

SOUTH AFRICA / JUDGMENT

Rode v Road Accident Fund (1856/2022)

[2024] ZAECMKHC 134 (27 August 2024)

[2024] ZAECMKHC 134**COURT**

Eastern Cape High Court, Makhanda

BEFORE

B B Brody

CASE / FILE NUMBER

1856/2022

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(EASTERN****CAPE DIVISION – MAKHANDA)****Reportable/Not****Reportable****Case****no.: 1856/2022****Matter****heard on: 22 August 2024****Judgment****delivered on: 27 August 2024****In**

the matter between:

M

RODE

Plaintiff

and

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

BRODY, AJ

1. This matter was placed on the trial roll for hearing on the 22nd of August 2024.
2. The defendant was unrepresented at the trial and I directed that evidence should be given in regard to the merits only.
3. The plaintiff appeared as the only witness and was assisted by an interpreter, especially as he had no vocal chords, and was unable to converse clearly in English.
4. At issue in the matter was that the defendant had raised a special plea of prescription, after which the plaintiff had amended his particulars of claim.
5. There can be no doubt that the plaintiff suffered severe injuries, and disabilities, as he suffered a fracture and dislocation of the facet elements at C5 and C6. There was also damage done to his vocal chords and he approached court with all the necessary expert reports and the following expert opinion was given by a specialist Neurosurgeon:

“Chapter 14 Neuro: Head Injury, Table 13.6 alteration MSCHIF Class 2: 20%

Severe speech dysfunction Class 1: 10%, Bowel incontinence, Class 1: 10%

Bladder incontinent Class 1: 10%

Combined whole person impairment = 88%

Qualified for compensation for general damages.”

6. The pleaded case was that on or about 18 February 2016 an employee of the defendant, in terms of the Act, lodged a claim against the defendant due to the injuries sustained in the collision. This was a claim directly with the defendant.
7. The plaintiff further pleaded that advice was given to the plaintiff by the defendant and the plaintiff accepted the advices of the defendant, in good faith.
8. On 3 May 2016, the defendant provided the plaintiff with an offer to settle the issue of negligence on the basis that the insured driver was solely negligent in causing the motor vehicle accident.
9. Around October 2016, the plaintiff was placed in Murambi House – Frail Care, Cape Town at the expense of the defendant. In fact, the defendant has paid the costs of the accommodation, the costs of medication, the costs of supply of goods and nursing facilities required by the plaintiff due to the injuries sustained.

10. It was only in 2002 that the plaintiff approached his current attorneys when he had received no monies from the Fund and was unable to do so until then because of his disabilities. When his sister visited him at the Frail Care Centre, it was then that an arrangement was made to see an attorney to proceed with the present litigation.
11. It was argued on behalf of the plaintiff, by Mr Somandi, that until that point, the claim was in the hands of the defendant and the plaintiff had no knowledge of how claims were dealt with by litigants and was, in any event, unable to enforce his rights, given his disabilities.
12. I emphasise that the plaintiff is unable to speak and is in a wheelchair, as a paraplegic.
13. Arising out of the evidence given by the plaintiff, and in particular the manner in which he answered questions put to him by Mr Somandi, I formed the view that the plaintiff may well have possible cognitive difficulties which have not been covered by his expert witnesses in their reports.
14. The evidence given by the plaintiff was that the collision occurred in Cradock and it was only much later that he woke up in Johannesburg, after being in a coma, when he realised what had happened. The plaintiff also struggled to answer various questions put to him by Mr Somandi, which were not complicated questions, and there can also be very little doubt from the present expert reports that there were severe injuries to the plaintiff's facial area, including his head.
15. I raised the issue of a Curator being appointed for the plaintiff and the plaintiff's legal representatives agreed that this would be appropriate, in the circumstances.
16. The plaintiff's claim is on all fours with the matter of Avuyile Sokatsha vs Road Accident Fund, delivered on the 19th of February 2019 by Plasket J (as he then was).
17. In this matter, the plaintiff referred the claim directly to the Road Accident Fund.
18. The plaintiff had pleaded that the defendant's employees owed him a "duty of care" to ensure that he was fully assisted and advised in regard to all necessary steps to be taken, and timeously advised to consult an attorney to issue summons before the lapse of five years.
19. Plasket J held the following in that judgment:

"[8] The thrust of the special plea is that the plaintiff's claim against the defendant in terms of the Road Accident Fund Act 56 of 1996 has prescribed. That fact is common cause that the plaintiff is not claiming in terms of the Act. His cause of action is based on a negligence of the employees of the defendant who allowed his claim in terms of the Act to prescribe. The special plea is directed at the wrong target. It does not rest whether and, if so, when the plaintiff's actual cause of action may have prescribed. That being so, the defendant has not established that the plaintiff's claim has prescribed."
20. In addition to that principle, the defendant in this matter clearly reached a conclusion that the plaintiff must succeed in his claim and made the offer, as pleaded by the plaintiff.

21. The plaintiff's amended particulars of claim make it perfectly clear that the plaintiff relies on the wrongfulness and/or unlawfulness and/or negligence of the defendant in not fully investigating the plaintiff's claim and not advising the plaintiff properly. The further pleading is that the defendant accordingly breached its statutory duty and obligations to pay a fair and reasonable compensation to the plaintiff in terms of the Act.
22. Further to the above, the defendant also acquiesced with its own offer by paying the medical expenses, and all other related expenses of the plaintiff, and hence his residence at Murambi house, Frail Care, Wynberg, since October 2016.
23. In the interests of justice, and on the basis of the defendant's own negligence, and acquiescence of its previous offer, I find that the special plea is dismissed.
24. In the result, the following order is made:
 - (a) The special plea is dismissed.
 - (b) The defendant is held 100% liable for the plaintiff's proven damages which occurred as a result of a motor vehicle collision which occurred on 4 July 2015 at or near R61 Road between Cradock and Graaff-Reinet.
 - (c) The defendant is ordered to pay the plaintiff's taxed, alternatively agreed, costs of suit on the high court party and party scale in respect of the following, which costs shall include, but are not limited to the following:
 - (i) The costs consequent to the employment of counsel, including all costs to attend to and prepare the matter on the 22nd of August 2024;
 - (ii) The costs to date of this order which shall include the reasonable taxable qualifying, reservation, preparation and travelling fees of expert witnesses, (if any);
 - (iii) The payment of the aforesaid costs shall follow within 180 days after the date of allocator.
 - (iv) The defendant shall pay the payment's interests on the costs of suit, as taxed, from a date fourteen days of date of allocator to date of final payment.
 - (d) The plaintiff's legal representatives are directed to bring an application for the appointment of a Curator ad litem as soon as practicably possible and before the set down of the matter in regard to quantum.
 - (e) Any remaining costs of the plaintiff are postponed until termination by the trial court in due course.

B B BRODY

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Plaintiff : Adv. Somandi

Instructed by

:

Majibana Nhuku Inc. Attorney

c/o Yokwana Attorneys

87 High Street

MAKHANDA

(REF.: RODE/0073)

Counsel for the Defendant : No Appearance

: Road Accident Fund

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