of the unknown vehicle and also its passenger. The police officer who had completed that report had not visited the scene of the accident. On the accident report the date of the accident has been recorded as unknown.

[11] The authenticity of the hospital records has not been challenged by the plaintiff, and in my view, they remain reliable and credible. From the plaintiff's own version, she could not give a clear version of how the alleged accident occurred, why it took her such a long time to report the accident to police, and also why he had failed to let the police rectify such defective accident report. Taking into consideration that there is no witness to corroborate the plaintiff's version which is not even clear as to how the accident happened, the only reliable and credible evidence available is the clinical notes of nurse who was the first person to attend to the plaintiff, the clinical notes of the first doctor who had attended to the plaintiff, and the notes of EMS who are the people who had picked up the plaintiff from the accident scene and transported her to hospital. All the three stake holders notes corroborate each other that the plaintiff fell whilst walking.

[12] The plaintiff has failed to prove that the bodily injuries she had sustained were caused by or arose out of the negligent driving of the insured motor vehicle, and further that the said bodily injuries were due to the negligence or other unlawful act of the driver of the insured vehicle or the owner thereof or his servant. Therefore, liability of the defendant to the plaintiff's loss or damage has not been proved or established at all.

[13] In the result I make the following order:

13.1 The plaintiff's claim is dismissed.

13.2 There is no order as to costs.

13.3 Copy of this judgment should be brought to the attention of the Legal Practice Council.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the plaintiff: Prof/Adv JLH Letsoalo Instructed by: J.E Risiva Attorneys Counsel for the defendant: In default Date heard: 9th May 2023 Electronically circulated on: 6th June 2023

[1] [2011] ZASCA 55 (31 March 2011) at para 7

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