

SOUTH AFRICA / JUDGMENT

Vassiliou v Road Accident Fund (820/2022) [2024] ZAGPPHC 875 (24 May 2024) [2024] ZAGPPHC 875

COURT

North Gauteng High Court, Pretoria

BEFORE

Mnisi

CASE / FILE NUMBER

820/2022

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO:820/2022

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE:

24 May 2024

SIGNATURE

In

the matter between:

CONSTANTINE

VASSILIOU

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 24 May 2024 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10h00 on 24 May 2024.

MNISI AJ

INTRODUCTION

- [1] The plaintiff has instituted action against the defendant in terms of the provisions of the Road Accident Fund Act, 56 of 1996 ('the RAF Act'), claiming payment for damages he allegedly suffered as a result of injuries he sustained in a motor vehicle collision on 8 October 2019.
- [2] The matter was before me on default basis in that the defendant failed to file any opposing papers. Although the matter was initially enrolled to be adjudicated on both merits and quantum, I ruled that it would be convenient to proceed on the issue of merits, with the issue of quantum deferred for later date. Accordingly the Court proceeded to hear evidence in respect of the issue of merits.
- [3] The only oral evidence led was from the plaintiff himself. There was also no oral evidence adduced by expert witnesses. The plaintiff also relied on their reports as well as their confirmatory affidavits which formed part of the record.

THE EVIDENCE

- [4] The plaintiff testified that on 8 October 2019, he was a passenger in a motor vehicle that collided with another vehicle in Brooklyn, Pretoria. The said vehicle was driven by a learner driver. At the time of the accident, Mr Vassiliou was employed as a Driving Instructor at the Olympic Academy of driving. He sustained neck and chest injuries as a result of the accident. However, Mr Vassiliou did not seek immediate medical attention as he did not feel severe pain symptoms at the time. He also attributed his failure to seek medical attention because he did not belong to a medical aid scheme. He relied on self-medication which he bought at the local pharmacy. As a consequence, he did not submit any medical records to the Fund in support of his claim. He further testified that the accident has limited his ability to work. Due to heavy work load, a no work no pay principle and his precarious financial condition meant that he could not take a half-day or a full day to visit a doctor as it would have resulted in a significant loss of wages or salary.

PLAINTIFF'S

SUBMISSIONS

- [5] It was submitted by the plaintiff's counsel in his heads of argument that I should be mindful of the doctrine that says you must "take your victim as you find them" and that Mr Vassiliou was a truthful and credible witness.
- [6] It was further contended that section 24 of the RAF Act provides that any claim form, which includes the RAF 1 form, which is not completed in all its particulars shall not be acceptable as a claim under the Act. Nevertheless, whatever shortcomings there may be in a claim form duly delivered, the claim shall be deemed to be valid in law in all respects unless the Fund, within 60 days from the date upon which the claim was delivered, objects to the validity thereof.
- [7] In this regard, Counsel for the plaintiff referred this Court to the remarks of Galgut AJA in the case of *Constantia Insurance Co Ltd v Nonhamba* 1986 (3) SA 27 (A) at 39G-H, with reference to the claim form in which it was stated that:

"As we have seen from the Commercial Insurance Union case supra at 157 [Commercial Union Insurance Co of South Africa Ltd v Clarke 1972 (3) SA 508 (A) at 517E] and the Gcanga case supra at 865 [AA Mutual Insurance Association Ltd v Gcanga 1980 (1) SA 858 (A)] the purpose of the form is to enable the insurance to "enquire into the claim" and to investigate it. It is designed to "invite, guide and facilitate" such investigation. It follows, in my view, that, if an insurance company is given sufficient information to enable it to make the necessary enquiries in order to decide whether "to resist the claim or settle or compromise it before any costs of litigation are incurred", it should not thereafter be allowed to rely on its failure to make such enquiries".

- [8] The plaintiff further contended that the medical report is part of the RAF 1 form, and that it is a report that accompanies the claim, not the claim itself.

APPLICABLE LEGAL PRINCIPLES

- [9] Section 17 of the Road Accident Fund Act provides:

'17. Liability of Fund and Agents –(1) The Fund or an agent shall-

- (a) subject to this Act, in the case of a claim for compensation under this section arising 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 the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that 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 (1A) and shall be paid by way of a lump sum.'

[10] It is trite that the RAF (the defendant herein) is obliged in terms of the Act to compensate for damages arising from bodily injury 'caused by or arising from 'the driving of a motor vehicle. It follows that the plaintiff bears the onus to prove that there is a casual link between his injuries and the negligent driving of the motor vehicle that resulted in a collision.

