

IN THE HIGH COURT OF SOUTH AFRICA**(EASTERN CAPE LOCAL DIVISION, MTHATHA)****CASE NO. 3055/2014****REPORTABLE**

In the matter between:

ZUKO BUSUKU**Plaintiff**

And

ROAD ACCIDENT FUND**Defendant**

JUDGMENT

SUMMARY : Interpretation of section 24 (1) (a) of the Road Accident Fund Act 56 of 1996 read with Regulation 7 (1) of the Regulations promulgated thereunder — the submission of the claim form is peremptory, meaning strict compliance — the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance will suffice — Regulation 7 (1) read with section 24 (1) (a) of the Act prescribe the submission of the claim form on form RAF 1 which requirement is peremptory — a medical report on form RAF 1 left blank and incomplete is tantamount to no medical report having been submitted and thus to having no legal force and effect —

section 24 (1) (a) and Regulation 7 do not allow for the substitution of form RAF 1 with hospital notes — issue of substantial compliance only arises in regard to content of form — does not arise and cannot arise in absence of claim form — held that submission of blank medical report on form RAF1 had no legal effect, resulting in prescription of claim.

ORDER : The defendant's special plea is upheld and the plaintiff's claim is dismissed with costs.

CORAM : ALKEMA J

[1] The plaintiff instituted action against the Road Accident Fund on 23 October 2014 arising from a motor vehicle collision on 21 June 2012. It is alleged by plaintiff in his particulars of claim that the collision was caused by the negligent driving of a vehicle where the identity of neither the owner nor the driver thereof has been established. It is thus a claim under section 17 (1) (b) of the Road Accident Fund Act 56 of 1996 (the Act).

[2] The defendant raised a Special Plea claiming that plaintiff has failed to send or deliver to it a medical report as contemplated by section 24 (1) read with section 24 (2) (a) of the Act, resulting in the claim becoming prescribed. The plaintiff's answer is that he complied substantially with the requirements of the Act and that the claim has not become prescribed. Thus the sole issue before this Court is whether the Special Plea should be upheld or dismissed.

[3] The salient facts are these: On 30 April 2014 the plaintiff lodged a so-called RAF 1 claim form with the Defendant. For the purposes of this judgment I will assume that the first part of the claim form was duly completed by the plaintiff. Attached to the claim form, from para 22 thereof, is a medical report template which was left blank. The only information that was filled in was the plaintiff's personal details.

[4] For purposes of this judgment I will refer to the medical report as the "*incomplete medical report*." The plaintiff's attorney testified that he personally delivered the completed claim form and incomplete medical report to the offices of the defendant in Mthatha. Attached to the medical report were all the hospital notes pertaining to the medical treatment of the plaintiff. The claim and accompanying incomplete medical report bear the date stamp of the Fund of 30 April 2014, but the hospital notes bear no date stamp. I nevertheless accept Mr *Ncolo*'s evidence that he delivered the hospital notes simultaneously with form RAF1.

[5] Mr *Bodlani*, who appeared for the plaintiff, submitted that the hospital notes attached to the blank medical report provided all the information required by the medical report, with the only difference that the source of the information was not the medical report, but the hospital notes submitted therewith. In the circumstances, he submitted there was substantial compliance with section 24 of the Act.

[6] Mr *Bodlani* has also referred me to a long line of cases in which it had been recognized that the Act and its predecessors represent “... *social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle.*” See: *Road Accident Fund v M obo M* [2005] 3 All SA 340 (SCA) at para 12; *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) at 285 E-F; *Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (A) at 152 E-I; *Bezuidenhout v Road Accident Fund* 2003 (6) SA 61 (SCA) at para 7.

[7] On the other hand, the above consideration must also be balanced against the protection of the interests of the Fund. The Fund relies entirely on the fiscus for its funding and it should be protected against illegitimate and fraudulent claims.

[8] In *Multilateral Motor Vehicle Accident Fund v Radebe* 1996 (2) SA 145 (A) at 152 E-I Nestadt JA said:

“It is true that the object 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 allegations 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 to

be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant.”

[9] These remarks are equally applicable to medical reports. The content of the medical report allows for an early investigation in, and assessment of, the quantum of damages. It calls for certain specific information and particularity to achieve this end. The claim and accompanying medical report must, in terms of section 7 of the Regulations read with annexure A thereto, be set out in form RAF1, which form includes the medical report.

[10] It has repeatedly been recognized that the statutory requirements of the Act relating to the submission of the claim form and medical report is peremptory; and that the prescribed requirements concerning the completeness of the form including the medical report, are directory. This means that substantial compliance with such requirements suffices.

[11] *In Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA) the Supreme Court of Appeal held at 120 (para 19):

“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 substantial compliance with such requirements suffices. As to the latter requirement this court in ‘SA Eagle Insurance Co Ltd v

Pretorius’ reiterated that the test for substantial compliance is an objective one.”

