

SOUTH AFRICA / JUDGMENT

Mkoko v Road Accident Fund (1378/2012) [2017] ZAECELLC 3 (24 January 2017)

[2017] ZAECELLC 3

COURT

Eastern Cape High Court, East London Local Court

BEFORE

J.E Smith

CASE / FILE NUMBER

1378/2012

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IN THE HIGH COURT OF

SOUTH AFRICA

EASTERN

CAPE DIVISION – EAST LONDON

Case

no: 1378/2012

ECD:

3078/2012

Case

Heard: 6/12/2017

Date

Delivered: 24/01/2017

In

the matter between:

NOMABHISINIYA

MONICA MKOKO

PLAINTIFF

and

ROAD

ACCIDENT FUND

DEFENDANT

JUDGMENT

SMITH J:

[1] The applicant instituted action against the defendant for damages arising out of injuries suffered in a motor vehicle collision that occurred on 24 September 2008. The summons and particulars of claim were served on the defendant on 8 November 2012. The plaintiff's

serious injury assessment report ("RAF4") was prepared and signed by Dr Olivier on 30 November 2014, and served on the defendant on 29 April 2015.

[2] The defendant thereafter filed a special plea averring that the plaintiff's claim for general damages has become prescribed

since the RAF 4 form was served after a period of 5 years. The defendant averred that in terms of section 23 (3) of the Road Accident Fund Act, 56 of 1996, ("the Act") the plaintiff's claim would not have prescribed before the expiration of 5 years from the date on which the action arose. In terms of the Regulations promulgated under the Act, the RAF 4 form must be submitted "at any time before the expiry of the periods for the lodgement of the claim prescribed by the Act and these Regulations" (Regulation 3 (3)(b)(i). The defendant contend that the RAF 4 form was lodged outside the period of 5 years prescribed by the Act, and the plaintiff's claim for general damages has accordingly become prescribed.

[3] In order to facilitate the adjudication of the special plea the parties filed a statement of agreed facts in terms of which they agreed on the date of the collision and the dates on which the summons and RAF 4 form were served.

[4] In terms of section 17 (1)(b) of the Act the defendant's liability to compensate a third party for non-pecuniary loss is limited to compensation for "a serious injury as contemplated in sub-section (1A) and shall be paid by way of a lump sum".

[5] And section 17(1A)(a) of the Act provides that:

"Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party."

[6] Regulation 3(3)(b)(i) requires the RAF 4 form to be submitted at any time before the expiry of the period for the lodgement of the claim prescribed by the Act and the Regulations. Regulation 3(3)(c) provides that the Fund is only liable to compensate a third party for non-pecuniary loss "if a claim is supported by a serious injury assessment report submitted in terms of the Act and these Regulations."

[7] Ms Watt, who appeared for the defendant, has correctly submitted that on a reasonable construction of these provisions:

- (a) a claimant may submit the RAF 4 form separately, provided that it is done within the prescribed period of 5 years;
- (b) the fund is under no obligation to compensate any claimant for non-pecuniary loss suffered as a result of a motor vehicle collision

if the RAF 4 is not lodged in terms of the relevant provisions of the Act and Regulations;

- (c) it is common cause that the plaintiff's RAF 4 form was submitted on 29 April 2015, outside of the period of 5 years stipulated by the Act and Regulations; and
- (d) the plaintiff's claim for non-pecuniary loss had accordingly become prescribed.

[8] Mr Mnqandi, who appeared for the plaintiff, was unsurprisingly hard put to contest the compelling logic of these contentions. He did, however,

attempt to suggest that insofar as the Regulations purport to prescribe a time period for the submission of the serious injury

assessment report and limit the liability of the Fund in respect of non-pecuniary loss, they are ultra vires the Act.

[9] That argument was of course not available to the plaintiff since she did not challenge the validity of the Regulations, and the responsible functionaries have accordingly not been cited. I am nevertheless of the view that there is no merit in the argument since the time periods for the submission of the serious injury assessment report and the limitation of the Fund's liability to compensate a third party for non-pecuniary loss are clearly spelt out in the Act.

[10] In the result the following order issues:

- (a) The defendant's special plea of prescription is upheld.
- (b) The plaintiff's claim for general damages is dismissed with costs.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff : Adv Mnqandi

Attorney for the Plaintiff : W T Mnqandi & Assoc

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Southernwood

Counsel for the Respondent : Adv Watt

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Date Heard

: 5 December 2016

Date Delivered : 24 January 2017

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