IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 57830/13

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

11/6/2019 .....
DATE

.....
SIGNATURE

In the matter between:

ELIZABETH MATJOI **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDENT**

JUDGMENT

RANCHOD J:

[1] The plaintiff claims against the defendant in terms of the Road Accident Fund Act 56 of 1996 (the Act) for damages arising out of a motor vehicle accident said to have occurred on 31 December 2012 at Walkerville, De Deur,

Gauteng in which she allegedly sustained bodily injuries whilst a passenger in a motor vehicle which veered off the road and collided with a lamp post. (The papers refer to the plaintiff intermittently as a passenger and also as a pedestrian. I deal with the issue presently.)

[2] Plaintiff's attorneys submitted the statutory RAF1 claim form to the defendant on 25 February 2013.

[3] In paragraph 5 of the claim form the date, time and place of accident has been provided as well as that the accident was reported at 'De Deur SAPS'. There is a request for the accident report number but it has been left blank. It is also required in the form that if the claimant was a passenger, paragraph 6 is to be completed. However, paragraph 6 has been left blank but with a note on it 'Attached accident report.'

[4] Paragraph 10 seeks an answer to the question whether the claimant wore a seat belt. It has been left unanswered. Likewise, no answer is provided to the question in paragraph 13 about the claimant's employment status although in a medico-legal report obtained by her attorneys from Orthopaedic Surgeon Dr TS Ramokgopa (who consulted with the plaintiff on 17 February 2016) it is stated that 'She worked at a dog home to groom dogs at the time of the accident. She had been in the same job since 1982.'

[5] Paragraph 21 of the claim form provides for a 'Declaration and Consent,' which is to be completed by the claimant, signed and witnessed. The entire paragraph has been left blank and unsigned.

[6] On 27 February 2013, two days after the claim was submitted to the defendant (the RAF) it wrote to the plaintiff's attorneys objecting to the validity of the claim on the following bases:

> '*1. RAF1 form should be properly signed and witnessed.*
>
> *2. Paragraph 6 of the RAF1 Form should be properly completed.*
>
> *3. Completed AOR not included as mentioned on the RAF1 Form, Paragraph 6.'*

[7] The next paragraph in the letter states the following:

> *'Kindly note that as a result of the NON-COMPLIANCE with the Act, prescription has not been interrupted. Kindly note further that the running of the 120-day period in which to investigate is suspended until such time as the Act has been substantially complied with. This claim will remain invalid until such time as the defect has been rectified and your claim substantially complies with the Act… .'*

[8] It appears that there was no reaction to the letter by the plaintiff's attorneys.

[9] Subsequently, plaintiff's attorneys caused summons to be issued against the Fund on 21 October 2013. *Inter alia,* it is stated in the particulars of claim that:

> *'(4) On the 31st of December 2011 at approximately 15H30 and at Walkerville, De Deur, Gauteng province a motor vehicle accident occurred involving a motor vehicle with unknown registration numbers which collided with the plaintiff. At the time of accident plaintiff was a passenger in the motor vehicle with unknown registration numbers.'* (My underlining.)

[10] Although it is stated that the unknown vehicle *'collided with the plaintiff'* in the next paragraph it is stated that the insured driver *'failed to allow any adequate clearance when attempting to pass plaintiff who was a passenger.'*

[11] Although no details were provided in the claim form about whether plaintiff is employed, past and future loss of earnings are claimed in the particulars of claim. Plaintiff also claims non-pecuniary loss (general damages).

[12] The defendant filed a plea dated 20 November 2013 but served on the plaintiff's attorneys on 13 January 2014, which includes two special pleas. The first one is to the effect that plaintiff failed to comply with Regulation 3 of the regulations promulgated under the Act read with section 17(1) and section 17(1A) of the Act. In terms of section 17(1) the defendant's obligation to compensate a third party for non-pecuniary loss is limited to compensation for

a *'serious injury'* as contemplated in section 17(1A). Regulation 3 provides a prescribed method of determining whether an injury is *'serious'*, and also provides that a claimant for non-pecuniary loss shall submit him- or herself to an assessment by a medical practitioner in accordance with the Regulations and shall obtain from the medical practitioner concerned, a duly completed serious injury assessment report (Form RAF 4) which must be submitted to the Fund. The defendant pleads that the plaintiff failed to comply with these requirements hence the court is precluded from making a finding whether the plaintiff is entitled to claim non-pecuniary loss from the defendant. The defendant accordingly pleaded that plaintiff's claim for general damages should be dismissed, alternatively, it be referred to the 'appropriate forum' as set out in the Regulations and that plaintiff pay the defendant's costs.

