

SOUTH AFRICA / JUDGMENT

Moeketsi v Road Accident Fund (959/2023) [2024] ZAFSHC 411 (24 December 2024) [2024] ZAFSHC 411

COURT

Free State High Court, Bloemfontein

BEFORE

Mhlambi

CASE / FILE NUMBER

959/2023

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IN THE HIGH COURT
OF SOUTH AFRICA,
FREE STATE
DIVISION, BLOEMFONTEIN

Reportable:

NO
Of Interest to other
Judges: NO
Circulate to
Magistrates: NO
Case
No: 959/2023
In

the matter between:

MASERAME
AUGUSTINA MOEKETSI
Plaintiff
And
ROAD
ACCIDENT FUND
Respondent

JUDGMENT

BY: MHLAMBI, J

HEARD ON: 19, 20 & 22 NOVEMBER 2024

DELIVERED ON: 24 DECEMBER 2024

- [1] The plaintiff sued the defendant for damages arising from injuries suffered by her arising from a motor accident that took place in April 2021. She claimed for past and future loss of earnings, general damages, and past and future medical expenses.
- [2] The defendant filed three special pleas: substantial compliance, premature summons, and prescription. The plaintiff lodged its claim with the defendant on 27 September 2022, and on 20 and 21 October 2022, the defendant objected to the claim's validity in terms of section 24(5) of the RAF Act. The objection was based on the following:

“3. We have pre-assessed the claim for substantial compliance with section 24 of the Act and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

3.1 The Medical section of the RAF 1 form has not been completed by the treating doctor in terms of Section 24(2) (a) of the Act, SMR not stamped. Prescription is not looming.

3.2 The claim has not been completed in compliance with Section 24 (4) (a & b) of the Road Accident which requires the RAFI form

to be completed in its entirety, page 4 missing, paragraph 15.

4. The claim as lodged is for the following product(s): Past Loss of Earnings, Future Loss of Earnings, General Damages, Past Medical Expenses & Future Medical Expenses. We have pre-assessed the claim and products for compliance with the Notice and wish to bring to your attention that the claim does not meet the following requirement(s) and we therefore object to same in terms of Sub-section 24(5) of the Act:

4.1 Visible, certified copy of Claimants ID/Passport (Certification date within the last 6 months)

4.2 Proof of injury - RAF4 Form for serious injury duly completed in line with AMA guides (Par 19)

4.3 Medico Legal Reports to support the claim for Future medical expenses

4.4 Employer's certificate of injured's service showing nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age

4.5 Any other proof of income of the injured, letter from employer, affidavit from employer / or any person that can confirm that the injured had an income.

4.6 Payslips x3 months prior & post MVA

4.7 Medical reports or documentation establishing, or substantiating claimant's temporary/permanent disability and the loss of earnings claimed (Medical legal reports)

4.8 Itemised tax invoices from registered medical providers and/or hospitals for past medical expenses claimed in terms of Section 24

(4) (d) and Section B Para of the RAFI

4.9 Proof of payment of medical expenses.”

[3] The defendant referred to Road Accident Fund v Busuku[1] and highlighted that courts should be aware of the fact that the Fund relies entirely on the fiscus for its funding, and they should be astute to protect it against illegitimate or fraudulent claims. The information in the claim form allows for an assessment of its liability, including the early investigation of the case. The defendant should not be expected to investigate inadequately advanced claims. An RAF1 form that is not completed in all its particulars should not be acceptable as a claim under the Act.

[4] The defendant contended that the plaintiff's failure to complete the RAF1 Claim Form in its entirety authorized the Defendant to request and be provided with information and documentation to investigate its liability (if at all), provide supporting documentation as requested by the Defendant at lodgment of her claim, and then filing of contradictory reports and Employer's Certificates; results in the Defendant being unable to timeously investigate the claim, and determine its liability (if any).

[5] The defendant sought that the special pleas should be upheld. In the alternative, the defendant proposed that the matter be postponed to pre-trial date on the first term of 2025 awaiting the outcome of the judgments of Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others (046038/2022) [2024] ZAGPPHC 294 (20 March 2024) and Road Accident Fund and Others v Mautla and Others (29459/2021) [2023] ZAGPPHC 2001 (1 December 2023)

[6] The defendants' in Mautla sought to review and set aside the following:

“[11.1] The decision to adopt and implement the Management Directive titled “1/2021 – Compulsory Information to be submitted when lodging a claim for compensation with the RAF”, dated 8 March 2021, and any directives or instructions issued in terms thereof (the Management Directive).

