

SOUTH AFRICA / JUDGMENT

Pithey v Road Accident Fund (50010/2007) [2009] ZAGPPHC 376 (3 November 2009) [2009] ZAGPPHC 376

COURT

North Gauteng High Court, Pretoria

BEFORE

Sapire AJ

CASE / FILE NUMBER

50010/2007

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HIGH

COURT OF SOUTH AFRICA

NORTH

GAUTENG PRETORIA

CASE

NUMBER: 50010/2007

DATE:

03 NOVEMBER 2009

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

PITHEY.

JOIANNNA CHRISTINA

Plaintiff

V

ROAD

ACCIDENT FUND

Respondent

Civil

trial

Coram
Sapire AJ

JUDGMENT

Sapire, AJ:

The plaintiff has sued the defendant to recover compensation for personal injuries suffered by her in an accident. The defendant's

liability, if any, arises from the provisions of section 17 of Act 56 of 1996. The accident took place on the 29th of November 2004.

As is required of one seeking compensation from the defendant the plaintiff filed a claim form contemplated in regulation 23 of the Regulations promulgated in terms of the Act.

The accident involved three vehicles. The first was that in which the plaintiff was travelling, the second was a vehicle with which the plaintiff collided which bore the registration number [.....] and which was driven by one M N Tshangase. The third car was a vehicle particulars of which were unknown.

The plaintiff was, in completing the prescribed claim form, specific in basing her claim on the negligence of the driver Tshangase. Together with the claim the plaintiff lodged a number of documents relating to the occurrence which described the events and the circumstances in which the collision took place. The contents of these documents suggest that the driver of the unknown vehicle may have by his negligence caused the accident.

The plaintiff in her Particulars of Claim attributes the cause of the accident solely to the negligence of the driver of an unidentified

and unknown taxi. This is in direct and irreconcilable conflict with the relevant portion of the claim form. The defendant has in a Special Plea contended that as no claim form in respect of such negligence has been filed there is no cause of action.

The relevant portion of the Special Plea reads as follows:

"5. AD PARAGRAPH 10

5.1 The Defendant admits that the Plaintiff has complied with the requirements of the Act and have lodged a claim in respect of the motor vehicle with registration number [.....] driven by N Ntshangase. The Defendant denies that the Plaintiff has complied with the requirements of the Act, as read with the Regulations in respect of the alleged unidentified vehicle as no claim has ever been lodged in respect of such alleged vehicle. The Defendant further prays that its Special Plea be read as if incorporated herein. The Defendant further pleads that the Plaintiff's claim was formally repudiated on or about the 19th May 2006.

6. AD PARAGRAPH 11

The Defendant admits demand and its failure to pay but states that, in the premises, it is not liable to pay the Plaintiff the amount

claimed or any portion thereof. WHEREFORE the Defendant prays that Plaintiff's claim be dismissed with costs."

The parties have agreed to have the issues arising from the Special Plea heard separately from the other matters arising in the action and have filed a statement of facts, in terms of Rule 33(1) upon which a decision is to be made. The agreed facts are:

1. The plaintiff instituted action against the defendant in terms of section 17 of Act 56 of 1966 for damages she suffered as a result of Injuries sustained in a motor vehicle collision that took place on the 29th of November 2004.
2. In her Particulars of Claim, the plaintiff alleges that she was the driver of a motor vehicle with registration number [.....] which was in collision with a motor vehicle with registration number [.....] but that the collision was caused by the negligence of the driver of a blur mini bus of which both the driver and the owner are unknown to her.
3. Plaintiffs action against the defendant falls under section 17(1) (b) of the Act and in the circumstances regulation 2 of the Regulations promulgated in terms of the Act applies.
4. Defendant raised a Special Plea in terms of which it alleged that no debt exist against the defendant under the Act due to plaintiffs failure to comply with Regulation 2 (3).
5. In order to have a claim against the defendant plaintiff would in terms of Regulation 2(3) have had to lodge a claim with the defendant within 2 (two) years after the date of the accident which should have been 26 November 2006.
6. The plaintiff lodged a claim against the defendant by lodging a bundle of documents under cover of a letter from her attorneys dated the 17th October 2005 (the claim bundle). A copy of the letter is attached to the Statement of Facts marked "SOF 1".
7. The defendant acknowledged receipt of the claim bundle on the 24th of October 2005 and affixed its date stamp to the first page of the covering letter.
8. Defendant did not object to the validity of the claim in terms of section 26.
9. The following documents were placed before the court:
 - (a) A Statutory claim form which is marked "SOF 2"
 - (b) Plaintiffs Affidavit in compliance with section 19 (f)(i) of the Act marked "SOF 3"
 - (c) An Affidavit by Arie Willem Jacobs who was a passenger in the plaintiffs vehicle marked "SOF 4".

