

SOUTH AFRICA / JUDGMENT

Moremedi v Road Accident Fund (86838/19) [2024] ZAGPPHC 1338 (18 December 2024)

[2024] ZAGPPHC 1338

COURT

North Gauteng High Court, Pretoria

BEFORE

H Kooverjie

CASE / FILE NUMBER

86838/19

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: 86838/19

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

DATE: 18 December 2024
SIGNATURE
In the matter of:-
MS
MOREMEDI
Plaintiff/Applicant
VS
ROAD
ACCIDENT FUND
Defendant/Respondent
Heard
on: 24 October 2024

Delivered: 18 December 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the Caselines system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 18 December 2024.

ORDER

It is ordered:-

1.
The defendant's special plea of prescription dated 11 January 2021 is dismissed.
2.
The issue pertaining to merits and quantum is separated in terms of the provisions of rule 33(4) and the quantum is postponed sine die.
3.
The defendant is declared to be liable for 100% of the plaintiff's proven or agreed damages arising from injuries which the plaintiff sustained in the accident that occurred on 1 January 2007.
4.
The defendant must make payment of the plaintiff's taxed or agreed party and party costs on a High Court scale, which costs would include the reasonable fees of the attorney and counsels' fee on Scale B.
Other costs incurred are subject to the discretion of the Taxing Master.
5.
The above costs will be paid into the trust account of the plaintiff's attorneys, which

banking info is as follows: Account
holder: Adams & Adams Trust
account;

Bank: Nedbank

Branch: Pretoria
Branch
code: 1[...]
Account
number: 1[...]

Ref: J[...]
6.
The following provisions will apply with regard to the determination of the aforesaid taxed or agreed costs –
6.1
the plaintiff shall serve a notice of taxation on the defendant;
6.2
the plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs from the date of settlement or taxation thereof; and
6.3
should payment not be effected timeously, the plaintiff will be entitled to recover interest on the applicable interest rate on the taxed or agreed costs from the date of the allocator to date of final payment.

JUDGMENT

KOOVERJIE J

INTRODUCTION

- [1] On 21 November 2019, the plaintiff issued summons against the Road Accident Fund (“the Fund”) on the premises that the Fund failed to exercise its legal duty of care when dealing with the plaintiff’s claim. This resulted in her claim being under-settled. The plaintiff alleged that the RAF failed to ensure that the plaintiff was awarded fair and reasonable compensation for the injuries she sustained as a result of the motor vehicle accident.
- [2] Upon receipt of the summons the Fund filed a special plea as well as its plea. In its special plea it contended that the plaintiffs’ claim had prescribed. The plaintiff then filed her replication.

ISSUE FOR

DETERMINATION

[3] The main issue for determination is whether the plaintiff's claim had prescribed. The defendant pleaded that the plaintiff's claim was instituted in terms of Section 17(1)(b) of the Road Accident Fund Act[1] which entailed that the plaintiff's claim had to be lodged within 2 years from the date upon which the claim arose and summons

had to be served within 5 years from the date of accident or date of death in order to interrupt prescription.

DELICTUAL CAUSE OF ACTION – LEGAL DUTY OF CARE

[4] The plaintiff was involved in a motor vehicle accident in 2007. In 2008, the Fund had approached the plaintiff directly.

[5] During negotiations with the Fund, the plaintiff was requested to attend a medico-legal examination with an orthopedic surgeon, Dr Birrell.

[6] In casu, the plaintiff negotiated her settlement directly with the Fund. She had no assistance from an attorney at the time. The plaintiff alleged that she did not accept the defendant's first offer of settlement. However she was induced to accept the second offer, in the amount of R224,812.53 together with the undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act was made. The Fund made no offer in respect of the loss of earnings, past and future. The Fund had advised her that if she did not accept the second offer, her claim would prescribe.

[7] In 2019, when the plaintiff visited an attorney in respect of her will, she was advised that her claim against the Fund may have been grossly under-settled. Mr Weiss, the attorney who assisted her at the time, advised her that he would investigate this issue. Based on the severity of her injuries and having regard to the expert report of Dr Birrell, it was very likely that her claim was grossly under-settled.

[8] In the present proceedings, the plaintiff claims damages in the region of over R3.5 million. The current damages claim is much more than the amount the Fund had settled upon, which was R224,512.23.