[13] In a bundle titled 'Index to Plaintiff's and Defendant's Medico-Legal Reports' is an RAF 4 Form dated 25 November 2013 and completed by Dr IS van der Westhuizen. (The Index states that the form has been completed by 'Dr Jaap Earle' which is clearly incorrect.) It is not at all clear why the Form was not sent to the defendant immediately after the assessment. Instead, the original made its way into the court file with the aforementioned 'Index to Plaintiff's and Defendant's Medico-Legal Reports' which was filed by plaintiff's attorneys only shortly before the trial on 2 May 2018.

[14] The second special plea is virtually identical to the first one and is no doubt erroneously repeated.

[15] On 3 May 2018 the defendant (after having served it on the plaintiff's attorneys the previous day) filed a notice of intention to amend its plea by replacing the two special pleas with two new special pleas as indicated in the notice. It appears this step was taken because on 2 May 2018 the plaintiff's attorneys served the RAF4 form which was completed by Dr I.S. van der Westhuizen on 25 November 2013. As a result, defendant did not intend to persist with the special plea relating to the claim for general damages. Why plaintiff's attorneys did not serve the RAF4 form earlier remains a mystery.

[16] The first special plea now introduced is, in essence, that the defendant had objected to the validity of the claim and yet the plaintiff failed to deal with it. The plaintiff has therefore failed to comply with section 24 of the Act and the claim is invalid.

[17] The second special plea (in the event that the first one is not upheld) is to the effect that the plaintiff failed to furnish details identifying the vehicle and driver of the vehicle which collided with the plaintiff or other vehicles involved in the accident in paragraphs 6 and 8 of the RAF1 form. Further, the plaintiff failed to comply with the provisions of section 19(f) of the Act.

[18] At the trial, plaintiff's counsel handed up a 'Notice in terms of Rule 28(2) and (3)' in terms of which the plaintiff objected to defendant's proposed amendment on the grounds that the intended special pleas lack the necessary averments to sustain the defences raised therein. I will revert to the objection presently.

[19] There is no acknowledgement of receipt of the objection by the defendant's attorneys. I was informed that it was handed to the defendant's attorneys at court on the morning of the trial.

[20] The plaintiff also handed up a so-called affidavit in terms of section 19(f) of the Act at the trial. I say 'so-called' because the last page, on which the deponent's signature appears, is a somewhat faded page and the original date has been 'tippexed' and a new date inserted. The first two pages of the affidavit are decidedly of recent origin and have not been initialled by the plaintiff and the Commissioner of Oaths. It seems to me that the last page has been removed from another affidavit and attached to the first two pages which would be highly irregular if not fraudulent.

[21] The plaintiff is a female. Paragraph 2 of the first page of the affidavit states that she is a male. The attestation clause does not clearly state whether the deponent is a male or female but repeatedly refers to 'he/she' without deleting the inapplicable gender.

[22] In the 'affidavit' it is stated that the accident occurred on 31 December 2012 when all indications are that it occurred on 31 December 2011.

[23] It is also stated in the 'affidavit' that the plaintiff was taken to Natalspruit Hospital after the accident. However, at paginated page 22 of the Supporting Documents' bundle is an 'Application for transfer of a patient' completed by

the Superintendent of Kopanong Hospital addressed to the Superintendent of Natalspruit Hospital stating the *'patient stays at Vosloorus and want (sic) to be in a hospital close to where she stays… To be close to his (sic) family.'*

[24] The police accident report also states that plaintiff was initially taken to Kopanong Hospital, not Natalspruit.

