

SOUTH AFRICA / JUDGMENT

Parkies v Road Accident Fund (437/2015) [2025] ZAGPPHC 533 (19 May 2025)

[2025] ZAGPPHC 533

COURT

North Gauteng High Court, Pretoria

BEFORE

W Domingo

CASE / FILE NUMBER

437/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 437/2015

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE

19 May 2025

SIGNATURE

In

the matter between:

ADOLPHAS

CYRIL BONGANI PARKIES

Plaintiff

and

ROAD

ACCIDENT

FUND

Defendant

JUDGMENT

DOMINGO, AJ

Introduction

- [1] This is action instituted by the plaintiff against the defendant as a result of injuries sustained in a motor vehicle collision that occurred on 7 August 2011. The plaintiff was driving a motor vehicle when the insured driver collided into him.
- [2] The merits (80% in favour of the plaintiff), past medical expenses, future medical expenses and loss of earnings were resolved previously. This matter was to proceed on the issue of general damages.
- [3] At the time of the proceedings, the defendant was not present, and the proceedings went ahead in the absence of the defendant.
- [4] Counsel for the plaintiff requested that all evidence (expert reports and confirmatory affidavits) be accepted by this court in terms of Rule 38(2) of the Uniform Court Rules. I ruled that all the evidence would be accepted in terms of Rule 38(2).

Issues

- [5] The principle issue to be determined in this matter was whether, by way of concessions made at a pre-trial conference on 16 November 2018, the defendant should be deemed to have accepted the seriousness of injuries sustained by the plaintiff as contemplated in terms of section 17(1) of the Road Accident Act 56 of 1996 (RAF Act).
- [6] Section 17(1) of the RAF Act states:

"Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensations for serious injuries.."
- [7] Plaintiff's counsel averred that the defendant had previously made concessions at a pre-trial conference on 16 November 2018 which amounted to an acceptance of the issue of seriousness of the plaintiff's injuries. Plaintiff's counsel also directed the court to the judgment of Davis J in *Adv Sayed N.O v Road Accident Fund*[1] where the court dealt with a similar issue.

The pre-trial conference

- [8] A pre-trial conference was held on 16 November 2018 between the parties' representatives.
- [9] The relevant questions and answers relied on by the plaintiff as exchanged at this pre-trial conference as per the pre-trial conference minutes, were the following:

“Given that the defendant has no counterpart for him, is the defendant prepared to admit the correctness of the content of the reports (RAF4 included) of the Independent Medical Examiner, Dr TJ Enslin? If not, then the defendant is requested to indicate:

- 4.1 Which factual allegations it does not admit and the reasons therefore.
- 4.2 What the defendant’s contentions are in respect of the aforesaid factual allegations.
- 4.3 Which of the opinions expressed, it does not admit and the reasons therefore.
- 4.4 What the defendant’s contentions are in respect of the aforesaid opinions.

ANSWER: Admitted, agree in so far as it accords with the hospital records.

- [10] The same set of questions as set out above were repeated in regard to the Plastic and Reconstruction Surgeon, Dr JPM Pienaar; Neurosurgeon, Dr D de Klerk; Ophthalmologist, Dr L van der Merwe; Occupational Therapist, Bester Putter (Ms M Peach); Clinical Psychologist, Dr K Truter; Maxillo Facial & Oral Surgeon, D HP Ehlers; Industrial Psychologist, Mr K Prinsloo and the Actuary, Mr G Whittaker.
- [11] In response to the questions asked in respect of each of the seven medical experts and actuary noted above the defendant’s representative answered: “See para 4”. Paragraph 4’s answer, as above stated, “Admitted, agree in so far as it accords with the hospital records”
- [12] In addition, I note the following relevant questions and answers as exchanged at the pre-trial conference:

“In addition to the aforesaid, the defendant is requested to make the following admissions in order to curtail the proceedings:

- 13.1 Does the defendant admit that the plaintiff has suffered the injuries set out in the respective medico-legal reports?

ANSWER: Not at this stage

- 13.2 Does the defendant admit that the plaintiff has received the treatment set out in the various medico-legal reports, and that it is accident related?
- 13.3 Does the defendant admit the sequelae suffered as a result of the injuries sustained by the plaintiff as recorded in the respective medico-legal reports filed on his behalf?
- 13.5 Does the defendant agree that the expertise of the plaintiff’s expert witnesses are agreed on and that it will not have to be proved?

ANSWER: Admitted

In addition, the plaintiff suggested that the parties discuss the following:

- 14.3 Plaintiff’s general damages.

ANSWER: subject to instruction

[13] The defendant to date has not provided the court with any expert reports which are contrary to those provided by the plaintiff.

Plaintiff's contentions

[14] Reliant on the general principles regarding admissions in civil proceedings[2], plaintiff's counsel averred that the fact that the defendant answered "admitted" to all the questions related to the expert reports in the pre-trial conference amounted to an admission that the plaintiff was entitled to claim for general damages. In other words, the defendant had admitted to the seriousness of the plaintiff's injuries.

[15] The plaintiff also made reference to Rule 37(4)(a) of the Uniform Court Rules which expressly makes provision for parties to, by way of admissions, expedite, the trial and limit the issues before court.

[16] Plaintiff's counsel also pointed out that in the Adv Sayed[3] case the court dealt with an admission where the RAF had in the pre-trial conference requested the defendant to indicate in writing

specifically which findings in the plaintiff's reports it disputed. The RAF had to give such indication by a specific date. The parties agreed in the pre-trial conference that if the RAF failed to do so within the agreed time limit the factual content, factual findings, conclusions reached, and opinions expressed by the plaintiff's experts shall be agreed to be common cause.

