
SOUTH AFRICA / JUDGMENT

Ngoma v Road Accident Fund (43140/2016) [2017] ZAGPPHC 692 (26 October 2017) [2017] ZAGPPHC 692

COURT

North Gauteng High Court, Pretoria

BEFORE

M J Mosopa

CASE / FILE NUMBER

43140/2016

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 43140/2016

Not regarding

Not of interest to other judges

Revised.

26 October 2017

NHLANHLA ISAAC NGOMA PLAINTIFF

And

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

MOSOPA, AJ

INTRODUCTION

- [1] The Plaintiff sued the Defendant hereafter referred to as the ("Fund") in his personal capacity for personal injuries he sustained as a result of a motor vehicle collision which occurred on the 28th of February 2015.

- [2] The parties agreed on the separation of the issue of merit and the issue of the quantum at the commencement of the proceedings and I therefore ordered such separation in terms of Rule 33(4) of the Uniform Rules of Court.
- [3] The Plaintiff alleges that he was a passenger in the motor vehicle which was driven by his sister Ms Bongi Ngoma on the 28th of February 2015 and the collision was caused by the sole negligence of the insured driver of the Fund.
- [4] The Fund denied in its plea that the Plaintiff was a passenger in the motor vehicle which was involved in a motor collision and further denied that such collision was caused by the sole negligence of its insured driver.
- [5] The Plaintiff and his sister Ms Bongi Ngoma testified in the Plaintiff's case and the Defendant closed its case without calling

any witnesses.

FACTUAL BACKG ROUND

- [6] The Plaintiff testified that in the early hours of the morning of the 28th of February 2015 at around 5 am he was travelling in his sister's car, together with his brother's son, two employees of his sister and his sister being the driver of the motor vehicle with registration number and letters DBG 616 MP and he was a passenger seated on the back left side of the motor vehicle.
- [7] They were travelling from Middelburg to Sphako where they were supposed to attend a wedding ceremony. While so travelling they saw two trucks overtaking one another. The type of road they were travelling in has two lanes which allowed travel in opposite

directions.

- [8] The truck which was overtaking the other truck was in their lane of travel, his sister in order to avoid the collision with the truck, which was on their lane, drove out of the road and lost control of the motor vehicle and then collided with the mine fence and ended up in a hole.
- [9] As a result of the collision he suffered injuries into his body and his upper arm was broken. He was then transported to Middelburg

General Hospital and then discharged as there were no Doctors to attend to his injuries. He was then later admitted to Tembisa

Hospital.

- [10] The sister to the plaintiff Ms Bongi Ngoma also testified and confirmed that the Plaintiff was a passenger in her motor vehicle

travelling from Middelburg to Mosterlosi. Safe to say that only the places which they were going to differs, with the Plaintiff saying that they were going to Sphako whereas the sister saying that they were going to Mosterlosi.

- [11] The Plaintiff's sister confirmed the manner in which the collision occurred as was explained by the Plaintiff safe for the fact that she also testified that after losing control the motor vehicle rolled and ended up in the hole. The Plaintiff never mentioned the fact that the motor vehicle rolled before it came to a standstill.
- [12] She also testified that after that she called the ambulance and the police to the scene of the collision. She further accompanied the police to the police station, an indication that she did not suffer any injuries as a result of this accident.

LIABILITY OF FUND AND AGENTS

- [13] Section 17(1)(a) of the Road Accident Fund, Act No 56 of 1996 (as amended) ("Act") provides as follows:

"17(1) The Fund or an agent shall,

- (a) subject to this Act, in a case of a compensation under this act arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established ;

- (b) ...

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or his or her employee in performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum."

- [14] Third party is defined in the Act as meaning a third party referred to in Section 17(1). From the afore-going it is clear that the Fund to be liable to compensate any person referred to as a third party such person should have suffered bodily injuries or death resulting out of the driving of the motor vehicle and that injury is due to the negligent or wrongful act of the driver of that motor vehicle.

- [15] It is settled law that the onus lies with the Plaintiff to prove its case on the balance of probabilities and there is no shift in onus.

- [16] The Plaintiff was consistent in his evidence that he was a passenger in the motor vehicle which was driven by his sister and such piece of evidence finds corroboration in the evidence of his sister Ms Bongile Ngoma.

- [17] The Plaintiff also presented as evidence hospital records which confirms that he suffered bodily injuries which necessitated medical attention as Exhibit "B". However, the hospital records shows that the Plaintiff was admitted at the hospital on the 5th of March 2015 whereas the accident took place on the 24th of February 2015.
- [18] The Plaintiff under cross-examination indicated that immediately after the accident he was transported to Middelburg General Hospital and could not say for how long he was admitted at the hospital. The Plaintiff's sister could also not tell the exact period of time in which was the Plaintiff admitted at Middelburg General Hospital.

THE LAW

- [19] Section 24 of the Act lays down the procedure to be followed in lodging a claim with the Fund.

- [20] The Plaintiff under" cover of the letter of his legal representative lodged the following documents with the Fund:

- 2.1 Road Accident Fund form 1;
- 2.2 Claimant's affidavit;
- 2.3 Copy of the banking details;
- 2.4 Consent to inspect medical records and police records;
- 2.5 Special Power of Attorney ;
- 2.6 Claimant's ID copy;
- 2.7 Hospital records;
- 2.8 Business income records.

The lodgement documents were admitted into evidence and they were marked Exhibit "A".

