

SOUTH AFRICA / JUDGMENT

Tsham v Road Accident Fund (622/2023)

[2024] ZAECQBHC 76 (10 December 2024)

[2024] ZAECQBHC 76**COURT**

Eastern Cape High Court, Gqeberha

BEFORE

J W Eksteen

CASE / FILE NUMBER

622/2023

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****EASTERN CAPE DIVISION,****GQEBERHA****NOT****REPORTABLE****Case No.: 622/2023**

In the matter between:

MZIWAKHE
EMMANUEL
TSHAM
Plaintiff
and
ROAD
ACCIDENT
FUND
Defendant

JUDGMENT

EKSTEEN J:

[1] Mr Tsham, the plaintiff, was severely injured in a motor vehicle accident that occurred on 9 November 2020 in Gqeberha, Eastern Cape. As a result of the injuries which he sustained in the accident he instituted action for damages against the defendant in terms of the Road Accident Fund Act[1] (the Act). The defendant entered an appearance to defend and in its plea it denied any knowledge of a collision and the consequences

thereof and it denied (in its amended plea) that Mr Tsham had complied with the provisions of the Act. This judgment relates

only to the question of the compliance with the Act.

[2] Although the ‘merits’ of the claim were in dispute on the pleadings, before the commencement of the trial, the defendant

admitted the locus standi of Mr Tsham and acknowledged that, if it is found that Mr Tsham has complied with the Act, it is liable to compensate him for 100% of such damages as he is able to prove that he has suffered arising from the injuries sustained in the accident. They further agreed to separate the question of compliance with the Act from the remaining issues in dispute. [2]

[3] The parties have agreed on the admitted facts that underlie the argument. It was common ground that Mr Tsham submitted an RAF 1 form to the defendant under the cover of a letter sent by his attorneys, and dated 21 September 2022, by registered mail on 29 September 2022. The RAF 1 form and the documents annexed thereto comprise 68 pages and was admitted into evidence by

agreement. It is not suggested that the form was not completed in every material respect.

[4] Mr Tsham issued summons, that was served on the defendant on 17 March 2023, in which he alleged that he had complied with all the requirements of the Act. Thereafter, the defendant entered an appearance to defend on 25 April 2023 and proceeded to file its plea on 17 May 2023. In its initial plea the defendant said that it had no knowledge of Mr Tsham’s compliance with the provisions of the Act. However, in October 2024, more than a year later, the defendant filed an amended plea in which it denied that Mr Tsham had complied with the requirements of the Act, and it annexed to its plea a letter dated 19 June 2024. The letter constitutes the sole basis for the denial of compliance. As the plea does not set out the basis for the denial it is instructive to set out the material portion of the letter in full. It recorded:

‘Dear Sir/Madam

1. To administer claims effectively and efficiently the Road Accident Fund (RAF), pursuant to section 4(1)(a) of the RAF Act, 1996 (the Act) published the Stipulated Terms and Conditions Upon Which Claims For Compensation Shall Be Administered (the Terms and Conditions) in Board Notice 271 of 2022 which was published in Government Gazette No. 46322 on 6 May 2022. The Terms and Conditions, read with section 24 of the Act, stipulate what documents must accompany the claim documentation when submitting a claim for compensation.
2. We have pre-assessed the documentation presented / posted / emailed by you on Tuesday, October 18, 2022 for the following products General Damages, Loss of Earnings, Past Medical Expense, Future Medical Expense, for compliance with section 24 of the Act and the Terms and Conditions. We advise that the documents submitted do not meet the requirement(s) for a substantially compliant and valid claim, as follows:
 1. Medical reports or documentation establishing or substantiating claimants temporary/permanent disability and the loss of earnings claimed (Medico Legal reports)
 2. An itemised tax invoice for a registered medical provider/or hospital for past medical expenses
 3. Proof of payment of medical expenses
3. The RAF hereby objects to the validity of the claim submitted by you in accordance with paragraph 25(4) of the Act for the reasons set out in paragraph 2 above.
4. Consequently, we do not accept the documentation presented/posted/emailed by you as a valid claim for purposes of lodgment in terms of the Act and accordingly return the documents herewith.
5. ...'
- [5] The amended plea elicited a replication in which Mr Tsham contended that it was not open to the defendant to rely on the provisions of the Board Notice 271 of 2022 which had been declared to be unlawful and had been set aside by a full court of the Gauteng Division. He contended further that the defendant was precluded from objecting to the valid lodgment of the claim, on the grounds advanced, after the lapse of sixty days from the date of receipt of the claim.
- [6] Notwithstanding the replication the defendant persisted in its denial of compliance with the Act. In Legal Practitioner's Indemnity Insurance[3] a full court of the Gauteng Division declared Board Notice 271 of 2022 to be unlawful. In consequence thereof, the RAF 1 form prescribed by the Minister of Transport in terms of s 26 of the Act pursuant to the notice was also declared to be unlawful. Both were reviewed and set aside. I am advised by Ms Swartz, on behalf of the defendant, that the judgment is not appealed. I have considered the judgment and I am in agreement with the

