

SOUTH AFRICA / JUDGMENT

Zaina v Road Accident Fund (CC55528/2015) [2017] ZAGPPHC 592 (25 August 2017) [2017] ZAGPPHC 592

COURT

North Gauteng High Court, Pretoria

BEFORE

D Makhoba

CASE / FILE NUMBER

CC55528/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, PRETORIA

CASE

NO: CC 55528/2015

DATE:

08/09/2017

In

the matter between:

SAUL

ZAINA Plaintiff

and

ROAD

ACCIDENT

FUND Defendant

JUDGMENT

MAKHOBHA, AJ:

[1]. The Plaintiff, Saul Zaina, is a 37 year old male person. The Defendant is the Road Accident Fund, a juristic person established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996. This is an action for damages pursuant to a motor vehicle collision on the 18th of April 2014 . The Defendant has conceded merits 100% of the Plaintiff's proven or agreed damages.

[2]. Damages in respect of past loss of income and future loss of earnings as well as earning capacity have been settled. Accordingly,

the only issue to be determined by the Court is quantum of general damages.

[3]. The Plaintiff filed two serious injury assessment reports; one by Dr Mennen (Orthopaedic surgeon) and the other by Dr Pauw (Clinical/ Neuropsychologist). Both doctors qualified the Plaintiff as having sustained serious injuries. Thus the Plaintiff argued that he qualifies for general damages.

[4]. The Defendant rejected the RAF 4 form because the Plaintiff's injury did not result in a 30% whole person impairment. In addition he directed that the Plaintiff submit himself at the cost of the Fund to a further assessment in terms of Regulation 3 (3)

(d) (ii) to ascertain whether the injury was in terms of the method set out in the Regulations by the medical practitioner, designated by the Fund.

[5]. Counsel for the Plaintiff submitted that the Fund has admitted all of the Plaintiff's medical reports during a pre-trial held on the 27th July 2017 . He further submitted that the Fund is bound by their admission in the pre-trial minute. For his submissions he relied and referred the Court to the decision of RG van Heerden v Road Accident Fund case number 66441/2011 delivered on the 8th December 2014 at the then Gauteng North High Court. Counsel for the Plaintiff relied mostly on the decision in RG van Heerden v Road Accident Fund supra, asking the Court to follow the judgment and order that the Defendant cannot now reject the RAF 4 form which was admitted during the pre-trial. It was argued on behalf of the Plaintiff that the Court must award the Plaintiff general damages. Counsel also handed in his short Heads of Argument.

[6]. For the Defendant, Counsel referred the Court to the decided case Road Accident Fund v Duma and three similar cases 2013 (6) SA 9 (SCA) and he asked the Court not to accept the report by Dr Mennen as the Plaintiff has been requested by the Defendant to submit himself for a further assessment.

[7]. In regard to the report by Dr Pauw (Clinical Neuropsychologist), Counsel for the Defendant submitted that Dr Pauw is not a medical practitioner as envisaged in Regulation 3 (3) (d) of the Road Accident Fund Regulations. Counsel for the Defendant did not submit Heads of Argument and he asked the Court to postpone the request for general damages sine die.

[8]. In *Price NO v Allied-JBS Building Society* 1980 (3) SA 874 (A) at 822 D-E the Court said "It seems to me that in any event the parties are at this stage bound by their pleadings and the admissions made therein. The pre-trial conference conducted under the terms of the Rule of Court 37 is designed to afford an opportunity to the parties, among other matters, to endeavour to find ways of curtailing the duration of the trial by redefining the issues to be tried." It is clear to me that a party is not entitled to resile from an agreement reached in a pre-trial conference concerning a fact, however, an agreement relating to law is not binding upon the parties or the Court. See also *Aegis Insurance Co Ltd v Consani* NO 1996 (4) SA 1 (A).