- [21] The Plaintiff failed to lodge or supply the Fund with the following documents:

- 21.1. Accident report;
- 21.2. Hospital reports of Middelburg General Hospital from the 28th of February 2015 up to the time he was discharged from the hospital.

- [22] It is correct, as was submitted by the Plaintiff's counsel Ms Tshoma, that the abovementioned documents are not required by Section 24 of the Act when the claim is lodged with the Fund.
- [23] On the other side of the coin such contention cannot be correct as the Fund has an obligation to investigate every claim submitted. The onus, as I have already indicated, rests with the Plaintiff. If the accident report would have been furnished the issue of whether or not the Plaintiff was a passenger in the motor vehicle could have been settled. Accident

reports are mainly done by police officers who do not have the interest in the outcome of the matter and are deemed to be objective in this regard and they also assist the court to a great extent as to how the accident occurred as opposed to the evidence of the Plaintiff's sister that the Plaintiff was the passenger in the motor vehicle.

[24] Section 19(f) is a peremptory requirement that every claimant submits an affidavit detailing the incident as it happened. It is abundantly clear that the purpose of this provision is, inter alia, to furnish the Fund with sufficient information to enable it to investigate the claim and determine whether or not it is legitimate.

See *Pithey v Road Accident Fund* (319/13) 2014 ZA SCA 55 (16 April 2014). Also *SA Eagle Insurance Company Limited v Pretorius* [1997] ZASCA 107; 1998

(2) SA 656 (SCA) at 663 D-E.

[25] Section 24(6) of the Act provides as follows:

"24(6) No claim shall be enforceable by legal proceedings commenced by summons on the Fund or an agent -

- (a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and
- (b) before all requirements contemplated in Section 19(f) have been complied with."

[26] It is settled law that where the Fund raises the issue of non-compliance with the provisions of Section 19(f) it must be done

by way of special plea. In casu there was no special plea raised by the Fund relating to non-compliance with the provision of Section 19(f).

[27] In any event the Fund could not have raised such special plea because of the issue relating to Section 19(f) affidavit come while the Plaintiff was leading evidence in chief. He was referred to the affidavit which was signed and commissioned on the 29th of February 2015, ironically on the date of the accident. The Plaintiff denied the contents of the affidavit as he denied that he was travelling from Middelburg to Dennilton but from Middelburg to Sphako. The Plaintiff further denied that the signature in the affidavit is his. In a nutshell the Plaintiff denied being the author of the affidavit which is deemed to be a Section 19(f) affidavit.

[28] In terms of the Regulations Governing the Administration of an Oath or Affirmation it is required of a commissioner of oaths to commission the affidavit in the presence of the deponent. Despite the names of the Plaintiff appearing on the affidavit and his date of birth he never appeared before the commissioner of oaths and moreover he dispute the signature as his.

[29] It is clear that the Plaintiff, despite contention by his counsel that he complied with the requirements of Section 19(f), failed to submit the Section 19(f) affidavit to the Fund thus rendering his claim unenforceable.

ANALYSIS

OF EVIDENCE

- [30] In *Road Accident Fund v M obo M* (2005) 3 All SA 340 (SCA) the court said the following: 'The court therefore must not be astute to find grounds to deny a bona fide claimant for compensation the remedy provided in the Act'.
- [31] The Plaintiff together with his sister testified that the police were immediately summoned to the scene after the incident occurred. The Plaintiff is quite sure that the police completed the accident report because he submitted such accident report to the local offices of the Fund in Tembisa. He also had the medical reports from Middelburg General Hospital which were also submitted to the local offices of the Fund in Tembisa. According to his knowledge his legal representatives were aware of such fact.
- [32] Now the question arises why did the Plaintiff's attorneys not retrieve such documents from the office the Plaintiff alleges to have submitted to.
- [33] The only logical conclusion one can reach in light of the evidence presented is that there were no such documents. It was an obligation on the side of the Plaintiff to present such documents to the Fund for the proper investigation of his claim.
- [34] Legally speaking the Plaintiff also failed to provide a Section 19(f) affidavit as the affidavit before me, despite bearing the name of the Plaintiff, he bears no knowledge of the contents thereof and most importantly he denies ever signing the affidavit.
- [35] It is settled law that there must be a strict compliance with the requirements as stipulated by the Act. Section 24(6)(b) of the Act renders a claim which is not accompanied by Section 19(f) affidavit unenforceable. But that is not the only short- come in the Plaintiff's case, as I have already indicated that the Plaintiff also failed to furnish the Fund with the accident report and the hospital records from the Middelburg General Hospital.

CONCLUSION

[36] I find that there was no full and strict compliance with the requirements of the Act by the Plaintiff when he lodged the documents

with the Fund.

[37] The Plaintiff failed to lodge the accident report, hospital records from Middelburg General Hospital from the 29th of February 2015 up to the time of his discharge and lodged a Section 19(f) affidavit which was not signed by the Plaintiff and which the contents thereof are disputed by the Plaintiff.

ORDER

It is for those reasons that I make the following order:

1. The Plaintiff's claim is dismissed.
2. The Plaintiff is ordered to pay the Defendant's costs.

M J MOSOPA

ACTING JUDE OF THE HIGH COURT

DATE OF HEARING:

12 OCTOBER 2017

DATE OF JUDGMENT: 26 OCTOBER 2017

FOR PLAINTIFF:

ADV I E TSHOMA

INSTRUCTED BY:

SEHOANA ATTORNEYS

FOR DEFENDANT:

ADV KHUMANO

INSTRUCTED BY:

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