

SOUTH AFRICA / JUDGMENT

Makwane v Road Accident Fund (1653/2023) [2024] ZALMPPHC 167 (5 November 2024)

[2024] ZALMPPHC 167

COURT

Limpopo High Court, Polokwane

BEFORE

M S Monene

CASE / FILE NUMBER

1653/2023

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO:1653/2023

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

Signature:

Date:

05/11/2024

In

the matter between: MAKWANE
 LEPULANA AARON
 PLAINTIFF
 And
 ROAD
 ACCIDENT FUND.
 DEFENDANT

JUDGMENT

MONENE AJ

- [1] The plaintiff an adult male person instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 22 May 2021. He alleges that the collision between the motor vehicle he was driving and another motor vehicle was caused by the sole negligence of a third motor vehicle driver who having negligently gotten onto the plaintiff's driving lane, fled from the scene and remains unknown.
- [2] The defendant has despite proper service failed to defend this action leading to the plaintiff to approach this court on default seeking before this court; separation of liability from quantum and an order holding the defendant 100 percent liable for any subsequently proven damages suffered the plaintiff.
- [3] The plaintiff proceeded before this court per default, sought and was granted leave to prosecute the merits part in terms of Uniform Rule 38(2).
- [4] Under cover of affidavit the plaintiff adduced, in brief, the following uncontested evidence:
- 4.1 In the default judgement founding affidavit the following evidence was led:
- 4.1.1 The plaintiff was, on 22 May 2021, a driver of a motor vehicle, to wit, a white Mazda with registration number C[...] along the Mamphogo and Mabintane Road in Maserumule Park in Limpopo Province.
- 4.1.2 The plaintiff's motor vehicle collided with a white VW Fox motor vehicle with registration number D[...] driven by one Tau Morathane Desmond.
- 4.1.3 The collision of the two motor vehicles was caused solely by a third unknown motor vehicle driver who upon negligently encroaching onto the plaintiff's lane caused the plaintiff to lose control of his motor vehicle causing the plaintiff to drive his motor vehicle into that of the second driver.
- 4.1.4 The unknown driver, in this case the insured driver, did not stop after the accident.
- 4.2 This evidence remains uncontested before me.
- [5] The plaintiff's claim in this matter was lodged with the defendant on 11 October 2022.

[6] The defendant was subsequently served with summons commencing action on 27 February 2023. This was proper service in terms of uniform rule 4(1)(a)(viii).

[7] The defendant is to date in default of filing both the notice to defend and a plea.

[8] Uniform rule 31(2) (a) leads no room for interpretation beyond its text when it provides as follows:

“Whenever in an action the claim or, if there is more than one claim, any of the claims is not for debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the matter down as provided in sub-rule (4) for default judgement and the court may, after hearing evidence, grant judgement against the defendant or make such order as it deems fit.”

[9] Subrule (4) of uniform rule 31 makes it imperative to serve a defendant with a default judgement application only where a notice of intention to defend has been filed making it not peremptory to serve the set down if a defendant has not bothered to file the notice of intention to defend. In casu therefore it was not necessary to serve the notice of set down on the defendant because no notice to defend was filed. Service of the set down notice was however still done and that did not jolt the defendant into any action at all.

[10] In the premises a case for default judgement has, in my view, been successfully mounted.

[11] In terms of uniform rule 33(4) if it appears to the court that there is a need to separate issues or convenience calls for such separation the court may even mero motu order a separation.

[12] Seeing that the costs of securing expert evidence for quantum purposes are exorbitant, at least as seen through the eyes of most indigent and most black people in this country, and regard being had to the defendant’s unexplained no-show in this proceedings, it is, in my view, convenient and fair to afford the plaintiff the opportunity to first be sure of the merits issue before incurring costs attendant to collecting quantum evidence.

[13] I thus do not struggle to arrive at a conclusion that separation should be granted as prayed for by the plaintiff.

[14] In all the above premises, I make the following order:

[14.1] The issues of liability or merits and quantum are separated.

[14.2] The defendant shall be liable for 100 percent of the plaintiff’s proven and/or agreed damages.

[14.3] The issue of quantum is postponed sine die.

[14.4] The defendant shall pay the plaintiff’s taxed or agreed to party and party costs to date on a high court scale within 30 days of taxation or agreement.

[14.5] Should the defendant fail to pay the costs in 14.4 above, the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of mora to date of final payment.

M S MONENE

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on

: 27 June 2024

Judgment

delivered on : 05 November 2024

For the Plaintiff/Applicant : S O Mwim

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For the Defendant/Respondent : No appearance

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