[9]. The stipulation in Regulation 3 (3) (c) reads as follows: "The law or an agent shall only be obliged to compensate a third party for non-pecuniary loss as provided in the Act if a claim is supported by a serious injury assessment report submitted in terms of the Act and these Regulations and the Fund or an agent is satisfied that the injury has been correctly assessed as serious in terms of the method provided in these Regulations." Therefore, this means that the Court has no jurisdiction to entertain the claim for general damages. The third party must satisfy the Fund and

not the Court that his injury was serious.

[10]. Unlike in this matter before me, in *RG van Heerden v Road Accident Fund* supra the Plaintiff in that matter, in light of the Fund's rejection of the RAF 4 form, submitted herself to the medical practitioner as requested by the Fund. The Fund did not reject her RAF 4 form and only did so on the date of trial though it had accepted it during the pre-trial. Whereas in the matter before me the Plaintiff has not submitted himself as requested by the Defendant. That is the fundamental difference between the two matters.

[11]. In the landmark decision about the RAF 4 form the Court decided as follows in *Road Accident Fund v Duma* and three similar cases 2013 (6) SA 9 (SCA) on paragraph 24 the Court said, "Recognition that the Fund's decision to reject the Plaintiff's RAF 4 forms constituted administrative action, dictates that until that decision was set aside by a Court on review or overturned in an internal appeal it remained valid and binding (see e.g. *Oudekraal Estates (Pty) Ltd v City of Cape Town* and others 2004

(6) SA 222 (SCA) (2004 [3] All SA 1 para 26). The fact that the Fund gave no reason for the rejection, or that the reasons given are found to be unpersuasive or not based on proper medical or legal grounds cannot detract from this principle. The same holds true for the Respondent's argument that it appeared from the medical evidence presented by them at the trial that the Fund was wrong in deciding that their injuries were not serious. Whether the Fund's decision was right or wrong is of no consequence. They exist as a fact until set aside or reviewed or overturned in an internal appeal. It was therefore not open to the High Court to disregard the Fund's rejection of the RAF 4 forms on the basis that the reasons given without any medical or legal basis or that they were proved wrong by expert evidence at the trial."

In paragraph (27), the Court had the following to say:

"In view of my conclusion that the High Court had no authority to interfere with the Fund's decision to reject the RAF 4 forms, the correctness of the Fund's reasons for doing so are of no real consequence."

[12]. In my view, it is therefore imperative for the Plaintiff to submit himself in terms of Regulation 3 (3) (d) (i). Failure to do so, the Court cannot arrogate itself the jurisdiction of determining whether an injury is serious. Even though the report of Dr Mennen was admitted during the pre-trial, the Court finds it does not preclude the Defendant from submitting himself for assessment.

[13]. The second objection or submission by Counsel for the Defendant that Dr Pauw is not a medical practitioner and thus not qualified to assist the Court in determining whether the Plaintiff sustained serious injuries was answered by the Court in Road Accident Fund v Duma and three similar cases supra on page 23 paragraph 33:

"In the circumstances it is clear to me that 'medical practitioner' envisaged by section 17 (1) (a) and Regulation 3 (1) are those practitioners that are registered under the medical and dental profession. In consequence, it excludes health practitioners such as occupational therapists, dieticians, oral hygienist and so forth, who are registered under other professions."

[14]. In *van Niekerk v Clark and another* [2010] JOL 26111 (WCC) the Court held that the test for absolution from the instance is not whether evidence led by the Plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court applying its mind reasonably to such evidence could or might (not should or ought) find for the Plaintiff. The test is however, different from whether the issue turns on the interpretation of a document. If the Plaintiff's evidence consists of the production of a document on which it sues and the sole question between parties is proper interpretation of the document, the distinction between the interpretation that a reasonable man might give to the document and the interpretation that ought to give it, disappears. In those circumstances absolution should be refused unless the proper interpretation appears to be beyond question

[15]. For reasons given above on request for judgment on general damages the Court finds that there is no evidence upon which a Court applying its mind reasonably could or might find for the Plaintiff. Judgment is therefore absolution from the instance.