reasons

advanced and the conclusions reached by the full court. Ms Swartz was unable to advance any submission to the contrary. It follows that the defendant's reliance on the Board Notice 271 of 2022 is ill-founded and must be dismissed.

[7] I turn to s 24(5). The section provides:

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

[8] As I have said the purported objection came more than a year after the issue of summons and more than 3½ years after the accident. The effect of s 24(5) is that, even where the content of the RAF 1 form, or the documentation annexed thereto, did not fully comply with the Act, the defendant is required to give notice within sixty days of the lodgment of the form of their objection. If no notice of objection is received within the sixty day period the effect thereof is to clothe an otherwise invalid lodgment with legal validity.[4] It follows that the objections raised in June 2024 to Mr Tsham's alleged compliance with the provisions of s 24 of the Act, cannot be sustained either.

[9] In the result, I make the following order:

1. The defendant's defence of non-compliance by the plaintiff with the requirements of the Road Accident Fund Act, 56 of 1996, is dismissed, with costs.
2. The defendant shall be liable for 100% of such damages as plaintiff is able to prove arising out of injuries sustained by him in the collision in which he was involved on 9 November 2020.
3. All further aspects of the action are postponed, sine die.
4. Defendant shall pay the plaintiff's costs of suit, together with VAT thereon, to date, in respect of the trial relating to the merits of the action, on a party and party scale, as taxed. Such costs are to include:
 - 4.1 The costs of photographs;
 - 4.2 The costs of preparation of heads of argument in respect of the argument pertaining to compliance;
 - 4.3 The costs of plaintiff's counsel which are to be taxed according to Scale C contemplated in Rule 69(7). Such costs to include one day's trial fee.
5. Interest shall accrue on the costs at the legal rate of 11,75% per annum, calculated from a date 14 days after the date of taxation, until the date of payment.

6. All payments in terms of paragraphs 4 and 5 above, are to be paid into plaintiff's attorneys banking account being:

GOLDBERG & DE VILLIERS INC ATTORNEYS

BANK:

ABSA

ACCOUNT NO: 7[...]

BRANCH: Govan Mbeki Avenue

BRANCH CODE: 630616

REF:

MAT 17453

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv L Schubart SC

Instructed by: Goldberg & De Villiers Inc

GQEBERHA

For Defendant: Ms R Swartz

Instructed by: State Attorney

Date Heard: 2 December 2024

Date Delivered: 10 December 2024

[1] Act 56 of 1996.

[2] In terms of Rule 33(4) of the Uniform Rules of Court.

[3] Legal Practitioner's Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others 2024

(4) SA 594 (GP).

[4] Road Accident Fund v Busuku 2023

(4) SA 504 (SCA) at para 20.

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Prepared on 11 October 2026 · Esheria