[9] In her summons the plaintiff pleaded that during the period 16 January 2010 to date the Fund had a legal duty, inter alia:

9.1 to ensure that claims of victims of motor vehicle accidents to approach a defendant directly were properly investigated;

9.2 to ensure that claimants who were approached by the Fund directly for advice on the merits of their claims and quantification thereof had to receive proper advice according to the law and, in particular, according to the provisions of the Road Accident Fund Act;

9.3 to ensure that a proper and fair compensation be paid to victims of motor vehicle accidents who were legally entitled to such compensation;

9.4 the Fund had a duty to investigate and settle the claims arising from the damage caused to claimants as a result of these motor vehicle accidents. Accordingly the plaintiff pleaded that the Fund had a legal duty in terms of the Road Accident Fund Act to compensate her

[10] It is evident that the plaintiff's claim is premised on the breach of the Fund's legal duty of care.

[11] Our courts had affirmed that the Road Accident Fund has a greater legal duty of care and is required to take all reasonable steps to prevent claims from prescribing in its hands. The court in *Johannessen Ralph v The Road Accident Fund*[2] held that in the absence of the Fund taking reasonable steps to contact the plaintiff and to process a claim properly, it would be unjust if the Fund was to benefit from such inaction. The Fund holds a statutory duty to carry out its responsibilities in terms of the Road Accident Fund Act.

[12] The facts in this matter are somewhat distinguishable from the facts in the aforesaid authority. In casu, the plaintiff's claim was timeously settled with the Fund. The plaintiff was only made aware in 2019, after consulting with her current attorney, that her claim was under-settled. Hence her case is premised on a delictual claim, based on the Fund's legal duty of care.

PRESCRIPTION ACT

[13] The current cause of action is premised on the breach of the Fund's legal duty of care. In my view, the Prescription Act[3] finds application. The Prescription Act is designed to strike a fair balance between the rights of creditors to enforce their claims against their debtors on the one hand, and on the other hand, the need to safeguard the rights of creditors must be weighed against the prejudice the potential defendants would suffer if the law did not come to their aid.

[14] In terms of the Prescription Act, the period in which to institute a claim is 3 years. Section 12(3) of the Prescription Act stipulates that:

"3 A debt shall not be deemed to be due until a creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

By virtue of the said provision, prescription begins to run against a creditor when he/she has knowledge or awareness of the debt.

Knowledge is thus the cornerstone in Section 12(3). The prescription clock only starts ticking upon the party becoming aware of the debt.

[15] It cannot be gainsaid that the plaintiff herein only gained knowledge of the facts when she consulted with her attorney in 2019. The Constitutional Court, in the matter of Pieter Paul Le Roux[4], acknowledged that people rely on the advice of legal practitioners as they are not knowledgeable in the law and its intricacies. At paragraph 60 the court stated:

“People seek the services of a legal practitioner for a variety of reasons – but in the main, they seek legal advice or require the provision of legal professional services. It will be fair to say those who seek professional legal services are not knowledgeable in the law and its intricacies. In a country such as ours, where the Constitution and the law occupy a central place in the lives of people, many rely on the advice and services of legal practitioners to navigate their way around the choices they must make, the conduct they must conform to, and generally how they must live their lives as constitutional subjects. When this happens it would also be fair to say that reliance had reasonably be placed on the legal advice received or an undertaking that the legal practitioner will carry out the given mandate professionally and diligently.”

[16] The court went on to state at paragraph [61]:

“The large majority of people who consult legal practitioners do not have any independent basis to test the correctness of the advice received or to interrogate an insurance that a mandate has been professionally discharged. They would not in any event have any need to do so. That is the nature of the knowledge gap between professionals and lay persons, reinforcing the reliance that people place on professionals

in many areas of their lives, the medical, accounting, engineering and legal spheres. It is for these reasons that legal practitioners are subject to professional and regulatory bodies.”[5]

[17] The matter of Links[6] dealt with a medical negligence claim. The court therein stated:

“It seems to me that it would be unrealistic for the law to expect a litigant who has no knowledge of medicine to have knowledge of what caused his condition without first having an opportunity of consulting the relevant medical professional or specialist for advice. That in turn requires that the litigant is in possession of sufficient facts to cause a reasonable person to

suspect that something has gone wrong and to seek advice.”

