

SOUTH AFRICA / JUDGMENT

Soko v Road Accident Fund (22873/2018)

[2025] ZAGPPHC 456 (9 May 2025)

[2025] ZAGPPHC 456**COURT**

North Gauteng High Court, Pretoria

BEFORE

Flatela

CASE / FILE NUMBER

22873/2018

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Policy**REPUBLIC****OF SOUTH AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG DIVISION****PRETORIA****CASE NO: 22873/2018****1.****REPORTABLE: NO****2.****OF INTEREST TO OTHER JUDGES: NO****3.****REVISED: NO****DATE:**

9 MAY 2025

SIGNATURE

OF JUDGE:

In the matter between: JULY
SOKO
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT
ORDER
1.
The defendant is absolved from the instance.
2.
There is no order as to costs

JUDGEMENT

FLATELA J

- [2] The plaintiff was injured in a motor vehicle accident on 5 March 2006. On 26 March 2018, the Plaintiff instituted an action against the Road Accident Fund (the Fund) for compensation for damages suffered by him as a result of the injuries sustained by him as contemplated by section 17 (1)(b) of the Road Accident Fund Act.
- [3] The matter came before me on trial roll for determination of liability and quantum. Despite filing a plea defending the action, the Defendant has not participated in these proceedings. Counsel for the plaintiff has indicated that the plaintiff's attorneys made several requests for the defendant to participate, but the Fund has failed to respond or take part in the process. The matter is therefore unopposed.
- [4] I proceeded to hear the plaintiff's submissions on both liability and quantum, including the general damages, past and future loss of income, and future medical expenses.
- [5] The Plaintiff appointed medico-legal experts to quantify his claim, and their reports and affidavits had been filed. The Applicant made an application for the reports filed by the experts to be admitted as evidence by way of affidavit in terms of Rule 38(2), and I granted the application. The defendant did not appoint any experts.

The plaintiff pleaded case.

- [6] The plaintiff pleaded that on 5 March 2006 at the intersection of Parkwood (N17) and Carolina Road in Chrissiesmeer, a collision

occurred between a motor vehicle with registration number S[...], driven by one SB Suliman (the insured driver), and a motor vehicle

with registration number B[...], driven by the Plaintiff.

- [7] The plaintiff asserts that the accident was caused by the negligence of the insured driver and pleaded general grounds for negligence, which included the insured driver's failure to keep a proper lookout, excessive speed given the circumstances, failure to apply the brakes at all or timeously, inability to avoid the accident, and lack of control over the insured vehicle. Additionally, she made a right-hand turn in front of an oncoming vehicle when it was not safe to do so.
- [8] In its plea, the defendant denied the claim of negligence of the insured driver; it pleaded that the accident was caused by the plaintiff's negligence. Alternatively, should the court determine that the insured driver was indeed negligent, the defendant argued that the accident was nonetheless caused by the plaintiff's contributory negligence.
- [9] The plaintiff asserts that the defendant is liable to compensate him for damages he suffered in the following terms:
- i. Past. loss of earnings R 13,336
 - ii. Future loss of earnings R 615 394
 - iii. General damages R1 200 000- R1 500 000

Ad Merits

The Plaintiff's evidence

Mr. July Soko

- [10] Mr. Soko testified that on 5 March 2006, he was driving his car, a Sentra with registration number B[...]. He was travelling with a passenger from Ermelo. He was traveling on the N17 Carolina Road in Chrissiesmeer when he noticed a vehicle approaching from the opposite direction, its headlights were on, and the vehicle flashed its lights before turning left into his lane. The plaintiff couldn't see clearly; the incoming vehicle, driven by an insured driver, subsequently collided with his car, which was in its correct lane. The plaintiff testified that he sustained serious injuries and was trapped inside his vehicle when police officials arrived at the scene. He testified that a funeral undertaker's vehicle also arrived, and the undertakers mistakenly believed he was deceased and intended to transport him to the mortuary. However, the police informed the undertakers that the plaintiff was, in fact, still alive. The plaintiff recounted losing consciousness and subsequently waking up at Carolina Hospital, where he received medical treatment and remained admitted for three months before being discharged. He returned to work in August 2006.
- [11] In reference to his employment history, the plaintiff indicated that he was previously employed by York Timbers and held the position of supervisor at Global Timber at the time of the incident. He

started his employment with York Timbers in 1989 until his retrenchment in September 2009, during which he earned approximately

R8000 per month. Following his retrenchment, he was self-employed as a vendor of fruit and vegetables until June 2021. At that point, he was reinstated at York Timbers as stock controller and production capturer. He continues to work in those positions to date.