10. Plaintiff completed paragraph 2 of the claim form where provision is made for the particulars of the motor vehicle from driving of which the claim arises by specifying a truck with registration number [.....] driven by one M N Tshangase. This is apparent on a perusal of "SOF 2".
11. The claim form does not disclose or refer to any vehicle, owner or driver of which is unknown.
12. In paragraph 6 - 8 of the plaintiff's Affidavit she mentions the Involvement of "an unknown blue mini bus" and in paragraph 18 states that "the accident was caused by the sole negligence of the driver of a blue taxi".
13. In the Affidavit of A W Jacobs he states that:
 - (a) he was a passenger in plaintiff's vehicle;
 - (b) "a truck was approaching from the opposite direction turned right into the R558.
 - (c) An unknown taxi also turned right directly behind the truck we had to swerve to avoid driving into the taxi";
 - (d) "Both the truck and the taxi were negligent and caused the accident".
14. On 19th May 2006 defendant repudiated liability on the grounds that the plaintiff was the sole cause of the collision".
15. On the 21th of August 2006 plaintiff's attorney received a letter from the defendant dated 17th of August 2006 which referred to plaintiff's Statutory Affidavit and the fact that plaintiff attempted to avoid a collision with a taxi when her vehicle slipped and collided with the rear of the insured vehicle.

A number of other facts were agreed and contained in the Statement of Agreed Facts which is unhelpful in coming to a conclusion on the issue in dispute.

The question of law in dispute framed in the Statement of Agreed Facts reads:

•Does the plaintiff's claim bundle as lodged with the defendant under cover of her attorney's letter dated the 17th of October 2005 constitute a valid claim in terms of the Act and the regulations promulgated in terms thereof?"

This formulation of the question is somewhat confused. What is in issue is, "as the plaintiff in her Particulars of Claim is relying on, the sole negligence of the driver of the unknown vehicle, does the claim form as completed by her sufficiently comply with the requirements of the Act to support a claim in arising from the negligence of the driver or owner of the unidentified vehicle?"

The plaintiff's contention is that the claim form taken together with the documents accompanying it was sufficient to alert the defendant to the fact that a claim was being made arising from the negligence of a driver of an unknown vehicle.

The plaintiff contends that the information furnished should have made the defendant aware that she was relying on the negligence of the driver of the unknown taxi, notwithstanding the clear wording of paragraph 2 of the claim form. From this it is to be inferred that the claim form also indicated a claim which would be based on the sole negligence of the driver of the unknown vehicle.

The defendant has contended that strict compliance with the regulations peremptory. The claim form in this instance is specific indicating the basis upon which the claim is lodged and does not require the defendant to investigate other causes of the accident giving rise to plaintiff's injuries and consequent claim.

The defendant stresses that the claim form prescribed by the regulation was intended to state and limit the grounds of liability. In specifying the insured vehicle as the vehicle the driving of which gave rise to the claim the plaintiff excluded any other cause.

The defendant further argued that it was not required to investigate the claim beyond the limit set in the claim form and could not consider every possible ground of liability emerging from the annexures to the claim form.

As no claim was lodged on the basis of the negligence of the driver of an unidentified vehicle any claim arising in respect thereof is now prescribed.

The defendant's arguments are of greater cogency. The indisputable fact is and remains that the basis of the plaintiff's claim as specifically stated in the claim form was the negligence of the vehicle there specified. Negligence on the part of the driver of an unidentified vehicle may have given rise to a claim on a different basis altogether.

It is surprising and distressing that with all the evidence available, the person who completed the form on plaintiff's behalf limited the claim to one based on the negligence of the insured vehicle. This carelessness has resulted in the Plaintiff having lost her claim for compensation for the injuries suffered by her.

I conclude that as the claim form does not relate to a claim based on negligence of the driver of an unidentified vehicle the defendant's

plea to this effect must lie upheld.

The action is accordingly dismissed with costs.

03/11/09

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