[12] As I understand the above *dictum*, the statutory requirements relating to the submission of the claim is peremptory; meaning there must be strict compliance with the requirements. However, the requirements relating to the content thereof, or the level of completeness of the form, are directory, meaning that substantial compliance will suffice. The issue of substantial compliance therefore only relate to the content of the claim form and not to the submission of the claim form. It follows that the issue of substantial compliance only arises once it is found that there has been exact compliance with the requirements relating to the submission of the claim form, and then only in respect of the content of the form.

[13] In *Molokoane v Multilateral Vehicle Accidents Fund* 1998 4 All SA 486 SCA at 491 (a)-b) *Melunsky* AJA (as he then was), said:

“In my view the appellant cannot rely on the principle of substantial compliance to excuse her failure to send the MMF 1 form to the entity which had to deal with it. It was a peremptory requirement of the agreement that the claim for compensation had to be sent to the appropriate appointed insurer or the MMF, as the case maybe, before the commencement of legal proceedings. This is clear from the provisions of article 62 (a). (See Nkisimane and others v Santam Insurance Co. Ltd 1978 (2) SA 430 (A) at 433 E-G and 435A-H; Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A) at 831E and SA Eagle

Insurance Co. Ltd v Pretorius 1998 (2) 656 (A) at 663A-B). It is true that the object of the legislation was to provide the widest possible protection to injured person but this does not entitle a court to overlook the failure to follow a procedure that required exact compliance. In the result the submission of the claim form to Mutual and Federal had no legal effect.”

[14] For the reasons which follow, I believe the above *dictum* has equal application to the facts of this case. The issue in this case is essentially whether there had been exact compliance with the Act in the submission of the claim form — which is peremptory.

[15] The submission of a claim under section 17 (1) (b) of the Act is dealt with by Regulation 2 of the Regulations promulgated under section 26 of the Act, read with section 24 of the Act. It is necessary to quote the applicable legislation in full.

[16] Regulation 2 of the Regulations (Government Gazette No. 770 of 21 July 2008: Road Accident Fund Regulations 2008 (Regulations) prescribe as follows:

“2 Further provision for liability of Fund in terms of section 17 (1) (b):

(1) (a) A claim for compensation referred to in section 17 (1) (b) of the Act shall be sent or delivered to the Fund in accordance with the provisions of section 24 of the Act, within two years from the date upon which the cause of action arose.

(b) A right to claim compensation from the Fund under section 17 (1) (b) of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a)

(c) In the event of a claim having been lodged in terms of paragraph (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.

(2) Notwithstanding anything to the contrary contained in any law a claim for compensation referred to in section 17 (1) (b) of the Act shall be sent or delivered to the Fund within two years from the date upon which the cause of action arose irrespective of any legal disability to which the third a party concerned may be subject."

[17] The meaning of the words "*claim*" and "*a claim for compensation*" in Regulation 2 of the Regulations quoted above, and the particularity required in completing the medical report, are described in section 24 of the Act read with Regulation 7 of the Regulations. I quote only the relevant parts.

"24. Procedure

(1) A claim for compensation and accompanying medical report under section 17 (1) shall—

(a) *be set out be 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)

- (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 the validity thereof, the claim shall be deemed to be valid in law in all respects.*
- (6) *No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent—*

(a) before the expiry 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 date 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."

[18] Finally, it is necessary to refer to Regulations 7 (1) and (2) of the Regulations, which read as follows:

"7. Forms

(1) A claim for compensation and accompanying medical report referred to in section 24 (1) (a) of the Act, shall be in the form RAF1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette.

(2) A claim by a supplier referred to in section 24 (3) of the Act shall be in the form RAF2 attached as Annexure to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the Gazette."

[19] Section 24 (1) provides that a claim for compensation and accompanying medical report “*shall*” be set out in the prescribed form, which “... *shall be completed in all its particulars.*” Regulation 7 of the Regulations provides that the claim and medical reports “*shall*” be in the forms described in the Annexure to the Regulations, and s.24 (4) (a) of the Act provides that any form which is not completed in all its particulars “... *shall not be acceptable as a claim under this Act.*” Section 24 (4) (b), (c) and (d) calls for the level of particularity required in completing the medical report.

[20] I think it is evident from the above quoted sections of the Act and Regulations, that the claim and accompanying medical report requires a level of particularity which enables the Fund to ensure that an assessment of a serious injury can be made in accordance with the method prescribed in Regulation 3 (1) (b), and that it was made by a medical practitioner as meant by s. 24 (2). This information cannot be gleaned from the hospital notes.

[21] Three consequences flow from the aforesaid: First, the claim and accompanying medical report must be set out on Form RAF 1 (which constitute the prescribed form), which form must be delivered to the Fund within two years from the date upon which the cause of action arose. These two documents constitute the claim for compensation. Two, the medical report shall be completed in all its particulars by the medical practitioner who treated the injured person for those injuries. Three, and on the strength of *Pithey (supra)*, and if the words used in Regulations 2 and 7 read with section 24 (1) (a) of the Act are taken seriously, the submission of the claim and

accompanying medical report must comply strictly with the statutory requirements which are peremptory.

