

SOUTH AFRICA / JUDGMENT

Rabie N.O obo Thabiso Abraham Oliphant Trust v Road Accident Fund (40543/2019) [2021] ZAGPPHC 312 (13 May 2021)

[2021] ZAGPPHC 312**COURT**

North Gauteng High Court, Pretoria

BEFORE

J Yende

CASE / FILE NUMBER

40543/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

REPORTABLE: NO

OF INTEREST TO

OTHER JUDGES: NO

REVISED. YES

2021-05

-13

CASE

NO: 40543/2019

In

the matter between:

JEANNE HELLEN

RABIE N.O.

APPLICANT

(obo THABISO

ABRAHAM OLIFANT TRUST)

And

ROAD ACCIDENT

FUND

RESPONDENT

Delivered:

The judgment is

delivered electronically via email and thus deemed to be delivered be delivered on 13 May 2021.

JUDGMENT

YENDE, A.J

Nature of the proceedings

- [1] Before court is an application premised on the court order granted by this court on the 11th October 2016, to order the respondent to make payment to the Applicant in respect of the expenses incurred in terms of the Applicant's Section 17(4)(a) Undertaking Certificate issued by the respondent .
- [2] The expenses incurred are inter alia, for establishment and administration of the Trust as well as all costs pertaining to furnishing bond of security for the period of 2016 to 2017.
- [3] The main relief sought is an order directing the respondent to pay the expenses incurred by the applicant, in her capacity as a Trustee in the Deeds of Trust which was agreed upon by the parties to be established for the benefit of the beneficiary.

SALIENT**FACTS**

- [4] The beneficiary of the Trust was involved in a motor vehicle collision that occurred on the 20 October 2014. As a result of the collision, the beneficiary incurred serious injuries and an action was instituted for compensation, which action was finalized on the 11 October 2016. Parties made agreement to settle the matter and the settlement agreement was made an order of the court
- [5] It is of prime importance to this judgment that the relevant sections of the court order are restated herein below ;
 - [5.1] "1.1 Merits is adjudicated 100% in favour of the plaintiff.
 - [5.2] 1.5 The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996 , in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of service or supplying of goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on the 20th October 2014.
 - [5.3] The undertaking was issued by the respondent on the 13th October 2016 and the relevant section(s) are herein below restated;

Undertaking:

[5.4] “The Fund’s liability to compensate the Claimant for the future accommodation in a hospital or nursing home or treatment of or rendering of a service or the supplying of goods to the Claimant, which are incurred as a result of injuries the Claimant sustained in the collision, is limited to the tariff or tariffs in force under the Act from time to time, and in lieu of such a tariff or tariffs , to the necessary and reasonable costs incurred by the Claimant as a result of injuries sustained in the accident”.

Deed of Trust

[5.5] In terms of the court order made by agreement between the parties paragraph 3 of the court order provides that; “3.1 The net proceeds of the payments referred to above, after deduction of attorney and own client costs(the capital amount) shall be payable by the Plaintiff’s attorneys to a trust, to be created within 12(twelve) months of the date of this order , which trust will; 3.2 Be created on the basis of the provisions as more fully set out in the draft trust deed attached hereto marked “A”; 3.3 Have as its trustee, Mrs. Jeanne Helen Rabie, with powers and liabilities as set out in the draft trust deed attached hereto marked “A” ”.

[5.6] The objectives of this Deed of Trust are interalia ;(7.1) To administer the capital amount, which represents damages payable to the beneficiary by the Road Accident Fund arising out of the accident that occurred on 28 October 2014, in such a way that, as far as reasonably possible, the capital amount received by the trust achieves its purpose of compensating the beneficiary in respect of the damages suffered by him arising out of the foregoing”.

[6] The applicant lodged a claim for expenses on the 8 May 2018 in terms of Section 17(4)(a) undertaking certificate .The applicant contends that the respondent is liable to the Trust for the amount of R 47 564,76 in respect of the expenses arising from Section 17(4)(a) undertaking certificate, in respect of the establishment and administration of this trust , as well as all costs pertaining to the bond security for the period of 2016 to 2017.

- [7] The respondent refuses to effect payment of these costs and argues that the applicant has not made out a case that the beneficiary had to have a trust created for his benefit at the costs of the respondent as a result of the injuries sustained during the collision. The respondent further attacks the applicant's application on the basis that no curator ad litem had been appointed to act on the beneficiary's behalf in the main action and thus the applicant's reliance on the fact that the Deed of Trust, read with the Court Order, founds liability on the part of the respondent is misplaced. The respondent contends further that the court order does not make provision for the respondent to furnish the plaintiff with the undertaking.

Legal

analysis

- [8] Section 17(4) (a) of the Road Accident Fund, Act 56 of 1996 provides that:

"Where a claim for compensation under sub-section (1)-

- (a) includes a claim for the costs of the future accommodation of any person in hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the fund or the agent to furnish such undertaking, to compensate –
- (i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or
- (ii) the provider of such service or treatment directly, notwithstanding Section 19(c) or (d), in accordance with the tariff contemplated in sub-section (4)(b)".

- [9] The applicant contends that the cost incurred in relation to the establishment and the administration of the trust as well as cost pertaining to the bond of security for a trust falls squarely within the ambit of "rendering of a service or supplying of a goods" as provided in the said Undertaking Certificate.
- [10] The contention by the applicant lies in the interpretation of the phrase "rendering of a service" as contained in section 17(4)(a) of Act 56 of 1996. The Supreme Court of Appeal in the matter of Bothma – Batho Transport (edms) Bpk v S Bothma & Seun Transport (edms) Bpk (802/2012) [2013] ZASCA 176 (28 November 2013) described the approach to be followed now in relation to the interpretation of, inter alia, statutory instruments, and states in

paragraph “[12] that summary , referring to the well-known and much cited summary of the earlier approach to the interpretation of contracts by Joubert JA in *Coopers & Lybrand & others v Bryant*, is no longer consistent with the approach to interpretation now adopted by South African courts in relation to contracts or other documents ,such as statutory instruments or patents . Whilst the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is ‘essentially one unitary exercise’. Accordingly it is no longer helpful to refer to the earlier approach ”.

