

SOUTH AFRICA / JUDGMENT

Shube v Road Accident Fund (2754/2019) [2025] ZAMPMBHC 24 (31 March 2025)

[2025] ZAMPMBHC 24

COURT

Mbombela High Court, Mpumalanga

BEFORE

Mashile

CASE / FILE NUMBER

2754/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION,

MBOMBELA

CASE NO: 2754/2019

(1)

REPORTABLE:NO

(2)

OF INTEREST TO OTHER JUDGES: YES

(3)

REVISED: YES

DATE 31/03/2025

SIGNATURE

In the matter between:

BRENDA
ABIGAIL
SHUBE
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

This judgment was handed
down electronically by circulation to the parties and/or parties'
representatives by email. The date
and time for hand-down is deemed
to be 31 March 2025 at 10:00.

JUDGMENT

Mashile J

- [1] This is a personal injury claim arising in the context of a motor vehicle accident that occurred on 3 February 2019 at Belfast Village, in the District of Bushbuckridge, Mpumalanga Province. The Plaintiff (“Ms Shube”) was the driver of motor vehicle with registration letters and number J[...]. Ms Shube alleges that travelling in the opposite direction was motor vehicle with registration letters and number K[...] driven by Mr DJ Gopane. Mr Gopane’s motor vehicle swerved onto the lane of oncoming traffic where it collided with her motor vehicle head-on. In consequence of the collision as described aforesaid, Ms Shube sustained bodily injuries for which she has instituted this delictual damages claim against the Defendant (“the Fund”) for compensation.
- [2] The action is defended by the Fund primarily on the ground that Ms Shube’s claim has, in terms of the provisions of the Road Accident Fund Act 56 of 1996, as amended (“the RAF Act”), prescribed. As such, the Fund has raised prescription as a special plea. Accordingly, this Court ought to decide it as a preliminary point. Ms Shube did not respond to the special plea, or this Court was not provided with her reaction to it. Everything said, the surrounding circumstances upon which the Fund founds the special plea of prescription are common cause. The parties, however, part ways on whether the facts provide a fertile ground on which to predicate a special plea of prescription.
- [3] Some of the facts on which the special plea of prescription emanates are evident from the perusal of the RAF 1 Form. Ms Shube lodged the claim with the Fund on 06 March 2019. In response to the lodgment of the claim, on 29 April 2019, the Fund, in writing, objected to the validity of the claim in terms of section 24(5) of the RAF Act. The Fund recorded its foundation for the objection as substantial non-compliance with the RAF Act in that Ms Shube did not supply the Fund with the statutory medical report, the case docket and the Officer’s Accident Report (“OAR”) when she submitted her claim to the Fund on 3 February

2019.

- [4] The Fund alerted Ms Shube's attorneys that due to the non-compliance with the RAF act, prescription would continue to run until she has substantially adhered to the provisions of the Act. Additionally, the Fund informed her attorneys that the claim would remain invalid until the defects have been cured and the claim substantially compliant. On 30 May 2019, the Fund wrote to Ms Shube's attorneys reminding them that the objection raised on 29 April 2019 remained extant because the claim was still invalid. The Fund cautioned the attorneys that should Ms Shube fail to respond within 30 days from the date of its letter, the Fund would proceed to repudiate the claim based on non-compliance.
- [5] The Fund further warned her attorneys that she may not issue summons prior to remedying the objection in terms of section 24(6)(a) read with section 24(5) of the RAF Act and that should she nonetheless opt to issue summons before she resolves the objection, the RAF would bring the necessary application in terms of the court rules for relief against non-compliance with the legislation and request a cost order against her. The Fund then concluded by furnishing Ms Shube's attorneys with an e-mail address, p[...], to which to respond.
- [6] Ms Shube's attorneys did not seize the opportunity as the Fund did not receive her answer nor any documents meant to cure the objection. On 18 July 2019, the Fund wrote to Ms Shube's attorneys advising that it was formally repudiating her claim and that it would defend any action that she may institute against it. The repudiation was based on Ms Shube's failure to submit the requested statutory documents.
- [7] In September 2019, Ms Shube commenced these proceedings against the Fund. The Fund duly defended and served a special plea and pleaded over. Regarding the statutory medical report, Ms Shube's attorneys advised this Court that she had submitted it to the previous firm of attorneys, which represented the Fund in July 2020. To this end, Ms Shube's attorneys presented an e-mail message to the Court showing the addresses and the contents without any form of proof of service – delivery report or acknowledgement or a read receipt.
- [8] It is common cause that ordinarily the documents that should have accompanied the claim at the time when it was lodged with the Fund were:

8.1 The RAF1 Form;

8.2 Statutory medical report completed by the treating doctor;

8.3 Certified copy of the claimant's identity document;

8.4 Accident report and case docket;

8.5 Section 19(f) affidavit;

8.6 Copies of medical records, X-rays and hospital notes.

- [9] The Fund asserts that considering the provisions of the RAF Act, which I will outline later in this judgment, Ms Shube's claim prescribed. The upshot of her failure to supply further particulars to make her claim compliant is that prescription continued to run uninterrupted. As such, concludes the Fund, her claim ought to be dismissed with costs.
- [10] From the facts set out above, this Court must decide whether the Fund has made a case for the upholding of the special plea of prescription. If the special plea crumbles, this Court must entertain the claim. Conversely, should the special plea be upheld, it will spell the end of the road for Ms Shube.
- [11] In evaluating whether the Fund is liable to compensate Ms Shube, I deem the starting point to be section 24, which deals with procedure for lodging valid claims. Section 24(1)(a) provides that a claim for compensation and accompanying medical report under section 17(1) shall be set out in the prescribed form, which shall be completed in all its particulars.
- [12] Section 24(5) and (6) respectively provides that:

"(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

- (6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent–
- (a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1) ; and
- (b) before all requirements contemplated in section 19(f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be."

