

SOUTH AFRICA / JUDGMENT

Skinner v Road Accident Fund (2093/2012) [2014] ZAECPEHC 56 (19 August 2014) [2014] ZAECPEHC 56

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

N G Beshe

CASE / FILE NUMBER

2093/2012

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE – PORT ELIZABETH)

CASE

NO.: 2093/2012

In

the matter between:

SUSAN

ELIZABETH SKINNER

Plaintiff

And

ROAD ACCIDENT

FUND Defendant

JUDGMENT

BESHE, J:

- [1] Plaintiff issued summons against defendant for R4 539 550.00 being in respect of damages allegedly suffered by plaintiff as a result of an accident in which her adoptive son died. The summonses were served on the defendant in January 2012. After the separation of issues in terms of Rule 33 (4) at the instance of the plaintiff, and on the 21 August 2013, the defendant conceded merits in favour of the plaintiff. Plaintiff placed the matter on the roll for the determination of quantum on the 14 August 2014. It appears to be common cause or at least

not in dispute that on 7 March 2014 defendant enquired whether or not plaintiff intended to obtain further reports in addition to that of Psychologist Hennie Minaar that was submitted in support of plaintiff's claim. Several notices were then served on the defendant. On the 14 March 2014

giving notice of defendant's intention to call a number of experts. Various expert reports were served on the defendant from 29 May 2014 to 24 July 2014. A notice of intention to amend was served on the defendant on the 25 July 2014 which had the effect of increasing claim for past loss of earnings. A further notice to amend was served on the defendant relating to past medical expenses on the 31 July 2014. On the date the matter was set down for trial defendant indicated that a postponement of the matter will be sought which substantive application was moved yesterday the 18 August 2014.

- [2] Defendant's basis for seeking a postponement of the matter is that upon having regard to all the expert reports, it intends to appoint a Clinical Psychologist as well as an Industrial Psychologist to investigate the severity of plaintiff's condition and her earning potential. On the basis that if the matter were to proceed at this stage, the defendant will be unduly prejudiced by not being prepared for the trial having not investigated plaintiff's claim in respect of loss of earnings and earning potential which forms 80% of her claim.
- [3] The application is opposed on the basis that from the time summonses were served on the defendant in January of 2012, defendant has been aware of the heads under which the plaintiff was suing for: Over R1 000.000.00 for past loss of earnings, over R2 000.000.00 in respect of future loss of earning capacity, and did nothing to investigate those claims. The notices defendant is complaining of were all filed timeously having regard to Rule 36 (9).
- [4] The reason cited for defendant not to embark on an investigation of plaintiff's claims under the mentioned headings is that they were bald assertions without any evidence to support them. And that to do so would have been a waste of tax payers' monies. It is however not clear what steps defendant took to investigate plaintiff's claim after they were served with Rule 36 (9) (a) notice and the subsequently with the reports in terms of Rule 36 (9) (b). This, after the defendant failed to investigate plaintiff's initial claim (before receiving the reports). I do not understand why it would not have been prudent to investigate those claims seeing that even at that stage huge sums of money which would have been paid from public coffers, were being claimed. In my view that would have been the reason for investigating the claims.
- [5] It is however common cause that plaintiff amended her particulars of claim in part to align the amounts claimed with expert reports, partly to include certain of her expenses that are alleged to have been paid by her business in the sum of R120 000.00 per annum. The notice of intention to amend is dated the 1 August 2013, which amendments were perfected on the 14 August 2014 – the date of the trial. There being no opposition to the proposed amendment. The defendant was aware of the proposed amendments some two weeks before the trial date.

- [6] Principles governing application for postponements are trite. As rightly pointed out by Mr Paterson for the defendant, they were restated by Plasket J in *Persadh and Another v General Motors South Africa (Pty) Ltd* 2006 (1) SA as follows:

“The following principles apply when a party seeks a postponement. First, as that party seeks an indulgence he or she must show good cause for the interference with his or her opponent’s procedural right to proceed and with the general interest of justice in having the matter finalised; secondly, the court is entrusted with a discretion as to whether to grant or refuse the indulgence; thirdly, a court should be slow to refuse a postponement where the reasons for the applicant’s inability to proceed has been fully explained, where it is not a delaying tactic where justice demands that a party should have further time for presenting his or her case; fourthly; the prejudice that the parties may or may not suffer must be considered; and. Fifthly, the usual rule is that the party who is responsible for the postponement must pay the wasted costs.”

- [7] It is clear from what I have stated earlier that the plaintiff cannot be faulted for complying with Rule 36 (9) when she did. As pointed out in *Klue and Another v Provincial Administration*, Cape 1966 (2) SA 561 (E) at 563 A – B and approved in *Doyle v SentraBoer (Co-operative) Ltd* 1993 (3) SA at page 183 – namely that:

“I do not think that Rule 36(9)(b) was designed to encourage one party to wait until ten days before a trial in order to satisfy himself that his opponent does not intend to call expert evidence, before himself deciding whether or not to call expert evidence on a material issue on the pleadings. Such an approach would in many cases result in a situation of stalemate and would in my view be contrary to the spirit of the Rule.”

- [8] There is no doubt that plaintiff will be prejudiced and unconvinced by the delay in the finalisation of the matter which is due to the inaction on the part of the defendant. It is however trite that a court must reach a decision having had regard to all the evidence. If a court were to decide this matter without the benefit of the evidence of the defendant the defendant will be prejudiced. In the process or consequently the tax payer will be prejudiced by having amounts that the propriety or reasonableness thereof has not been investigated. In my view therefore, it will be in the interest of justice to afford the defendant an opportunity to prepare for the trial by investigating plaintiff’s claims. I however do not think that it will be appropriate to order that the matter be postponed sine die as defendant prays. It would be desirable and in the interest of justice that in future prompt action is taken by the defendant to avoid delays in determination of claims against the Road Accident Fund.

- [9] Accordingly the following order will issue:

- (a) The trial be and is hereby postponed to a date to be arranged with the Registrar.
- (b) The Registrar is requested to give preference to this matter in allocating a new date of trial.

- (c) Defendant is ordered to pay costs that have been occasioned by the postponement, such costs to include qualifying expenses of experts in respect of Rule 36 (9) (a) notices served on the defendant.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 18 August 2014

Date Reserved : 18 August 2014

Date Delivered : 19 August 2014

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Prepared on 9 October 2026 · Esheria