

SOUTH AFRICA / JUDGMENT

## Ngxongwana v Road Accident Fund (1273/2015) [2016] ZAGPPHC 985 (27 October 2016) [2016] ZAGPPHC 985

COURT

North Gauteng High Court, Pretoria

BEFORE

N.P. Mali

CASE / FILE NUMBER

1273/2015

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### Source record

REPUBLIC  
OF SOUTH AFRICA  
IN  
THE HIGH COURT OF SOUTH AFRICA  
GAUTENG  
DIVISION, PRETORIA  
CASE  
NO: 1273/2015

DATE: 27/10/2016  
In

the matter between: NOXOLO  
NGXONGWANA  
PLAINTIFF  
and  
ROAD  
ACCIDENT  
FUND  
DEFENDANT  
J  
U D G M E N T  
MALI  
J  
[1]

The plaintiff herein an adult female, instituted a claim against the defendant for damages arising of out motor vehicle accident, the sole

cause of the accident being the negligent driving of the insured driver. It is common cause that on 7 January 2013 the insured driver was driving a motor vehicle with registration numbers [C...]. The said motor vehicle was used for public transportation and it is commonly referred to as a taxi. It is also not in dispute that the plaintiff was a fair-paying passenger in the said taxi.

[2]

The defendant is the fund or agent obliged to compensate any person for any loss or damage which the third party has suffered as a result of any bodily injury to him or herself caused by or arising from the driving of a motor vehicle if the injury is due to the negligence or other wrongful act of the driver.

[3]

The defendant denies that the insured driver was negligent and alleges that the plaintiff is the sole cause of the collision.

At the

commencement of the trial the parties agreed to separate issues of merits and quantum of damages of the plaintiff's claim. I ruled that the matter proceed on the issue of merits of the claim only.

[4]

According to the plaintiff's particulars of claim the following is stated;

"

5

The

cause of the accident is the negligent driving of the driver of the insured motor vehicle one or more of the following ways;

1.

He drove his vehicle at the high speed knowing that the Plaintiff was unwilling to be conveyed and as a result she fell off;

2.

He failed to have due regard to the Plaintiffs request;

3.

He failed to apply brakes timeously or at all;

4.

He drove his motor vehicle knowing that it had defective tyres and or brakes;

5.

The insured driver failed to keep a proper look out."

LAW

[5]

Section 3 of the Road Accident Fund Act 56 of 1996 ("the Act") provides;

"The

object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by driving of motor vehicle."

[6]

Section 17(1) of the Act provides:

"The

fund or agent shall...be obliged to compensate any person for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself caused by or arising from the driving of a motor vehicle if the injury is due to negligence or other wrongful act of the driver....

[7]

Section 19 (f) (i) of the Act provides:

"(f)

if the third party refuses or fails-

(i)

to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or..."

[8]

The plaintiff was the only witness who testified in support of her case. She testified that on 7 January 2013 she and her husband boarded the insured driver's motor vehicle ("taxi") from Evander to Embalenhle. The plaintiff's husband first alighted in a different destination and the plaintiff proceeded with the taxi because she was going to alight in the Mall.

[9]

The plaintiff remained alone with the insured driver in the motor vehicle whilst driving in an

unknown direction. The driver took a different route which the plaintiff was unfamiliar with. The plaintiff stated that she asked

the insured driver to stop in order for her to alight. The insured driver did not heed to her request instead &he increased the

speed and ignored her.

[10]

The plaintiff further stated that she was seated behind the insured

driver's seat and continued to request the insured driver to stop the car. The insured driver looked at her through the rear view mirror behind him, ignored her again and laughed at her. She inquired from the driver about the direction he was traveling in. The driver instead turned up the volume of the radio of the taxi. She tapped the insured driver on the shoulder requesting him to stop. The insured driver instead again looked and laughed at her.

[11]

The plaintiff moved closer to the door and shook the door to draw the insured driver's attention and to confirm her intention to get out of the motor vehicle. She further stated that she wanted to exit whilst the taxi was in motion because she felt endangered and frightened when the insured driver took a unknown route.