- [13] The next matter should be prescription in circumstances where the driver or the owner of the vehicle has been identified, which is dealt with under section 23 of the RAF Act. The essence of the provisions of that section is that subject to subsections 2 and 3, the right to claim compensation under section 17 from the Fund for loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or owner thereof has been established, shall become prescribed on the expiry of a period of three years from the date upon which the cause of action arose.
- [14] Section 17(1) provides that the Fund shall, subject to this Act, in the case for a claim for compensation arising from the driving of a motor vehicle where the identity of the driver or owner thereof has been established be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death or any bodily injury to any other person caused or arising from the driving of a motor vehicle by any person at any place within the Republic, if the

injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee. The obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection 1(a) and shall be paid by way of a lump sum.

- [15] Insofar as service by e-mail is concerned, it was held in the unreported case of *Wele v Economic Freedom Fighters and Others*[1] that it is not sufficient to show that a mail was sent to the other party. More needs to be demonstrated before it can be presumed that the other party received it, thereby shifting the burden of proof to that other party that it was in fact not received. Perhaps the following passage could be useful:

"[21] ...the critical moment in electronic communication is when the message enters a system outside the control of the sender. Although the ECTA deems a message sent when that happens, it does not create a presumption; an addressee may deny receipt, but must then adduce sufficient evidence to shift the burden of proof to the sender to demonstrate that the email was in fact received by the addressee."

- [22] Absent proof that the applicant received the relevant notice transmitted to "th[...]@gmail.com", I am unable to find that the applicant was aware that the hearing would proceed on the day."
- [16] It is common cause that the action was instituted in September 2019, the cause of action having arisen on 3 February 2019. Despite advice from the Fund that the documents that she had submitted for lodgment of the claim were statutorily inadequate, rendering the claim invalid, Ms Shube failed to rectify the situation. Prescription continued to run as it could not be interrupted by an invalid claim. In this regard, see the case of *Van Zyl v Road Accident Fund*[2] where this point is made. The three-year period for the prescription of the claim lapsed on 2 September 2023.
- [17] To the extent that it was argued on behalf of Ms Shube that her attorneys delivered the statutory medical report at the offices of the erstwhile attorneys of the Fund, I need to state that there was no proof presented that this was indeed the case. Ms Shube's attorneys would not hand over to this Court any proof of receipt by the attorneys of the Fund on the day alleged to have been sent. As was held in the *Wele* matter *supra*, absent proof that the statutory medical report reached the attorneys of the Fund in July 2020, I am unable to presume it received. Again, I reiterate that prescription was left to run freely. See also the Labour Court matter of *Jafta v Ezemvelo KZN Wildlife*.[3]
- [18] A claim lodged without a statutory medical report is substantially non-compliant and insufficient. It is critical for such a document to accompany the claim for compensation as stipulated by section 24(1)(a) of the RAF Act. Other than setting out the claimant's injuries, it is also a document by which the treating medical practitioner confirms them. Submitting a claim without a medical report or police docket could be a total waste of time and personnel resources as it remains possible that the purported claimant may never be able to show that he or she was indeed involved in the motor vehicle collision from which the claim allegedly

emanates.

- [19] It was not without significance therefore that the legislature couched the provisions of section 24(1)(a) in peremptory terms – “a claim for compensation and accompanying medical report under section 17(1) shall be set out in the prescribed form, which shall be completed in all its particulars”. It is evident that the statutory medical report must be submitted together with the claim for compensation. If there were other documents that were required to accompany the claim for compensation, the legislature would have expressly mentioned them as is the case with the statutory medical report. Thus, a claim for compensation not accompanied by the statutory medical report cannot be in substantial compliance with the provisions of the RAF Act.
- [20] A police report and/or police docket is equally necessary albeit not as critical to render the claim invalid. To the extent that it mentions names and particulars of the injured on a particular day and time, it serves as a causal link between the person mentioned in the statutory medical report and the collision. The OAR and the case docket, conceded by the attorneys of Ms Shube, were submitted to the Fund in March 2024, which is 5 years after and hopelessly late. These contain information that the Fund should immediately upon lodgment peruse, assess and determine whether to defend the action. If it transpires that the claim is genuine and compliant, settlement negotiations should commence without the parties first embarking on court processes. This obviously will save time, human resources and necessarily, legal costs.
- [21] Against that background, it is manifest that the claim has been invalid from inception. Notwithstanding the protestations of the Fund relating to the invalidity of the claim and affording Ms Shube the opportunity to furnish the statutory medical report, the attorneys of Ms Shube left the matter unattended. Instead of supplying the critical document to prevent prescription from running against the claim, the attorneys of Ms Shube waited until the Fund repudiated the claim and then instituted this action whose prospects of success hobbled from the beginning. Well, the action prescribed on 2 February 2023.
- [22] I have considered this matter against all the facts provided above and I conclude that the action is doomed to fail. I make the following order:

The claim against the Fund is dismissed with costs.

B A MASHILE

JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Plaintiff: Ms BN Manzini Instructed by: BC Masinga Incorporated Counsel for the Defendant: Adv V Mukwevho Instructed by: The State Attorney Mbombela Date of Judgment: 31 March 2025

[1] Wele v Economic Freedom Fighters and Others

[2016] ZAECBHC 3 paras 21 and 22.

[2] Van Zyl v Road Accident Fund

[2012] ZAGPJHC 118.

[3] Jafta v Ezemvelo KZN Wildlife

[2008] ZALC 84; [2008] 10 BLLR 954 (LC).

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