[25] On 10 April 2017 the plaintiff's attorneys served a notice in terms of Rule 28 that plaintiff intends to amend paragraph 4 of the particulars of claim by stating that the accident occurred on 31 December 2012 and that a Ford Bantam motor vehicle with registration letters and numbers YKS 893 GP is identified as the vehicle involved in the collision, its driver is identified and it is stated that the plaintiff was a passenger in the vehicle. Why the date of the accident was sought to be changed from 21 December 2011 to 31 December 2012 is not understood as the correct year appears from the police accident report to be 2011 and not 2012.

[26] It appears that the defendant did not object to the intention to amend and ordinarily the plaintiff should have filed the amended paragraph of the particulars of claim in accordance with the Rules. It is therefore not clear whether the plaintiff decided to abandon the intended amendment. But it is clear that that amendment was not effected as appears from the pleadings as they are.

[27] The effect is that paragraph 4 of the particulars of claim remains as is in which, although it is stated that the accident occurred on 31 December 2011, it is inexplicably averred that an unidentified vehicle was involved, that the said unknown vehicle 'collided with the plaintiff' but then goes on to state that she was a passenger in the unknown vehicle.

[28] It gets worse. In paragraph 3 of the particulars of claim it is stated that the defendant is liable *'where the identity of the owner or driver thereof* (sic) *has been established.'*
At paragraph 5.6 it is alleged that the insured driver *'failed to allow any adequate clearance when attempting to pass plaintiff who was a passenger.'*

[29] The plaintiff's attorneys were in possession of the police accident report at an early stage as well as the plaintiff's version that she was a passenger in the insured vehicle. The vehicle and its driver are mentioned in the report.

[30] Nowhere in the accident report or other documents, including the insured driver's police statement, is it stated that he was attempting to overtake another vehicle. Yet, in the particulars of claim it is alleged that the insured driver *'failed to overtake at a point where visibility was clear'* and that *'he failed to give any adequate warning of the approach of his vehicle.'* The driver, in his police statement, stated that he lost control of his vehicle, veered off the road to his right hand side and collided with an electric pole.

[31] It is also alleged in the particulars of claim that plaintiff was initially taken to Natalspruit Hospital when in fact, as alluded to earlier, she was taken to Kopanong Hospital and thereafter transferred to Natalspruit.

[32] I mention in some detail these glaring inaccuracies to highlight how ineptly plaintiff's claim has been handled with scant regard to attention to detail.

[33] The matter was allocated to me for adjudication of only the special pleas raised by the defendant and the plaintiff's objection thereto. I deal firstly with the objection by plaintiff.

[34] The plaintiff stated that the grounds for objection are as follows:

'1. It is alleged at paragraph 2, of the Defendant's notice in terms of rule 28, that "The Plaintiff lodged a claim with the Road Accident Fund ("the Fund") on the prescribed RAF1 form on 25 February 2013. On 27 February 2013 the Defendant objected to the validity of the Plaintiff's claim on the following (sic)*:*

1.1 RAF1 form should be properly signed and witnessed

1.2 Paragraph 6 of the RAF1 should be properly completed; and

1.3 Complete OAR not included as mentioned on the RAF1 form paragraph.

2. It is alleged at paragraph 2 and 3, of the Defendant's second plea notice in terms of rule 28, that "Section 24(6) of the Act

provides that no claim shall be enforceable by legal proceeding commenced by a summons served on the Fund before all requirements contemplated in section 19(f) have been complied with."

3. *The Defendant's Special Pleas, read together with its notice to amend lack the necessary averments to sustain this defense* (sic) *in that:*

3.1 *The Plaintiff has complied with the non-compliances raised by the Defendant;*

3.2 *The Plaintiff has also complied by served and filed Contents of the Docket including the Officer's Accident Report;*

3.3 *Where the Fund or Agent thereof fails to object to the validity of the claim within 120 days, the claim shall be deemed to be valid in all respects.'*

Paragraph 1 is in regard to the first special plea while paragraph 2 is with regard to the second special plea by the defendant.

[35] On 28 October 2013 defendant served notices in terms Rule 36(4) and 35(14) calling upon plaintiff to furnish, *inter alia*, any medical reports, hospital records, her identity document, police officer's accident report form and the police docket.

