

SOUTH AFRICA / JUDGMENT

Van Wyk v Road Accident Fund (69459/2013) [2017] ZAGPPHC 50 (6 February 2017) [2017] ZAGPPHC 50

COURT

North Gauteng High Court, Pretoria

BEFORE

S.A.M. Baqwa

CASE / FILE NUMBER

69459/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

06/02/2017

CASE

NO: 69459/2013

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

R

R VAN

WYK

Applicant

and

ROAD

ACCIDENT

FUND

First Respondent

JUDGMENT

Baqwa J

- [1] In this application the applicant seeks payment of his past medical expenses together with costs relating to a motor vehicle accident which occurred on 15 December 2012.
- [2] The respondent opposes the application and its grounds for opposition can be grouped into three, namely, a special plea of *lis pendens*; secondly that the vouchers supporting the claim do not relate to the injuries sustained by the applicant in the accident and that the amount claimed by the applicant constitutes an illiquid damages claim which ought not to be claimed by way of motion court proceedings.

Background

- [3] It is common cause that the applicant was involved in a motor vehicle accident on 15 December 2012 and that he sustained injuries which are confirmed by a medico-legal report of Dr Oelofse.
- [4] It is further common cause that the applicant instituted action against the respondent under case number 69459/2013.
- [5] The action was settled on 28 October 2015 except for the issue of the applicant's past medical and hospital expenses which was postponed *sine die*.
- [6] It is trite that the respondent is legally mandated to reasonably compensate a third party for the loss or damage wrongfully caused through driving of the motor vehicle. It is equally trite that such loss would include past medical and hospital expenses. This is provided for in section 17 (1) and (5) of Act 56 of 1996.

Discussion of Points in Dispute**Lis Pendens**

- [7] The requirements for *lis pendens* are:

7.1 Pending litigation

7.2 Between the same parties

7.3 Based on the same cause of action

7.4 Based on the same subject matter

Upon reading the documents filed it is quite apparent that the above requirements are met in the present application. The Court Order on 28 October postponed the issue of damages for past medical expenses sine die. Ordinarily one would expect the plaintiff to set the matter down for a hearing of the uncompleted part of the trial. It is not quite clear to me why the applicant/plaintiff has chosen the motion court route.

[8] Further, a claim for illiquid damages ought to be brought through action proceedings. This point is driven home in numerous decisions of our courts. Thus in *Room Hire (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949

(3) SA 1155 (T) at 1161 Murray A J. P. stated the law in this regard as follows:

"There are on the other hand certain classes of case (the instances given by Dowling, J., are matrimonial causes and illiquid claims for damages) in which motion proceedings are not permissible at all. But between these two extremes there is an area in which (as I see the position) according to recognised practice a choice between motion proceedings and trial action is given according to whether there is or is not an absence of a real dispute between the parties on any material question of fact."

[9] The present application is for an illiquid claim for damages in the main action for past medical expenses. There is a material dispute as to whether or not all the vouchers relate to the accident in question and in my view the applicant should have simply set the matter down for hearing of the medical expenses issue. The applicant ought to have realised from the very fact that medical expenses were excluded from the settlement agreement reached regarding other issues and that the defendant was contesting the claim for past medical expenses. It ought therefore to have been clear to him that viva voce evidence would have to be led regarding the vouchers.

[10] By proceeding to launch the application despite this set of facts the applicant was exposing himself to the risk alluded to in the *Room Hire* case (supra) where it was stated as follows (at p 1162):

"Or the application may even be dismissed with costs, particularly when the applicant should have realised when launching his application that a serious dispute of fact was bound to develop. It is certainly not proper that an applicant should commence proceedings by motion with knowledge of the probability of a protracted enquiry into disputed facts not capable of easy ascertainment, but in the hope of inducing the Court to apply Rule 9 to what is essentially the subject of an ordinary trial action."

[11] The past medical expenses issue is already before the trial court and this application merely duplicates an action which is already ripe for trial. A further possibility if the matter is dealt with by way of motion proceedings would be to deprive the respondent of its right to call witnesses to refute the evidence brought by the applicant.

[12] I hold the view as submitted by the respondent's counsel that the application is an abuse of court as the matter could have been allocated a date in the trial roll but the applicant chose to overburden the motion court roll with this matter.

[13] In the result I make the following order:

ORDER:

The application is dismissed with cost on an attorney and client scale.

S.A.M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Heard on:

06 February 2017

For the Applicant:

Advocate C.J.S. Kock

Instructed by:

Van Zyl Le Roux Incorporated

For the First Respondent:

Advocate A. M. Masombuka

Instructed by:

Matabane Incorporated

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