[11.2] The decision to adopt and implement the Supplier Claims External Communication (the Supplier Communication) dated 19 May 2021.

[11.3] The decision to publish, adopt and implement the “BOARD NOTICE 58 of 2021” with description “Road Accident Fund, Stipulation of Terms and Conditions upon which Claims for the Compensation shall be Administered”, published in the Government Gazette on 4 June 2021, and any directives or instructions issued in terms thereof (the Board Notice).

[11.4] The decision to publish, adopt and implement the “SUBSTITUTION OF RAF1 CLAIM FORM” published in the Government Gazette on 4 June 2021, and any directives or instructions issued in terms thereof (the Substitution Notice).

(collectively, the Decisions)”

- [7] Contrary to the submissions contained in paragraph 7.1 of the defendant’s heads of argument, the court in *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* granted leave to appeal paragraph (iii) of its order granted on 20 March 2024 which reads that the Board Notice 271 of 2022 published in Government Gazette No 46322 of 6 May 2022 (‘the Board Notice’) is declared unlawful and is reviewed and set aside.
- [8] The defendant contended further that the decisions in *Rasenyalo v Road Accident Fund* (958/2023) [2024] ZAFSHC 150 (1 July 2024), *Jeje v Road Accident Fund* (4628/2023) [2024] ZAFSHC 265 (27 August 2024) and *Ranosi v Road Accident Fund* (6056/2023 [2024] ZAFSHC 310 (20 September 2024) where all decided without probably taking into account the pending litigation of the two cases in the Supreme Court of Appeal. I mention that in *Ranosi*, the court referred to the LPIFF case *supra*.
- [9] The plaintiff submitted that the RAF1 form and supporting documents such as the accident report, hospital record, medical records, and section 19(f) affidavit submitted to the defendant provided the necessary information to conduct its investigation into the merits of the plaintiff’s claim. The plaintiff has, therefore, substantially complied with the provisions of the Act. The letters of objection deal with documents such as payslips, medico-legal reports, and proof of payment of medical expenses, which refer to the quantum of the claim and are not required for the investigation of the merits. The plaintiff lodged a valid claim and has not issued a premature summons and its claim has not prescribed. The issues in the two matters before the SCA differ materially from the matter at hand.
- [10] The Free State decisions mentioned above all emphasise the peremptory requirements relating to the submission of the claims, and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. The test for substantial compliance is an objective one.[2]
- [11] In *Road Accident Fund v Busuku* it was stated that the RAF 1 form does not call for detailed information. It is not intended, of itself, to enable the Fund to

assess the quantum of the plaintiff’s claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so the RAF 1 form requires the disclosure of information to guide and facilitate the investigation. The purpose of s 24(5), in the context of the Act and bearing in mind the principles of interpretation set out earlier, is to enable a plaintiff who has timeously lodged a claim, but has failed to comply fully with the procedural requirements of s 24(1) and (2) to remedy any deficiencies which arise from the completion of the RAF 1 form.[3]

- [12] It was further stated in Busuku that the Act constitutes social legislation, and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or unlawful acts on the part of the driver or owner of a motor vehicle. For this reason, the provisions of the Act must be interpreted as extensively as possible in favour of third parties to afford them the broadest possible protection.
- [13] Having considered the order granted by the Supreme Court of Appeal for consideration in the Mautla case, the limited grounds of appeal in the LPIFF case and the authorities dealing with the compliance required by section 24 for prescribed forms in claims for compensation, I am of the view that the outcome of the matters pending at the SCA will not have a bearing in the crisp points raised in the defendant's three special pleas. Consequently, all three special pleas should fail.
- [14] It is trite that the successful party is entitled to costs, but in the given circumstances, costs should be in the cause.
- [15] The following order issues.

Order:

1. The special pleas are dismissed.
2. Costs will be costs in the cause.

MHLAMBI, J

On behalf of the applicant: Adv. EE Barlow Instructed by: Mavuya Attorneys Office No: 66/67
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On behalf of the respondent: Ms J Gouws Instructed by: State Attorneys 11th Floor Fedsure Building
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- [1] 20223 (4) SA 507 (SCA)
- [2] Jeje v RAF.
- [3] Para 20.

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Prepared on 9 October 2026 · Esheria