[36] Plaintiff's attorneys responded on 14 November 2013 by furnishing copies of 'Third Party Claim Form' presumably a reference to the RAF1 form and 'Copy of Clinical records' of Natalspruit Hospital and plaintiff's passport.

[37] Nowhere in the papers before me is there an indication that the plaintiff formally furnished the defendant with the accident report or the police docket and the date when they were furnished. However, the documents form part of the 'Supporting Documents' bundle on which the date of the cover sheet is 2 May 2018 and it is also stamped by the Registrar of this Court on the same day. The inference to be drawn is that these documents were only provided a week before the trial date of 9 May 2019.

[38] The hospital records of the plaintiff from Kopanong Hospital where she was first treated immediately after the accident are not in the bundle. Instead, a single page from a J88 Form is in the bundle but it relates to a Kabelo D. Mofokeng, who was treated at Kopanong Hospital.

[39] The RAF1 was unsigned when the claim was submitted. Only on the morning of the trial did the plaintiff provide a copy of page 8 of the RAF1 which was now signed by the plaintiff.

[40] Section 24(4) provides:

> *'(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.'

[41] Section 24(5) provides:

'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.'

[42] Section 24(6) provides:

'No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent –

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19(f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any

time after such repudiation serve summons on the Fund or the agent, as the case may be.

[43] The end result is that the first special plea must be upheld. That should be the end of the matter but I will nevertheless briefly deal with the second special plea as well relating to the failure by the plaintiff to provide an affidavit in terms of section 19(f) of the Act which provides:.

'19. The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage-

. . .

(f) if the third party refuses or fails-

(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(ii) . to. furnish the Fund or such agent with copies of all statements. and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into ·possession thereof; . . .'

[44] Plaintiff handed up to the defendant and the Court on the morning of the trial a purported affidavit in terms of section 19(f) of the Act. I say 'purported' for the reasons stated earlier about the authenticity of the affidavit.

In my view, it does not comply with the Act. The plaintiff should have provided an affidavit that complies with section 19(f) read with section 24(6) before issuing summons.

[45] It is also to be noted that the vehicle's and the driver's particulars were not furnished on the RAF1 Form. At paragraph 7 of the form it was stated 'N/A' no doubt meaning 'Not Applicable.' And yet it appears that the plaintiff's attorneys were in possession of the police accident report in which the details are provided.

[46] In **Multilateral Motor Vehicle Accident Fund v Radebe**[1], Nestadt JA said:

> *'It is true that the objective of the Act is to give the widest possible protection to third parties. On the other hand, the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation. . . .These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the*

[1] 1996 (2) SA 145 (A) at 152 E – I.

additional burden of doing what the regulations require should be done by the claimant.'

[47] In **Pithey v Road Accident Fund**[2] the Supreme Court of Appeal stated:

'It has been held in a long line of cases that 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 the substantial compliance with such requirements suffices.'

[48] The purpose of these provisions is to enable the Fund to gather all the required information from the prescribed form to enable it to assess the validity and quantum of the claim without casting an extra burden on it to carry out its own investigations at significant expense. The form RAF1 was not signed when it was submitted to the Fund. The Fund was therefore entitled to object to the validity of the claim on that ground. If indeed the form was signed on 4 February 2013 it begs the question, why was it not submitted as soon as the Fund raised the objection to the validity of the claim in its letter dated 27 February 2013.

[49] The claim therefore remains invalid because of non-compliance with sections 19(f), 24(4) and 24(6) of the Act. Hence, plaintiff's claim is not

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[2] 2014 (4) SA 112 (SCA) at para 19.

enforceable by summons served on the Fund prior to having lodged a valid claim.

[50] As I said, the second special plea is in the alternative to the first one. Had it been pleaded in addition to the first one, I would have upheld both special pleas.

[51] In the circumstances, the first special plea is upheld and the plaintiff's claim is dismissed with costs.

RANCHOD J
JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Plaintiff	: Adv Mlilo
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Counsel on behalf of Defendant	: Adv S. M. Ngwane
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