[12] The plaintiff testified further that as a result of the accident, he suffers from migraine headaches and experiences pain on the right side of his cervical spine, back pain, upper legs, arm discomfort, left knee pain and lower legs. He takes several tablets for pain.

[13] The Plaintiff testified that there was nothing he could do to avoid the accident.

[14] In relation to the lodgement of the claim to the Fund, the plaintiff testified that a friend assisted him by bringing the necessary RAF forms for completion. Subsequently, his friend lodged the claim to the RAF.

[15] That concluded the plaintiff's case on the merits.

Compliance with the requirements of the Act

[16] In the particulars of claim, the plaintiff contended that he met all the requirements outlined in Article 24 of the Act; alternatively, he argues that, under Section 24(5), he is deemed to have complied with these requirements. Additionally, he pointed out that the period specified in Section 24(6) has elapsed since his compliance.

[17] From the outset, I raised concerns regarding the validity of the claim regarding the fact that in their particulars of claim, there is no allegation that the plaintiff had lodged the claim with the RAF, and there were also no lodgement forms and supporting documents in the trial bundle. The plaintiff's counsel submitted from the bar that the plaintiff had lodged the claim directly with the Road Accident Fund (RAF) and that all documentation relating to the

lodgement of the plaintiff's claim is currently with the Fund. Counsel for the Plaintiff further submitted that the plaintiff's

legal representatives have made several requests for copies of the claim from the Fund, and their requests have been ignored. Lastly,

the Plaintiff's counsel submitted further that the issue of liability is not in dispute between the parties. The Fund had not objected to the plaintiff's assertion that the plaintiff met all the requirements of Article 24(5). They noted the assertion in their plea. Alternatively, it is deemed to have complied with these requirements. Additionally, he pointed out that the period specified in Section 24(6) has elapsed since the plaintiff lodged the claim.

[18] The plaintiff's claim falls within the ambit of the provisions of section 17(1)(a) of the Road Accident Fund Act 56 of 1996 ('the Act'), section 24 of the Act.

[19] As the plaintiff asserts that he has fulfilled the obligations set forth in section 24(5) of the Act, I find it prudent to deal first with the statutory requirements concerning the submission of a valid claim.

[20] Section 17 (1) provides:

Section 17 (1) provides:

'(1) The Fund or an agent shall –

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver 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 of or any bodily injury to any other person, caused by 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.

Has the plaintiff submitted a valid claim against the RAF?

[21] In *Mautla and Others v the Road Accident Fund*[1] The Full Bench decision of this division held –

“The date of delivery of the claim is the essential first step for the enforcement of any rights in terms of the Act. This first step is crucial for claimants because it determines whether or not their claim in the first instance has been submitted timely. There is no provision in the Act that permits the RAF to refuse to accept the delivery of a claim or to refuse to acknowledge receipt of that claim. Had the legislature contemplated such a situation, it would have provided for it specifically.”

[22] Dealing with the requirements for the submission of a valid claim, in *Mautla* (Supra), the court held as follows:

THE REQUIREMENTS FOR THE SUBMISSION OF A CLAIM

*“On the requirements for the submission of a valid claim, the Supreme Court of Appeal in *Pithey v Road Accident Fund*[2] held:*

“[16] Since the claim form and the documents submitted to the Fund are pivotal to a decision in this matter, it is necessary to consider the statutory provisions pertaining thereto. First, the relevant parts of s 24 read as follows:

'(1) A claim for compensation and accompanying medical report under section 17(1) shall –

- (a) be set out in the prescribed form, which shall be completed in all its particulars

- (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

...

- (4)
- (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.
- (b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words 'not applicable' shall be inserted.
- (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.'

[16] Second, s 19 excludes liability in the event of a failure to provide information in a particular form. Section 19(f) provides that if the third party refuses or fails —

'(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out or

(ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof' — the Fund shall not be obliged to compensate the third party in terms of s 17 for any loss or damage. The affidavit and copies of statements and the documents mentioned in s 19(f) are required to provide details of how the accident giving rise to the claim arose. It is abundantly clear that the purpose of this provision is, inter alia, to furnish the Fund with sufficient information to enable it to investigate the claim and determine whether or not it is legitimate.

[17] I pause to say something about the primary purpose and objectives of the Act. It has long been recognised in judgments of this and other courts that the Act and its predecessors represent 'social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle'. Accordingly, in interpreting the provisions of the Act, courts are enjoined to bear this factor uppermost in their minds and to give effect to the laudable objectives of the Act. But, as the full court correctly pointed out, the Fund, which relies entirely on the fiscus for its funding, should be protected against illegitimate and fraudulent claims.

