

SOUTH AFRICA / JUDGMENT

Rand Mutual Assurance Company Limited (Phasimeni) v Road Accident Fund (49539/2013) [2017] ZAGPPHC 573 (8 September 2017) [2017] ZAGPPHC 573

COURT

North Gauteng High Court, Pretoria

BEFORE

D Makhoba

CASE / FILE NUMBER

49539/2013

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, PRETORIA

CASE

NO: 49539/2013

In

the matter between:

RAND

MUTUAL ASSURANCE COMPANY LIMITED

(PHASIMENI) Plaintiff

and

ROAD

ACCIDENT

FUND Defendant

JUDGMENT

MAKHOBHA, AJ:

[1]. The matter before Court is a claim for damages against the Defendant as a result of injuries sustained by one Mr James Sebenzile Phasimeni in a motor vehicle collision that took place on the 11th January 2012 on the N10 road in the Northern Cape Province.

[2]. Mr James Sebenzile Phasimeni was employed by Freid Delwery CC, which was insured by the Plaintiff in respect of its employees in terms of the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993.

[3]. At the commencement of the trial, both parties handed in two bundles, namely documents marked "A", and pre-trials, pleadings and notices marked "B".

[4]. The Defendant conceded liability in respect of the Plaintiff. The issue before Court is the quantum of the Plaintiff's claim.

[5]. The Plaintiff called only one witness, Mr Rhulani Makaukau, who testified that he was employed by the Plaintiff as a Claims Manager Class 4. He testified further that Mr Phasimeni was indeed injured on duty and because of the severity of his injuries, the claim was managed by him at the Head Office of the Plaintiff. In his testimony, he referred to an undisputed document which is a certificate by Rand Mutual Assurance that contains a breakdown of the amounts already paid to and on behalf of Mr Phasimeni. This document is contained on pages 73(a) and 72(b) of bundle "B". He confirmed the correctness of the amounts as set out in the Rand Mutual Certificate. In addition, he testified that Mr Phasimeni was severely injured and he requires constant medical attention as he is paraplegic.

[6]. The Plaintiff thereafter closed its case without calling any further witnesses. The Defendant closed its case without calling any witnesses.

[7]. Both parties submitted their Heads of Argument.

[8]. Counsel for the Defendant, in his Heads of Argument, agrees with the submissions made by the Plaintiff's Counsel in his Heads of Argument. Submissions made in respect of costs are also not in dispute.

[9]. In light of the evidence given by Mr Makaukau, the Court is satisfied that the Plaintiff succeeded in discharging the onus of proving the quantum of its claim against the Defendant. Moreover, the Plaintiff's claim is not in dispute by the Defendant.

[10]. Judgment is granted in favour of the Plaintiff against the Defendant.

[11]. The following order is made:

11.1 The Defendant shall pay to the Plaintiff the amount of R 3 827 329.47 (Three Million Eight Hundred Twenty Seven Thousand Eight Hundred And Twenty Nine Rand And Forty Seven Cents) ("the capital amount").

11.2 Should payment not be effected timeously, the Defendant is liable to pay interest to the Plaintiff on the capital amount at the rate of 10.50% per annum from date of judgment of final payment.

11.3 The aforementioned sum of R 3 827 329.47 (Three Million Eight Hundred Twenty Seven Thousand Eight Hundred And Twenty Nine Rand And Forty Seven Cents) shall be paid directly into the trust account of the Plaintiff's attorneys, Van Velden-Duffey Incorporated , details of which are as follows:

Account holder: Van Velden-Duffey Attorneys

Bank: ASSA Bank

Branch code: 63-01-46

Account number: [...]

Reference: MAT19886

The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall inter alia include (but not be limited to) the following:

11.4 The fees of senior-junior counsel on the High Court scale up to and including 23 August 2017 as well as for preparing Heads of Argument ;

11.4.1. The aforesaid costs shall also be paid into the aforementioned trust account of the Plaintiff's attorneys.

11.4.2. The following provisions shall apply with regards to the determination of the aforementioned taxed or agreed costs:

11.5 The Plaintiff shall serve the notice of Taxation on the Defendant's attorneys of record;

11.5.1. The Plaintiff shall allow the Defendant 14 (fourteen) Court days to make payment of the taxed costs from date of settlement or taxation thereof ;

11.5.2. Should payment not be effected timeously, the Plaintiff shall be entitled to recover interest at the rate of 10.50% per annum on the taxed or agreed costs from due date to date of final payment.

11.6 A contingency fee agreement is not applicable.

D MAKHOBHA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

CASE NO.: 49539/2013

HEARD ON: 23 AUGUST 2017

FOR THE STATE: ADV. H.VERMAAK

INSTRUCTED BY: VAN VELDEN-DUFFEY INCORPORATED

FOR THE DEFENSE: ADV. D. MATSETELA

INSTRUCTED BY: NINGIZA HORNER INCORPORATED

DATE OF JUDGMENT: 08 SEPTEMBER 2017

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