

SOUTH AFRICA / JUDGMENT

Vutlhari v Road Accident Fund (2692/2021) [2022] ZALMPPHC 31 (17 June 2022) [2022] ZALMPPHC 31

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago

CASE / FILE NUMBER

2692/2021

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Source record

REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
LIMPOPO DIVISION,
POLOKWANE
CASE
NO: 2692/2021
REPORTABLE: YES/NO
OF INTEREST TO OTHER
JUDGES: YES/NO
REVISED.
In

the matter between:

NUKERI
VUTLHARI
PLAINTIFF
And
ROAD
ACCIDENT FUND
DEFENDANT

JUDGEMENT**KGANYAGO J**

- [1] The plaintiff represented by NK Vukeya Inc instituted an action against the defendant claiming damages out of an alleged motor vehicle accident that occurred on 8th October 2019 along Mathibaskraal road, Nobody, Mankweng. According to the plaintiff's particulars of claim, at the time of the accident the plaintiff was still a minor child. When the accident occurred, the plaintiff was a passenger in a certain Toyota Quantum with the registration letters and numbers unknown to the plaintiff. The insured driver was also unknown to the plaintiff. The insured driver had lost control of the vehicle which rolled over which resulted in the plaintiff sustaining injuries of the left weber B ankle and left fibula fracture. The plaintiff alleges that as a result of the injuries she had sustained during the alleged accident, she had suffered damages in the amount of R4 350 000.00 which is for medical expenses, general damages and loss of income.
- [2] The defendant did not defend the action despite proper service of combined summons. That led to the plaintiff setting down the matter for the 23rd May 2022 for trial on both merits and quantum. On perusal of the court's file before the trial date, the presiding Judge found some discrepancies relating to the alleged accident. The first discrepancy was that according to the hospital records of Mankweng Hospital Emergency Unit, the plaintiff was brought to the hospital on 8th October 2019 at 18h07. The plaintiff when brought to the hospital she was complaining that she had missed a step and fell, and sustained an injury on the left ankle which was swollen. The doctor who had seen the plaintiff on the same date had recorded that the plaintiff had fell on that date, and was complaining about the pain in the left ankle that was swelling.
- [3] The second issue of concern was that the accident report shows that it was completed by one sergeant Mashiloane on 29th January 2020 at 16h55. Sgt Mashiloane had recorded that the accident occurred on 8th October 2019 at 12h30 at Mathibaskraal road. Where the sergeant was supposed to draft the sketch plan, he had recorded that the scene was not visited.
- [4] The 23rd May 2022 was the roll call day. On that day counsel for the plaintiff wanted the matter to be stood down to the settlement roll of Friday the 27th May 2022. When the court engaged counsel of the plaintiff to clarify these discrepancies that I have alluded to above, he was unable to answer and wanted the matter to be removed from the roll. The court refused to remove matter from the roll and instead allocated it for trial which was supposed to be the 24th May 2022. On 24th May 2022, counsel for the plaintiff submitted that the plaintiff who was in court the previous day was unable to come to court on that day as she was sick and the matter was postponed to 26th May

2022. On 26th May 2022, the court was informed that the plaintiff has not yet recovered and the matter was postponed to 15th June 2022 to enable the plaintiff to recover fully.
- [5] On 9th June 2022 the plaintiff's attorneys filed a notice of withdrawal as attorneys of record. Their notice of withdrawal as attorneys of record indicate that the plaintiff has terminated their mandate, and the termination of mandate was attached to the notice. However, the termination of mandate does not state who was taking over the file, or whether the plaintiff was going to represent herself. On 15th June 2022 the plaintiff or her representative failed to attend court.
- [6] It is trite that the Road Accident Fund (RAF) is obliged to compensate for bodily injuries caused by or arising from the driving of a motor vehicle. In the case at hand, on reading the pleadings and other documents filed of record, there are some question marks as to whether the injuries that the plaintiff had sustained were caused by or arising out of the driving of a motor vehicle. Currently RAF has terminated its panel of attorneys and most of their matters are undefended. That causes a huge burden to presiding officers as they have to ensure that everything was in accordance with justice before they make an order as these matters involves public funds.
- [6] In PM obo TM v Road Accident Fund[1] Weiner AJA said:
- "[34] The RAF is an organ of state, established in terms of s 2 of the Road Accident Fund Act 56 of 1996 (the Act). It is thus bound to adhere to the basic values and principles governing the public administration under our Constitution. Section 195(1) requires inter alia, that '[a] high standard of professional ethics must be promoted and maintained'; and that '[e]fficient, economic and effective use of resources must be promoted.*
- [35] In cases involving the disbursement of public funds, judicial scrutiny may be essential. A judge is enjoined to act in terms of s 173 of the Constitution to ensure that there is no abuse of the process. Judges of all divisions have expressed concern that in many RAF cases, there is an abuse of the process..."
- [7] The hospital records of the plaintiff show that the plaintiff sustained her injuries when she missed a step and fell. There is nowhere in the hospital records where it has been recorded that the injuries were as a result of a motor vehicle accident. The accident was also reported to the police three months later, and that accident report is no of assistance to court as it had failed to record most of the crucial facts. The only person who can be able to clarify the court on these issues is the plaintiff through her oral evidence.
- [6] The former attorneys of the plaintiff when they set this matter down for hearing on 23rd May 2022 was specifically for trial on both merits and quantum. When the court raised these issues with them in advance was for the purpose of not catching them by surprise, but to enable them to prepare in advance. However, instead of assisting the court, they are leaving the court in the lurk. The conduct of the former attorneys of the plaintiff after the court has raised these

issues

with them raises more questions than answers. The former attorneys of the plaintiff have engaged the services of seven expert witnesses whom their expert reports have been filed. To engage so many experts in my view did not come cheap. The alleged termination of mandate by the plaintiff is questionable as it does not state who will be taking over the file. Under normal circumstances a termination of mandate will state as who will be taking over the file. The termination also happened immediately after the court has raised some issues which goes into the heart of the validity of the claim. It seems the former attorneys of the plaintiff have realized the problems in this matter, and have taken the short cut of simply running away from it. It does not make sense to simply leave the matter like this after investing so much money in it.

[7] From the minimum evidence placed before court, there is a possibility that this is not a genuine claim and the plaintiff's injuries were not caused by or arising out of the driving of a motor vehicle. However, it is not the duty of this court to investigate whether the injuries were caused by or arising out of the driving of a motor vehicle. It is the function of RAF to ensure that claims lodged with it are properly investigated within the stipulated time period, and that genuine claims are settled. Courts are required to decide matters on facts placed before it. However, the courts will not turn a blind eye on questionable matters that comes before it without scrutinizing them, more especially where the matters are undefended. When dealing with public funds, a high degree of care is expected from the courts in order to avoid the abuse which may occur as a result of most RAF matters currently been undefended.

[8] In order not prejudice the plaintiff in case her claim is genuine, it will be in the best interest of justice if this matter is postponed sine die and RAF is ordered to investigate whether the plaintiff's claim is genuine.

[9] In the result I make the following order

9.1 Matter is postponed sine die.

9.2 RAF is ordered to investigate whether the plaintiff's claim is genuine and report to the Registrar of this Court within 60 days of this order of the outcome of their investigation.

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCES: For the Plaintiff : In default For the defendant : In default Date of hearing : 15th June 2022 Electronically circulated : 17th June 2022

[1] [2019] ZASCA 97 (18 June 2019) at paras 34 and 35

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