

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No.: 40189/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 18 July 2023

SIGNATURE

In the matter of:

T MABENA

Applicant

And

THE ROAD ACCIDENT FUND

Respondent

EX TEMPORE JUDGMENT

LESO AJ:

INTRODUCTION

- [1] The applicant brought leave to appeal the judgment handed by this court on 25 November 2022, the applicant sought the appeal to be heard before the full bench of this court. The application was heard on 7 June via Teams.

BACKGROUND

- [2] The above application was filed on 8 February 2022 wherein the applicant sought leave to appeal against certain portions of the judgment dealing specifically with the loss of earnings on the following grounds:

- 2.1 The honourable Judge erred: in finding that the plaintiff's claim for loss of earnings for an amount of R3,052,126-00 cannot stand due to a lack of averments in the particulars of claim.
- 2.2 In finding that the plaintiff is entitled to (only) an amount of R1,000,000-00 for loss of earnings.
- 2.3 In not finding that J. Sauer, the actuary supplied a report with 2 scenarios on which report the Court should have relied to make a judgement for loss of earnings in favour of the plaintiff.
- 2.4 In not finding that the plaintiff is entitled to the amounts calculated by the actuary for loss of earnings to retirement age 65 of either R2,358,751-00 (in the scenario as an unskilled worker) or R3,052,126-00 (in the scenario as a self-employed worker).
- 2.5 In finding that the plaintiff is limited to the amount of R1,000,000-00 for past and future loss of earnings as claimed in the particulars of claim.
- 2.6 In finding that the plaintiff did not amend its' particulars of claim with regard to the amount claimed for loss of earnings, while the plaintiff did file a notice to amend the amounts claimed (dated 6 January 2021) in the original particulars of claim, at the date of the hearing.
- 2.7 In not finding that the plaintiff filed and served an application for the amendment of the amounts claimed in paragraphs 7.1, 7.2, 7.3, 7.4 and 7.5 as well as the total mount claimed in paragraph 9 of the particulars of claim at the day of the hearing.
- 2.8 In not finding that the heads of argument filed on caselines prior to the hearing stipulated the amended amounts claimed for loss of earnings as per the actuarial report of Mr. J. Sauer.

THE LAW

[3] Section 49(1)(b) of the High Court Uniform Rules gives direction on civil appeals from the High Court as follows:

(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against: Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date.

[4] Section 17(1) of the superior Courts Act provides for circumstances under which the court may grant leave to appeal as follows:

- a) (i) the appeal would have a reasonable prospects of success; or
- (ii) there is some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

DISCUSSION

[5] The issue to consider in this application is whether the applicant would have prospects of success in the appeal as envisaged in Section 17(1) of the superior Courts Act.

[6] I will first deal with the form before I could consider the content of the application. The application which was lodged on 8 February 2023 was filed in terms of rule 36(10) and the counsel insisted that the application was in order. At the start of the proceedings, the counsel for the applicant was requested to address the court as to why the Leave to appeal did not comply with rule 49(1)(b) as the application was lodged after 15 days. The counsel admitted that the application did not comply with the time frames and he sought condonation for non-compliance with the uniform rule.

- [7] Rule 49(1) requires strict compliance with time frames on application for leave of appeal. The period prescribed by the rule may be extended by the court if good cause is demonstrated by the Appellant and Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard, this application does not pass the above tests because there is no formal application for condonation as prescribed by rule and the applicant failed to show good cause why the above period should be extended.
- [8] The test for leave to appeal is whether there are reasonable prospects of success on appeal, therefore this application should focus on meeting the threshold of this test. The wording of the papers should not be to the effect that the court was wrong, but that another court would reasonably have come to a different conclusion.
- [9] On the merits or grounds of appeal, the appellant relies only on the mistake by the court when determining the amount for loss of earnings. The applicant ground of appeal has no prospect of success because the ground of appeal is based on incorrect application of the law and misleading facts by the applicants attorneys.
- [10] After the judgment the applicants the court received correspondences to the effect that there was a mistake on the amount of loss of income and an amended draft order with the amounts which they sought as per the heads of arguments was then inserted in the draft order. The correspondences were then followed by leave to appeal. During the application for appeal only a notice to amend which was uploaded on 21 June 2021 was before court and there was no amended pages for the court to consider. The pleadings were still not amended and the counsels argument that the applicant made out a case on the heads is a mis norma.

CONCLUSION

[11] The application stands to fail because it does not comply with the requirements of rule 49(1)(b) Section 17(1)(a) of the Superior Courts Act 10 of 2013.

IN THE RESULT THE FOLLOWING ORDER IS GRANTED:

ORDER

1. Application for leave to appeal is dismissed;
2. No order as to costs.

JT LESO

Acting Judge of the High Court

Applicants Attorneys: SLABBERT & SLABBERT ATTORNEYS

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