[16]. In respect of past loss of income and future loss of earnings and earning capacity, I make the following order:

1. The Defendant shall pay to the Plaintiff the sum of R 233 758.00 (Two Hundred and Thirty Three Thousand, Seven Hundred and Fifty Eight Rand alone) in respect of past loss of income and future loss of earnings and earning capacity.
2. The amount mentioned in paragraph 1 is to be paid to the Plaintiff within 14 days of the date of this Court Order.

3. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.25% per annum, calculated from the 15th calendar day after the date of this Order to date of payment.
4. The Defendant shall furnish the Plaintiff with an undertaking in terms of section 17 (4) (A) OF Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him resulting to injuries sustained by the Plaintiff in the motor vehicle accident that occurred on the 18th April 2014 to compensate the Plaintiff in respect of the said costs after costs have been incurred and upon proof thereof.
5. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject thereto that:
 - 5.1 In the event that the costs are not agreed
 - 5.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
 - 5.1.2 The Plaintiff shall allow the Defendant 7 (seven) court days from date of allocator to date of final payment.
 - 5.2 Such costs shall include but not limited to:
 - 5.2.1 The costs incurred in obtaining payment of the amounts mentioned in paragraphs 4 and 5.
 - 5.2.2 The costs of and consequent to the employment of Counsel, including Counsel's charges in respect of his full day fee for 4th August 2017 as well as reasonable preparation and costs for the day of noting judgment;
 - 5.2.3 The costs of all medico-legal, radiological, actuarial, accident reconstruction, pathologist and addendum reports obtained by the Plaintiff, as well as such reports furnished to the Defendant and/or its attorneys, as well as all reports in their possession contained in the Plaintiff's bundle, including but not limited to the following
 - 5.2.3.1 Dr Mennen - Orthopaedic Surgeon;
 - 5.2.3.2 A Adroos - Occupational Therapist;
 - 5.2.3.3 Kobus Prinsloo - Industrial Psychologist;
 - 5.2.3.4 A Pauw - Clinical Psychologist; and
 - 5.2. 3.5 Doubell -Actuary
 - 5.2.4 The reasonable and taxable preparation, qualifyi ng and reservation fees, if any, ins uch amount as allowed by the Taxing Master, of the following experts:

5.2.4.1 Dr Mennen - Orthopaedic Surgeon; 5.2.4.2A Adroos - Occupational Therapist;
5.2.4.3Kobus Prinsloo - Industrial Psychologist; 5.2.4.4A Pauw- Clinical Psychologist; and 5.2.4.5T
Doubell- Actuary

5.2.5 The reasonable costs incurred by and on behalf of the Plaintiff in, as well as the costs of
consequent to attending the medico-legal examination of both parties.

5.2.6 The costs consequent to the Plaintiff's trial bundles and witness bundles , if any;

5.2.7 The cost of holding all pre-trial conferences, as well as round table meetings between legal
representatives for both the Plaintiff and the Defendant, including Counsel's charges in respect
thereof;

5.2.8 The cost of an consequent to compiling all minutes in respect of pre- trial conferences;

5.2.9 5.2.9 The reasonable travelling costs of the Plaintiff, who is hereby declared a necessary
witness.

6. The amount referred to above will be paid to the Plaintiff's attorneys, Spruyt Incorporated
by direct transfer into their trust account, details of which are the following

Standard Bank

Account number: [.....]

Branch code: Hatfield (011545)

Reference: [.....]

7. There is no contingency fee agreement in place.

D MAKHOB

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.:

55528/2015

HEARD ON:

04 AUGUST 2017

FOR THE STATE:

ADV. S.G. MARITZ

INSTRUCTED BY:

SPRUYT INC.

FOR THE DEFENSE:

ADV. S.T. MALEJWE

INSTRUCTED BY:

NINGIZA HORNER INC.

DATE OF JUDGMENT:

25 AUGUST 2017

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Prepared on 26 October 2026 · Esheria