

SOUTH AFRICA / JUDGMENT

Mgweba v Road Accident Fund (3385/2016) [2019] ZAECPEHC 75 (4 November 2019) [2019] ZAECPEHC 75

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Beyleveld

CASE / FILE NUMBER

3385/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE LOCAL DIVISION, PORT ELIZABETH)

Case

No: 3385/2016

Date

heard: 1 November 2019

Date

delivered: 4 November 2019

NOT

REPORTABLE

In

the matter between:

LONWABO

MGWEBE

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

Beyleveld AJ:

- [1] When this matter was called on roll call on 1 November 2019, the plaintiff sought certification that the matter is trial ready, whilst the defendant contended that the matter was not ripe for hearing.
- [2] The seriousness of the injury is not admitted by the defendant. The plaintiff has, in order to claim general damages in terms of s 17(1A) of the Road Accident Fund Act[1], filed a serious injury assessment report[2].
- [3] Form RAF5 was subsequently filed by the plaintiff who disputed the rejection by the defendant of the assessment submitted on behalf of the plaintiff.
- [4] The Tribunal found in favour of the plaintiff confirming the injury as serious.
- [5] A copy of such finding is annexed hereto marked “A”.
- [6] Apparently the defendant was only recently furnished with a copy of “A”.
- [7] Although “A” refers to the plaintiff, it is abundantly clear that the injuries referred to in “A” and which were purportedly assessed, bear no resemblance to the injuries pleaded in the Particulars of Claim, and in particular bear no resemblance to the injuries listed in the RAF4 forms submitted by the plaintiff.
- [8] Self-evidently the Tribunal either through an administrative error recorded the wrong injuries in the letter recording the plaintiff’s injuries as serious or in error recorded the plaintiff’s name incorrectly as the name of the claimant who suffered the injuries listed.
- [9] In either event, the Health Professions Council of South Africa (HPCSA) never brought out a finding in respect of the plaintiff’s actual injuries.
- [10] This must obviously be corrected.
- [11] The unfortunate consequence is that the matter is not trial-ready.
- [12] As soon as a proper recordal of the finding of the HPCSA is to hand, the parties may approach the Judge President or Deputy Judge President and attempt to seek approval for the allocation of a preferential trial date.
- [13] I, therefore, make the following order:

[13.1] The Health Professions Council of South Africa is directed to expeditiously forward a proper finding on the plaintiff’s injuries as recorded in the RAF4 reports to the plaintiff’s attorneys;

[13.2] The plaintiff's attorneys are directed on receipt of such findings to forthwith forward a copy thereof to the defendant's attorneys;

[13.3] The matter is removed from the trial roll.

[13.4] The costs are costs in the cause.

A. BEYLEVELD

ACTING JUDGE OF THE HIGH COURT

Appearances:

Obo the Plaintiff:

Adv P.E Jooste

Instructed by

Gregory Clark & Associates, 9 Buffelsfontein, Mount Pleasant, Port Elizabeth

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Obo the Defendant:

Adv A. Frost

Instructed by

BLC Attorneys, 4 Cape Road, Port Elizabeth

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[1] Act No. 56 of 1996

[2] RAF4 to the Regulations promulgated in terms of s 26 of the Act, R347 in GG 36452 dated 15 May 2013.

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