[18] It cannot be gainsaid that when the plaintiff accepted the offer of settlement from the Fund in 2008, she was not equipped with the knowledge that the offer made was unjustifiable.

[19] In considering whether the plaintiff had knowledge, a further enquiry is made, namely whether the plaintiff could by exercising reasonable care have acquired the requisite knowledge. The Constitutional Court considered this aspect and stated that a mere suspicion that some wrong has occurred would not trigger the running of prescription. If the facts are such that they give rise to a suspicion or some wrongdoing on the part of another, it would warrant a further enquiry and prescription will only start to run upon the conclusion of the enquiry.[7] No evidence was placed before me that she held such suspicion about her settlement. Moreover the defendant had not pleaded any such contention.

- [20] Links is therefore authority for the proposition that- prescription would only start to run when the creditor knows or on reasonable grounds should know that a wrong has been committed and the facts giving rise to it.
- [21] This reasoning is aligned to a litigant's right in terms of Section 34 of the Constitution where they should not be denied access to courts and should not impede their right to a fair hearing.[8]
- [22] On the facts before me, I find that prescription commenced once the plaintiff gained knowledge that her claim was under-settled. This was in 2019 when she consulted with her attorney, Mr Weiss. Consequently her claim has not prescribed.

THE REPUDIATION OF THE PLAINTIFF'S CLAIM

- [23] The Fund, in its plea, repudiated the plaintiff's claim in its entirety. The Fund simply denied any liability on the part of the insured driver. This change of decision makes no sense.
- [24] The defendant now, in its plea, denies that the insured driver was negligent, alternatively that the collision was caused as a result of the negligence of the insured driver, further alternatively that the plaintiff contributed to the negligence.
- [25] The Fund fails to explain how it has come about that it now repudiates the claim when it had previously (in 2008), conceded 100% on the merits. The Fund's concession resulted in an offer being made and the eventual settlement of the plaintiff's claim. In my view, there is no merit in the Fund's repudiation.
- [26] I have considered the plaintiff's affidavit (in terms of Rule 38(2)), where she sets out the circumstances under which she was injured in the motor vehicle accident. At the time, she was a pedestrian. Her detailed explanation therein, is in accordance with the Accident Report, her affidavit at the time, as well as the hospital records.
- [27] In the premises, I find the Fund liable for 100% of the plaintiff's proven damages arising from the injuries she sustained in the motor vehicle accident.

CONCLUSION

- [28] The issue of quantum is separated and will be ventilated in further proceedings where a determination would be made as to whether the Fund failed to act with the necessary duty of care. The plaintiff contended that by virtue of the experts' findings (Dr Birrell), she was entitled to loss of earnings as it was determined that she could no longer work. Moreover the general damages was under-settled.

COSTS

- [29] In the exercise of my discretion, there is no reason why the unsuccessful party (the Fund), should not pay the costs. Even though they had not participated at the hearing, the Fund nevertheless filed its special plea and plea.

[30] In the premises, the special plea of prescription is dismissed with costs.

H. KOOVERJIE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the plaintiff/applicant: Adv. W du Preez Instructed by: Adams & Adams Attorneys

Counsel for the respondent: No appearance Instructed by: The State Attorney Date heard: 24

October 2024 Date of Judgment: 18 December 2024

[1] No. 56 of 1996

[2] case number 2014/03112 [2016] ZAPJHC 94, Gauteng Local Division, Johannesburg.

[3] 68 of 1969

[4] Pieter Paul Le Roux and Another v Johannes G Coetzee & Seuns and Another CC 2024 (4) SA 1 (CC) at paragraphs 60 and 61

[5] my underlining

[6] Links v Member of the Executive Council Department of Health, Northern Cape Province 2016 (4) SA 414 CC at par 22

[7] Pieter Paul Le Roux matter at paragraph 54

[8] In Barkhuizen [2007] ZACC 5; 2007 (5) SA 323 CC at paragraph 31, the court stated “Our democratic order requires an orderly and fair resolution of disputes by courts This is fundamental to the stability of an orderly society. It is indeed vital to a society that is founded on the rule of law. Section 34 gives expression to this fundamental value by guaranteeing to everyone the right to seek the assistance of a court.

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