[12]

The plaintiff stated that she finally managed to open the door of the moving vehicle. The insured driver proceeded to keep the taxi in motion. She then fell out of the taxi, sustained injuries and then tried to stop the passing vehicles. A certain gentleman driver appeared and told her that he was alerted by another motorist about her. She then narrated her ordeal to the said gentleman. The said gentleman managed to trace the insured driver and called the police officers. The insured driver was instructed by the police officers to take the plaintiff to the hospital and he did so.

[13]

Under cross examination she stated that she fell out of the moving vehicle and she did not throw herself out. She reiterated that her intention was to draw the driver's attention by opening the door as the driver was ignoring her.

[14]

The plaintiff was drawn to the affidavit she deposed to on 28 August 2014 wherein she attested to the fact that she realised that she was being abducted and jumped off the moving vehicle. She testified that the contents of the affidavit were never read to her. He attorney instructed her to sign the affidavit and she signed it at her home. She reiterated that she never appeared before the Commissioner of Oaths.

[15]

That concluded the evidence of the plaintiff and she closed her case.

Both Counsel submitted their written heads of argument and I am indebted to them. I have studied the heads of argument and have considered their content in my judgment.

[16]

It is appropriate to deal with the question of a section 19(f)(i) affidavit which might be dispositive of the issues. In terms of section 19 of the Act, liability is excluded in the event the third party refuses or fails to submit an affidavit or statement in terms of section 19 (f). Section 19 (f) requires the third party to submit an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out. The purpose of the statement of the affidavit is to furnish the Fund with sufficient information to enable it to investigate the claim and determine whether or not it is legitimate.

[17]

The begging question then is whether a valid affidavit was submitted to the fund, and whether there is any affidavit before court. In terms of Regulation 3(1) No R1258 of 21 July 1972 it is peremptory that the deponent signs the declaration in the presence of the Commissioner of Oaths.

[18]

In her heads of argument, Counsel for the defendant Ms Magano submitted that in the event that the information regarding the affidavit was brought to the attention of the defendant, the defendant would have raised a special plea. She therefore concluded that the matter ought to fail on that basis only.

[19]

Counsel for the plaintiff, Mr Kanyane did not raise the issue section 19 (f)(i) of the affidavit in his re- examination. Furthermore he neither made any submissions in the closing heads of argument dealing with section 19 (f) (i) affidavit. The silence of the plaintiff regarding this matter is conspicuous.

[20]

It has now been established that the plaintiff's purported affidavit lodged with the fund does not comply with the provisions of section 19 (1) (f) of the Act. The investigation of the plaintiffs claim was based on the "affidavit" which she denies having read, as well as that she never deposed to the purported affidavit in the presence of the Commissioner of Oaths.

[21]

Having regard to the above, I fully agree with the defendant's contention that the matter ought to fail on that basis alone.

This is

because the matter could not have proceeded to trial at all.

COSTS

[22]

The matter was first heard on 27 May 2016. The plaintiff purported to be using the services of an isiXhosa interpreter. It

became apparent

at the start of the proceedings that the interpreter was interpreting in isiZulu. In the interest of justice the

matter had to be postponed

because no isiXhosa interpreter was available on such short notice.

The postponement occurred at the

instance of the plaintiff.

[23]

In the result the following order is made:

23.1

The plaintiff's claim is dismissed with costs.

23.2

Costs to include costs of 27 May 2016 and 23 June 2016.

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N.P.

MALI

JUDGE

OF THE HIGH COURT

Counsel

for the Plaintiff:

Adv J.T. Kanyane

Instructed

by:

KGADIMA KEKANA ATTORNEYS

Counsel

for the Defendant:

Adv F. Magano

Instructed

by:

NINGIZA HORNER INC

MATTER

HEARD ON:

23 June 2016

## JUDGMENT

RESERVED ON: 15 JULY 2016

DATE OF JUDGMENT:

27 OCTOBER 2016

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Prepared on 10 October 2026 · Esheria