

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED

11 March 2021
DATE


SIGNATURE

CASE NUMBER: 33165/17

In the matter between

SITHEBE MMAPULE ESTHER

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

DOSIO AJ:

INTRODUCTION

- [1] This is an action instituted by Esther Mmapule Sithebe ("the plaintiff") against the Road Accident Fund ("the defendant") due to personal injuries sustained on 28 February 2016, whilst she was a passenger in an insured motor vehicle bearing registration number HHW292 MP and which was driven by the insured driver.

- [2] The issue before me is the determination of a special plea raised by the defendant, that the plaintiff has failed to comply with s24(4)(a) of the Road Accident Fund Act 56 of 1996, ("the Road Accident Fund Act"), in that the plaintiff's name is omitted in the RAF 1 form.
- [3] The defendant was originally assisted by the firm Ningiza Honer Incorporated. However a notice of withdrawal from record was filed. The matter was called at 15h10 on 10 March 2021. There was no one present on behalf of the defendant, accordingly I proceeded to consider this special plea by default.

BACKGROUND

- [4] The plaintiff's attorney lodged a RAF 1 claim form, together with a copy of the plaintiff's identity document, the police docket, consent form and medical records with the defendant on 13 December 2016. The RAF 1 form at paragraph [22] omitted the name of the plaintiff.
- [5] The defendant sent a letter to the plaintiff's attorneys on 24 February 2017 requesting them to complete paragraph 22 of the RAF 1 form. The letter stated:
"With reference to the above matter, kindly send us the following:
Completion of paragraph 22 of RAF 1"
- [6] The summons was filed on 16 May 2017. This was met with a plea on the merits dated 31 July 2017. The defendant then amended its plea to introduce a special plea in respect of non-compliance with s24 of the Road Accident Fund Act. The special plea is dated 1 October 2019.
- [7] The plaintiff's counsel argued that the letter dated 24 February 2017 did not repudiate or object to the plaintiff's claim. Counsel contended that there has been substantial compliance with s24(4)(a) of the Road Accident Fund Act, in that the hospital records and accompanying documentation which were submitted to the fund were adequate to fulfil the needs of an enquiry by the defendant. It was further contended that the hospital records and accompanying documentation contained most of the information called for in the RAF 1 form. Counsel argued that because the defendant failed to object within 60 days of the lodgement of the documents referred to in paragraph [4] *supra*, that in terms of s24(5) of the Road Accident Fund Act, the RAF 1 form is deemed to be valid in all respects.

THE LAW

[8] It is trite law that a claim for compensation and the accompanying medical report shall be set out in the prescribed form being the RAF 1 form in compliance with s24(1)(a) of the Road Accident Act.

[9] Section 24 of the Road Accident Fund Act states that:

“24. (1) A claim for compensation and accompanying medical report under section 17 (1) shall-

(a) be set out in the prescribed form, which shall be completed in all its particulars;

(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

(2) (a) The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.

(b) Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in subsection (1)(a) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of expenses in terms of section 17(5) shall be in the prescribed form, and the provisions of this section shall apply mutatis mutandis in respect of the completion of such form.

(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by

registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.”[My emphasis]

- [10] In the case of *Road Accident Fund v Busuku* (case number 1013/19) [2020] ZASCA 158 (1 December 2020) the learned Eksteen AJA stated at paragraph [6] that;
 “...the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection. On the other hand, courts should be alive to the fact that the Fund relies entirely on the fiscus for its funding and they should be astute to protect it against illegitimate or fraudulent claims.”
- [11] The submission of the claim form is to enable the defendant to investigate the merits of a plaintiff’s claim. As stated by the learned Eksteen AJA in the case of *Road Accident v Busuku supra* at paragraph [16]:
 “The RAF 1 form does not call for detailed information. It is not intended, of itself, to enable the Fund to assess the quantum of the plaintiff’s claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so the RAF 1 form requires the disclosure of information to guide and facilitate the investigation.”
- [12] In the matter of *Pretorius v Road Accident Fund* (353030/2018) ZAGPJHC 293 (26 August 2019), the RAF 1 form omitted at paragraph [22] the name of the person who the doctor examined. The learned Sutherland J at paragraph [8] stated:
 “What is required is not formal mechanical compliance but substantial compliance.”
 Further at paragraph [11]
 “Thus, a court of first instance is required to enquire into whether, as a fact, the RAF has been prejudiced by the omission of information in the RAF 1 form, in the sense of being denied information it properly requires to assess whether or not it is at risk of liability. Where the hospital records are provided with the RAF 1 form, it is incumbent on the RAF to read such documentation together with the RAF 1 form. A reading of those documents would have revealed that the examination results recorded in the RAF 1 form are correlate with the medical records”. [my emphasis]

EVALUATION

- [13] Section 24 of the Road Accident Fund Act provides that any form, (which includes the RAF 1 form), which is not fully completed shall not be acceptable by the Act. However, s24(5) states that whatever shortcomings there may be on a claim form, 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.

- [14] In the matter *in casu*, it is clear that the special plea was raised more than 60 days after the claim was filed. The letter filed by the fund dated 24 February 2017 is not an objection to the claim, it is merely a request to comply with the provisions of s24(1)(a). In the absence of a timeous objection raised by the defendant, the claim is valid in terms of s24(5) of the Road Accident Act and the special plea should be dismissed.
- [15] If I am wrong in this regard, the matter of *Pretorius v Road Accident Fund supra* is applicable, in that the hospital records that were supplied together with the RAF1 form placed sufficient information before the defendant to establish the cause and nature of the plaintiff's injuries. It was accordingly incumbent on the defendant to have read the RAF 1 form together with the medical reports.
- [16] It is important to note that the full name of the plaintiff as well as her signature appears at paragraph 21 of the RAF 1 form, as well as on the letter dated 13 December 2016. In addition, the plaintiff's name appears on the medical reports and on the identity document that was filed on 13 December 2016. As stated in the case of *Road Accident Fund v Busuku supra*, the hospital records cure the lack of a name and surname which has been omitted on the RAF 1 form.
- [17] There is a myriad of cases where the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. In the matter of *SA Eagle Insurance Co Limited v Pretorius* (397/96) [1997] ZASCA 107; 1998 (2) SA 656 (SCA) the court held that as regards substantial compliance, this is an objective test.
- [18] Considering all the facts placed before me, I am satisfied that the defendant was able to ascertain in respect of whom this claim was and was also able to assess the cause and extent of the injuries sustained by the plaintiff. Accordingly, I find that the furnishing of the RAF 1 form together with the hospital records constitutes substantial compliance with the requirements of s24 of the Road Accident Fund Act.
- [19] Accordingly the special plea is dismissed with costs.

ORDER

[20] In the premises the following order is made:

1. The special plea is dismissed.
2. Costs are to be paid by the defendant on a party and party scale.



D DOSIO
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email. The date and time for hand-down is deemed to be 09h00 on 11 March 2021.

Matter heard on: 10 March 2021
 Judgment granted on: 11 March 2021

Appearances:

On behalf of the Applicant
 Instructed by:
 On behalf of the Respondent

Adv. K Mashaba
 MTP Monyai
 Absent