Plaintiff's counsel averred that this matter is distinguishable from the Adv Sayed[4] case in that in casu the defendant had "admitted" to the correctness of the expert reports in the pre-trial conference. The admission was made in so far as the expert reports accord with the hospital records. Thus, the plaintiff's counsel submitted that this court must conclude as was concluded in the Adv Sayed[5] case:

"It is a situation where the RAF itself has, by the exercise of a deliberate election, chosen to accept the conclusion of the plaintiff's expert regarding the seriousness of the minor's injuries. It must be accepted that, before exercising this election, the RAF must have satisfied itself as to the correctness of that conclusion."

Legal Framework

[17] In the Adv Sayed[6] case a detailed approach on the requirements for a plaintiff to qualify to claim general damages is set out as follows by Davis J:

"It is this: in terms of the proviso to section 17(1), the RAF shall only be liable to compensate a plaintiff for general damages (non-pecuniary loss) if the seriousness of such a plaintiff's injuries has been assessed as contemplated in section 17(1A).

Such assessment, for which the qualifying threshold is 30% WPI, shall be based on a prescribed method and shall be carried out by a medical practitioner[7] registered as such under the Health Professions Act[8].

The “method” of assessment has been prescribed in Regulation 3 of the Road Accident Fund Regulations promulgated on 21 July 2009[9]

A plaintiff who has undergone such an assessment in the prescribed method, shall obtain a serious injury assessment report from the medical practitioner who has performed the assessment.[10]

Should the RAF not be satisfied that the injury has been correctly assessed, it may either reject the plaintiff’s serious injury assessment[11] or direct the plaintiff to submit him or herself to assessment by a medical practitioner designated by the RAF.[12] Should there still be disputes thereafter as to the seriousness of the injuries, the issue shall be dealt with by an appeal tribunal appointed by the HPCSA after due exchange of notices as provided for in the Regulations.[13]

It is also trite that the above procedures are peremptory and that a court has no power to determine the seriousness of the injuries.[14]

Evaluation and discussion

[18] The crux of the question as in the Adv Sayed[15] case is, can the RAF be deemed to have been ‘satisfied’ as to the seriousness of the plaintiff’s injuries in this case as a result of the admission made at the pre-trial conference?

[19] The facts of admission by the defendant in this case is clearly distinguishable and materially different from the facts in the Adv Sayed[16] case. In the present instance the defendant admitted in the pre-trial conference minutes to the correctness of the expert report in so far it accords with the hospital records. However, in interpreting this admission together with the admissions in paragraph 13 and 14.3 of the pre-trial minutes, I am not convinced that the defendant admitted to the seriousness of the plaintiff’s injuries.

[20] The defendant in paragraph 13.1 of the pre-trial minutes, when asked “does the defendant admit that the plaintiff has suffered the injuries set out in the respective medico-legal reports?; the defendant answers “not at this stage”. Furthermore, in paragraph 14.3 where the plaintiff suggested the parties discuss, the plaintiff’s general damages; the defendant’s answer is “subject to instruction.” These paragraphs in my opinion clearly indicate that there was a no admission by the defendant to seriousness of the plaintiff’s injuries.

- [21] In my view, the admission of the expert reports by the defendant is an admission of the content of the “reports” themselves as they align with the hospital records and not admission per se of the “seriousness of the injuries” as required by the legislative framework. Thus, the “admission” of the defendant in regard to the expert reports may be open to interpretation, however, in my view it has to be read in conjunction with the rest of the admissions made by the defendant in the pre-trial conference minutes.
- [22] In the premises, I am of the view the defendant cannot be deemed to have been satisfied as to the seriousness of the plaintiff’s injuries in this case as a result of the admissions made at the pre-trial conference.

Order

[23] In the circumstances, I hereby make the following order:

23.1 The plaintiff is ordered to obtain a serious injury assessment report from the Health Professions Council of South Africa (HPCSA) which sets out the nature of the seriousness of the injuries of the plaintiff as a result of the motor vehicle collision which occurred on 7 August 2011.

23.2 The claim for general damages is postponed sine die.

W DOMINGO

ACTING JUDGE OF THE HIGH COURT

PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties’ legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. This matter was heard in open court on the 21 February 2025. The date for hand down is deemed to be 19 May 2025.

APPEARANCES

For the Plaintiff: ADVOCATE M RABANEY instructed by MACROBERT ATTORNEYS, MS A GRIESEL For the defendant: NO APPEARANCE

[1] (36492/2021)

[2024] ZAGPPHC 1325 (18 December 2024).

- [2] Section 15 of the Civil Proceedings Evidence Act 25 of 1965: “It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such part to disprove any fact admitted on record of such proceedings.”
- [3] Supra note 1 at para 11, 32 and 34.
- [4] Supra
- [5] Supra at para 34.

[6] Supra at paras 19-26.

[7] Section 17(1A)(a) and (b).

[8] 56 of 1974.

[9] Regulation

3. Assessment of serious injury in terms of section 17(1A).

[10] Reg 3(3)(a).

[11] Reg 3(3)(d)(i).

[12] Reg 3(3)(d)(ii).

[13] Reg 3(4) -3(13).

[14] See Duma v Road Accident Fund 2013

(6) SA 9 (SCA); RAF v Lebeko 2012 JDR 2176 (SCA) [2012] ZASCA 159 and Kobo M and Another v RAF 2023

(3) SA 125 (GP).

[15] Supra note 1 at para 27.

[16] Supra.

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