

SOUTH AFRICA / JUDGMENT

Raseyalo v Road Accident Fund (958/2023) [2024] ZAFSHC 150 (1 July 2024) [2024] ZAFSHC 150

COURT

Free State High Court, Bloemfontein

BEFORE

PJ Loubser

CASE / FILE NUMBER

958/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable/Not

reportable

Case

no: 958/2023

In

the matter between

KHAUDI

DAVID RASENYALO

PLAINTIFF

And

ROAD

ACCIDENT FUND

DEFENDANT

Heard:

20 March 2024

Delivered:

1 July 2024

Summary: Special Plea based on provisions of RAF Board Notice 271 of 2022, issued in terms of Regulation 7(1) of the Road Accident Fund Regulations of 2008 – whether Board Notice is valid

ORDER

1.The two special pleas raised by the Defendant are dismissed with costs, including the costs of counsel on scale B.

JUDGMENT

LOUBSER PJ

- [1] On 31 December 2021 the Plaintiff was a passenger in a truck that collided with another vehicle at or near the M10 Road, Namibia, Free State Province. At the time of the accident, the Plaintiff was 40 years old. It is alleged that he suffered a serious fracture of the left arm in the accident. According to the summons, he suffered damages in the form of past and future medical expenses, general damages and past and future loss of earnings in the total sum of R2 900 000 plus interest.
- [2] In response to the summons, the Defendant raised two special pleas. The first pertains to the alleged failure of the Plaintiff to lodge a substantially compliant claim in terms of section 24 of the Road Accident Fund Act[1], read together with Board Notice 271 of 2022.[2] The second relates to the fact that the summons was served on the Defendant before the invalid claim was cured by the Plaintiff. The Plaintiff then filed a replication in which he does not deal with the substantial non-compliance of his claim. He only deals with the issue of the summons, by saying that the letter of objection received from the Plaintiff, was not a letter of objection based on the premature summons. In the replication, the Plaintiff does not deny that he received the letter of objection.
- [3] It is now apposite to refer to the facts as they appear from the papers before the Court. The Plaintiff submitted his claim for compensation to the Defendant on the prescribed RAF claim form on 13 September 2022. On 27 September 2022 the Defendant notified the Plaintiff's attorneys in a letter of objection that the claim did not meet all the requirements for a valid claim. It referred to Board Notice 271 of 2022, in which all the documents are stipulated which must be included in the claim to ensure that a substantially compliant and valid claim is lodged. The documents which were not included in the Plaintiff's claim, are then listed in the letter, for instance copies of all hospital and medical records, photographs of injuries, an employer's certificate showing the nature of the employment, the period of service, pay slips pre and post accident and proof of payment of medical expenses, to name a few.

- [4] This letter of objection was delivered by the Defendant to avoid the sanction in terms of section 24(5) of the Act, which provides that if the RAF does not, within 60 days after receipt of the claim, object to the validity thereof, the claim shall be deemed to be valid in law in all respects.
- [5] Despite supplementing his claim after the letter of objection, all the alleged shortcomings were still not cured, according to the Defendant. The Plaintiff then proceeded to serve a summons on the Defendant on 28 September 2023. To date, the Plaintiff has not placed the Defendant in possession of the required employer's certificate, and proof that he is not receiving any disability grant, according to an e-mail sent to the Plaintiff's attorney by the Defendant.
- [6] At the hearing of the special pleas, the Defendant only relied on the first special plea, namely that the plaintiff failed to lodge a substantially compliant claim in terms of section 24 of the Act, read together with Board Notice 271 of 2022. On behalf of the Plaintiff, it was submitted that there was indeed substantial compliance with the provisions of the Act, and that Board Notice 271 of 2022 has no lawful effect.
- [7] Now section 24(1) of the Act provides that a claim for compensation and accompanying medical report shall be set out in the prescribed form, which shall be completed in all its particulars. Section 24(6)(b) provides that no claim shall be enforceable by legal proceedings commenced by a summons before all requirements contemplated in section 19(F) have been complied with. Section 19(F) provides that the RAF shall not be obliged to compensate if the claimant fails to submit, together with his claim, an affidavit in which particulars of the accident and related documents are fully set out. Such an affidavit was indeed provided by the Plaintiff in his claim.
- [8] Board Notice 271 of 2022 stipulates the terms and conditions upon which claims for compensation shall be administered. It is mentioned in the introduction thereof that the implementation of these terms and conditions shall be effected with the due and necessary amendment of the RAF 1 claim form, as provided for in Regulation 7(1) of the Road Accident Fund Regulations of 2008. It is further informed that, in addition to the documentation required in terms of the Act to ensure that a valid claim is lodged which substantially complies with the Act, 'the following documents must be included and form part of the claim's supporting documents when lodging a claim with the Fund'. A long list of documents which have to be included then follows in the Schedule to the Board Notice.
- [9] The documents which are lacking in the Plaintiff's claim, are documents listed in the Schedule to the Board Notice. The question that now needs to be decided, is whether the provisions of the Board Notice in question are valid and lawful in effect. To put it differently, should a special plea to the effect that the provisions of the Board Notice have not been complied with, be upheld?