[18] It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in *SA Eagle Insurance Co Ltd v Pretorius* reiterated that the test for substantial compliance is an objective one.

[19] In *Multilateral Motor Vehicle Accidents Fund v Radebe* [1995] ZASCA 80; 1996 (2) SA 145 (A) at 152E – I Nestadt JA said:

'It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand, the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation. . . . These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant.'

Although these remarks were made in a different context, they articulate, in my view, the purpose that the claim form is intended to serve.” (footnotes omitted)

[31] It must be emphasized at the outset that the submission or delivery of a claim is a precursor to the RAF’s “investigation”

obligations. The Act specifically provides in section 24(5) that after receiving the claim, the RAF then has 60 days within which to object to the validity of the claim. If there is no objection to the validity of the claim, this does not mean that an otherwise invalid claim is then deemed to be valid. Section 24 however deals only with procedural matters and the deeming provision does not apply to the substantive requirements. This is well established in our law.[3]

[22] I now turn to consider the plaintiff’s evidence and submissions

[23] Concerning the lodgement of a claim to the Road Accident Fund (RAF), the plaintiff testified that a friend assisted him in completing the RAF lodgement forms and that it was this friend who subsequently lodged the claim to the RAF. This was the evidence presented by the plaintiff.

[24] *Moshoana J Dealing with the sufficiency of evidence in Madlala v Road Accident Fund*[4] held as follows :

Section 16 of the Civil Proceedings Evidence Act (Evidence Act)[5] provides as follows:

Sufficiency of Evidence

“16 Judgment may be given in any civil proceedings on the evidence of any single competent and credible witness.”

[13] Credible evidence is evidence that is likely to be believed. A credible witness is a witness who is believed to be truthful. It remains the duty of this Court to assess the evidence of the plaintiff in order to weigh the probabilities.[6]

[25] It is not clear from the pleadings and the plaintiff's evidence whether a claim was lodged with the defendant and whether it was lodged in a timely manner. The plaintiff presented evidence regarding the lodgement of the claim as a single witness; however, he was not the person who submitted the claim directly to the RAF, and his friend did not corroborate his evidence.

[26] The plaintiff presented insufficient evidence to grant a judgment.

[27] Counsel for the plaintiff argued on behalf of the plaintiff that the failure by the fund to object to the allegation that the plaintiff has complied with section 24(5) should render the claim valid. In

Thugwana v RAF, in a matter dealing with the compliance of section 24(5) read with regulation (2) (1) (c) of the Act the SCA held that:

“This construction of s 24(5) read with regulation 2(1)(c) is, in my view, incorrect. Regulation 2(1)(c) prescribes a substantive requirement to found liability (the submission of an affidavit to the police), and non-compliance therewith is fatal. On the other hand, the purpose of s 24 is to ensure that, before the onset of litigation, sufficient particulars about the claim are placed before the Fund to enable it, timeously, to make a decision whether it will resist or settle the claim. The section has nothing to do with issues not specified therein. Simply put, it is incapable of breathing life into a claim that failed to arise because of non-compliance with the substantive requirement found in regulation 2(1)(c).”

[28] The plaintiff's counsel further argued that the RAF refused to provide the plaintiff's attorneys with the RAF file. If a party refuses to disclose documents believed to be in their possession, the plaintiff has recourse.

[29] In the results

FLATELA LULEKA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the handed down is deemed to be 10h00 on 9 May 2025

Counsel for Plaintiff

: Adv M Tromp Instructed by:

: P A S ATTORNEYS, Ermelo Date of the Hearing

: 21 October 2024 Date of the Judgement : 9 May 2025

[1] Mautla and Others v the Road Accident Fund (29459/2021)

[2023] ZAGPPHC 1843 at para 64

[2] 2014

(4) SA 112 (SCA) at para [15] – [19]. Para [19] in particular approved in Busuku supra.

[3] Thugwana v Road Accident Fund 2006

(2) SA 616 (SCA) at para [9] and the reference to Krishke v Road Accident Fund 2004 (4) SA 358 (W).

[4] (65311/17)[2025 ZAGPPHC 153 (14 February 2024

[5] Act 25 of 1965 as amended.

[6] See Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and others 2003 (1) SA 11 (SCA) and Santam Bpk v Biddulph (105/2003) ZASCA (16 February 2004).

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