[11] It is also trite that in civil matters, the duty rests upon the plaintiff to adduce evidence to persuade the Court to find in his favour. The distinction between the burden of proof and evidentiary burden has been explained by Corbett JA in *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977(3) SA 534 (A) at 548 A -C as follows:

"As was pointed out by DAVIS, AJA, in Pillay v Krishnaa and Another, 1946 AD 946 at pp.952 – 3, the word onus has often been used to denote, inter alia, two distinct concepts: (i) the duty which is cast

on a particular litigant, in order to be successful, of finally satisfying the Court that he is entitled to succeed on his claim or defence, as the case may be; and (ii) the duty cast upon a litigant to adduce evidence in order to combat a prima facie case made by his opponent. Only the first of the these concepts represents onus in its true and original sense. In *Brand v Minister of Justice and Another*, 1959 (4) SA 712 (AD) at p.715, OGILVIE THOMPSON, JA, called it "the overall onus." In this sense the onus can never shift from the party upon whom it originally rested. The second concept may be termed, in order to avoid confusion, the burden of adducing evidence

in rebuttal ("weerlegginglas"). This may shift or be transferred in the course of the case, depending upon the measure of proof furnished by the one party or the other. (See also *Tregea and Another v Godart and Another*, 1939 AD 16 at p. 28; *Marine and Trade Insurance Co. Ltd, v Van C der Schyff*, 1972 (1) SA 26 (AD) at pp.37-9.)".

APPLYING THE PRINCIPLES TO THE PRESENT CASE

[12] In applying the above principles to the facts of the present matter, the following is of relevance: the evidence before me, in particular the oral testimony of Mr Vassiliou in relation to how the alleged collision occurred is not only that of a single witness, but also riddled with contradictions and improbabilities. It is actually not even clear whether he was a driver or a passenger in the vehicle. I will point out aspects of contradictions later in this

judgment.

[13] It is hard and improbable to accept his testimony to the effect that he suffered neck and chest pains after the accident, yet he did not consult a medical Doctor. It is more than plain from the above authorities that the plaintiff should prove his case on the balance of probabilities the casual link between the injuries which he sustained, and the negligent driving of the motor vehicle for the Fund to become liable. To my mind, it is a matter of serious concern that there are no medical records, nor doctor's notes to corroborate that the

plaintiff indeed was treated for injuries sustained in the accident. The plaintiff upon whom the evidentiary burden lies, did not bother to adduce the relevant material evidence to support that he was injured in an accident.

- [14] Section 24(2)(a) of the RAF Act provides that the report (“medical report or RAF1”) shall be completed by the medical practitioner who treated the injures or deceased person for the bodily injuries sustained by him/her in the accident from which the claim arises. On the facts before me, Mr Vassiliou was not treated by a medical practitioner despite having suffered the alleged injuries.
- [15] It is also apparent from the RAF1 completed by a certain Dr J.J Schutte that he only consulted with Mr Vassiliou on 26 May 2020, some more than seven months after the alleged accident has occurred. It is even more worrying that the doctor recorded that he ‘completed with history and examination of the patient himself in person a source’.[1] Moreover, in terms of the RAF regulations, the medical practitioner who examines the patient after the accident must furnish the ‘ICD 10 codes’ applicable to the emergency medical treatment provided to the patient and motivate why the treatment is viewed as emergency medical treatment. In this case Dr Schutte recorded the treatment plan as ‘injury cervical spine’ without providing any ICD codes. It is axiomatic that there was no medical evidence before Dr Schutte and that he relied on the plaintiff to complete the RAF1 form.
- [16] I also noted the report of the Orthopaedic, Dr M.B Deacon who apparently examined the plaintiff on the 26th of October 2023 and it was recorded that the plaintiff sustained a chest injury with residual complaints of chest pain and shortness of breath. Dr Deacon further recorded that ‘the above symptoms are as given by the patient.’ Nowhere in Dr Deacon’s report or that of Dr Schutte is it recorded that there is a causal link between the injuries and the accident which allegedly took place on 8 October 2019.
- [17] The next question, is that of credibility. The plaintiff’s version regarding the accident and the manner in which it transpired was not corroborated by any witness. The accident report filed before this court also shows that the report was filed by the plaintiff himself. Moreover, the Orthopaedic recorded that: ‘he claims that he went to the general practitioner to consult who prescribed medication for his neck and chest pains.’
- [18] It was further recorded that he never went to hospital for X – rays. This directly contradict the plaintiff’s evidence in chief in which he testified that he never consulted a doctor due to financial constraints. Moreover, he repeated this averment in his supplementary affidavit dated 19 January 2024.
- [19] It is further worth noting that in the aforesaid supplementary affidavit, the plaintiff describes himself as the driver of the motor vehicle which was involved in the accident. This contradicts his own evidence where he described himself as a passenger during the accident. This clearly impact negatively on his credibility.

CONCLUSION

[20] In National Employees General Insurance v Jagers[2], Eksteen AJP (as he was known then) had this to say about onus of proof:

“It seems to me, with respect, that in any civil case , as in any criminal case, the onus can ordinarily be discharged by adducing credible evidence to support the evidence the case of the party on whom the onus rests...”

[21] Having weighed his versions against the probabilities and improbabilities, I have come to the inescapable conclusion that the plaintiff in the present case has failed to discharge the onus that rested upon him of proving that the defendant is liable to compensate him for his loss or damages as contemplated in section 17 of the Act. As a consequence, I am not persuaded that the injuries sustained by the deceased arose from the collision caused by the negligent driving of the motor vehicle. That being so, the following order is made:

Order

1. The plaintiff’s claim is dismissed with costs.

J Mnisi

Acting Judge of the High Court

Heard On: 22 January 2024 Decided On: 24 May 2024 Counsel for Plaintiff: Adv C Cross Instructed by: VZLR Attorneys Counsel for Defendant: Unknown

[1] See Caselines, P. 018-39.

[2] 1984 (4) SA 437 (E) 44D.

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