- [10] In *Mautla and Others v Road Accident Fund and Others*[3] the Full Bench of the North Gauteng High Court also had to deal, inter alia, with a board notice and a claim form substitution notice relating to the manner in which the RAF receives and deals with claims that are submitted to it. In a comprehensive judgment, the Court stated that the claim form and requirements for the submission of a valid claim are the gateway to any claim for compensation, and hence there is a necessity for proper consideration and consultation before any such requirements that are not specifically prescribed by statute can even be considered, let alone imposed.
- [11] The Court also considered the validity of Regulation 7(1), which forms the cornerstone of the present Board Notice, as indicated above. The Regulation provides as follows: ‘A claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act, shall be in the form RAF 1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.’ The Court then pointed out that what the RAF has done through the implementation of the substituted RAF1 form, is to summarily impose conditions for the submission of what it regards as a valid claim, and at the same time appropriated to itself the right to decide whether or not the provisions of section 24(1)(b) of the Act are to apply.
- [12] The Court concluded that the RAF exceeded its powers in issuing and applying the Board Notice relevant in that case, in a peremptory way without any statutory authorization. The Board Notice did not facilitate the efficient administration of claims, but rather reduced the number of claims by creating administrative hurdles to stop claims from being submitted, the Court remarked.[4]
- [13] In the end, the Court declared Regulation 7(1) to be unconstitutional, unlawful and invalid, and set it aside to the extent that it confers upon the RAF the right to amend or substitute the RAF1 form attached to the Regulations as Annexure A. It also set aside Board Notice 58 of 2021 with description ‘Road Accident Fund Stipulation of Terms and Conditions upon which Claims for Compensation shall be administered’, as well as any directives or instructions issued, or actions taken in terms thereof. The decision to implement the ‘Substitution of RAF1 Claim Form’ published in the Government Gazette on 4 June 2021, and any directives or instructions issued, or actions taken in terms thereof, was also set aside by the Court.
- [14] In the present case, the Board Notice on which the RAF relies, was also issued in terms of the provisions of Regulation 7(1), which has now been declared unlawful and invalid. The Board Notice therefore has no foundation for its existence any more. In addition, the present Board Notice falls in the same category as the one dealt with in the abovementioned case, since it also sought to supplement the documentation required by the Act to ensure that a valid claim is lodged. It is therefore exposed to the same fate that had befallen the one in the abovementioned case.

[15] It follows that the Defendant cannot rely on the stipulations provided for in Board Notice 271 of 2022, which was issued in terms of the provisions of the now defunct Regulation 7(1). As for costs, I can find no reason why the general rule that costs follow the result, should not apply.

[16] The following order is made:

PJ LOUBSER, J

Appearances For the Plaintiff: Adv. K. P. Mohono Instructed by: Mavuya Attorneys Bloemfontein

For the Defendant: Ms C. Bornman Instructed by: Office of the State Attorney Bloemfontein

[1] Act 56 of 1996

[2] Published in Government Gazette 46322 of 6 May 2022

[3] [2023] ZAGPPHC 1199

[4] At para 66 of the judgement

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Prepared on 10 October 2026 · Esheria