- [11] In *Reyneke N.O v Mutual and Federal Insurance Co Ltd* 1992 (2) SA 417 (T) , the court when referring to the repealed Motor Vehicle Accident Act 84 of 1986, and more specifically Section 8(5)(a) which provides for an undertaking by the Fund to compensate only if and when costs are incurred in future (being similar to the current Section 17(4) provision of the Road Accident Fund Act), held that “ ,this provision is limited to costs of accommodation in a hospital or nursing home or treatment of ,or rendering of a service ,or supplying of goods to the claimant . The words ‘a claim for the cost of future ...rendering of a service ...to him’(“n eis om die koste van die toekomstige...leowering van ‘n diensaan hom’) are, in my opinion ,wide enough to cover the costs of a curatrix bonis who in effect renders a service to the patient by administering her estate. A court is therefore empowered by s 8(5)(a) which is equivalent to Section 17(4)(a) (my emphasis) to include in its award an order that the MVA Fund , or its appointed agent ,furnish an undertaking to compensate the third party, in this case ,in respect of the future fees and charges of the curatrix bonis appointed to administer her estate, as and when these become payable”.
- [12] In *Barnard N.O v Road Accident Fund* 2017 (1) SA 245 (ECP) the court considered the question as to whether a plaintiff was entitled to claim the costs of the future employment of a domestic

assistant in terms of section 17(4)(a) undertaking and held that “ [32] In light of what is set out above I find the phrase ‘in accordance with the tariff contemplated in subsection (4B)’ as introduced in s 17 of the RAF Act 19 of 2005 , as read with the provisions of ss(4B),serves only to restrict the liability of the Fund in relation to such services as are regulated by a prescribed tariff and does not confine the ambit of an undertaking only to such services. The wording of the section is wide enough to cover liability of goods or the rendering of services the provision of which is not regulated by a tariff promulgated in terms of the National Health Act, such as the services of a domestic assistant and/or the costs of a curator bonis appointed to administer the estate of a claimant”.

[13] Recently in the matter of Ronald Herman Meyerdicks N.O v Road Accident Fund (3526/2014) an unreported judgment of this court

delivered on the 4 June 2018, the court held at para [18] “that the undertaking being limited to 80% includes the reasonable costs incurred in the establishment of a trust and the reasonable costs incurred in the administration of the award, the reasonable costs incurred in providing security to the satisfaction of the Master in terms of section 77 of the Administration of Estates Act”.

[14] This court have also carefully considered the various matters of Rabie Jeanne Helen N.O (obo Tshediso David Thai Trust) Case Number 37056/2019, Rabie Jeanne Helen N.O (obo Mishack Lethamaga Serudu Trust) Case Number 38945/2019, Rabie Jeanne Helen N.O (obo Thomas Manganye Trust) Case Number 38946/2019 v Road Accident Fund unreported judgment of this court delivered on the 19 September 2019. I submit that a restrictive interpretation was applied in the above matters and thus I am not persuaded thereof.

Discussion

[14] It is this court’s firm view that although the undertaking certificate is not the same as contracts or patents any interpretation assigned to the words therein should be done in the interest of justice and to protect and preserve the dignity of road accident victims who will but for the accident have to depend on others for their care and livelihood. To give a strict interpretation to Section 17(4)(a) undertaking certificate as being ordinarily granted where the Road Accident Fund has admitted liability ‘ for the future medical and hospital expenses of the Claimant which includes the accommodation of a claimant in hospital or nursing home or , treatment of or rendering of a service or supplying of goods to the claimant(s)’ only for health services in our current development of our bill of rights will go against the intention of the legislature in providing the said undertaking . Thus leaving the claimants in the lurch.

[15] It is the court’s view from the above analysis that the interpretation of the phrase ‘rendering of service or supplying

of goods’ cannot be confined only to the admitted liability of the Road Accident Fund for ‘rendering of services’ the provision of which is regulated by a tariff promulgated in terms of the National Health Act. As mentioned above the words ‘rendering of service’ is and/or wide enough to include the rendering of service by a domestic assistant, a curatrix bonis and the establishment and administration of the trust on behalf of the road accident victims. Thus expenses incurred as the consequent thereof are claimable in terms of the Section 17(4)(a) Undertaking Certificate issued by the Road Accident Fund and such expenses should be reasonable in the circumstances.

[16] Consequently the following order is made;

[16.1] The respondent is ordered to pay the applicant the amount of

R 47' 564.76 in respect of expenses incurred in terms of the applicant's Section 17(4)(a) Undertaking Certificate ,for establishment of the trust as well as all costs pertaining to the bond of security for the period 2016 to 2017;

[16.2] Interest on R47 '564.76 at the rate of 10.25% per annum until the date of payment;

[16.3] The respondent is ordered to pay the costs of this application.

J YENDE

Acting Judge of the High Court

Gauteng Division

Delivered: This judgment was prepared and authored by the Judge whose name is reflected above, and is handed down electronically by circulation to the parties' legal representatives by email and uploading same to the electronic file of this matter on Caselines. The date for hand-down is deemed to be: 13 May 2021.

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(Room G-06, Groenkloof Chambers)

APPLICANT'S ATTORNEYS: VZLR INC

Pretoria

COUNSEL FOR RESPONDENTS: NO APPEARANCE

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