[22] The purpose of Regulations 2, 3 and 7, read with sections 17 (1A) and 24 of the Act, is to enable the Fund to gather all the required information from the prescribed forms to enable it to assess the validity and quantum of the claim without casting an additional burden on the Fund to carry out its own investigations.

[23] As stated at the outset of this judgment, the medical report attached to the Third Party Claim Form served on the Fund on 30 April 2014, was left in blank and no particularity was supplied at all. It lacks any or all compliance with any or all of the provisions under the Act or Regulations. Due to its total lack of compliance, the issue of “*substantial compliance*” with the Act or Regulations does not arise. In my view, it cannot even be termed as partial compliance; it can best be described as non-compliance with the Act and Regulations.

[24] If the words used in the above quoted sections are given their ordinary grammatical meaning, as they must, and if the sections are given effect to, as they must, then the inescapable result is that the medical report must be completed in all its particulars; and if not, then the claim shall not be acceptable as a claim under the Act. It follows that the hospital records may not substitute a duly completed medical report as the source of the information. The Act read with the Regulations only recognize the duly

completed medical report on form RAF1 as the only source of the information. If the hospital records may constitute substantial compliance with Regulation 7 read with section 24 of the Act, as Mr *Bodlani* submitted, then the words used in the Act and Regulations become meaningless and are not given effect to. And this is not permissible under the law of interpretation of Statutes and it offends the case law on the subject, including judgments from the Supreme Court of Appeal which are binding on this Court.

[25] The requirement by section 24 (2) (a), namely that the medical report must be completed by the medical practitioner who treated the plaintiff, strengthens the inference that the hospital notes may not substitute the duly completed medical report under form RAF1. Regulation 7 of the Regulations specifically requires that the claim and accompanying medical report “... *shall be in the form RAF1 attached as Annexure A to these Regulations ...*” This requirement rules out the notion that the hospital notes may constitute substantial compliance with the Act and Regulation. Finally, section 17 (1) (b) (1A) read with section 26 (1A) and Regulation 3 of the Regulations, prescribe in detail the method of assessment of a serious injury and by whom such assessment shall be carried out, and which assessment must be in the form RAF4. These requirements militate against the use of hospital notes which simply refer to the hospital treatment received by the plaintiff, in the place of the prescribed forms RAF.

[26] In *Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (AD) the (then) Appellate Division held at 152 H-I:

“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 additional burden of doing what the regulations require should be done by the claimant. There can be no (substantial) compliance where the claimant has merely indicated to the fund how it, through its own efforts, can obtain the necessary information or documents.”

[27] The above remarks apply equally to where the medical report is left in blank.

[28] A medical report left in blank means that there is no medical report before the court. There is no burden on the Fund to do its own investigations, and for the reasons mentioned in the various cases referred to, the Fund should not be saddled with such a burden. The medical report serves a certain function and once it is allowed to be left in blank one makes a mockery of the function it serves to fulfil.

[29] I therefore come to the conclusion that the issue of substantial compliance of the content of the medical report does not and cannot arise in circumstances where it is left in blank. Having regard to the last sentence in the extract of the *dictum* quoted above in *Molokoane (supra)*, I find the submission of a blank medical report has no legal effect due to its non-

compliance with Regulations 2 and 7 read with section 24 (1) (a) of the Act which are peremptory and not directory.

[30] There are two further issues which call for comment. The first relates to the plaintiff's claim for non-pecuniary loss, and the second to the effect of section 24 (5) of the Act. I shall deal first with the claim for non-pecuniary loss, and then with section 24 (5).

[31] Plaintiff's claim for non-pecuniary loss is limited to compensation for a serious injury as contemplated in section 17 (1A) of the Act. In terms of the Regulations, the prescribed form for a serious injury assessment report is form RAF4. In terms of Regulation 2, the claim for compensation shall be sent or delivered to the Fund within two years from the date upon which the cause of action arose.

[32] The date upon which the cause of action arose in this case was 21 June 2012, which means the RAF4 form had to be sent or delivered to the Fund on or before 20 June 2014. The RAF4 form in this case reflects the date of assessment of the serious injury as 15 August 2014, long after the due date of delivery on 20 June 2014. On Mr *Ncolo*'s own evidence, it was delivered by him to the Fund on 1 September 2014, more than two months after the due date on 20 June 2014. It follows that because no claim had been lodged as contemplated by Regulation 2 (1) of the Regulations read with section 24 of the Act, the claim became prescribed on 21 June 2014 in terms of Regulation 2 (1) (b) of the Regulations.

[33] I now turn to the final issue relating to the effect of section 24 (5) of the Act.

[34] Section 24 (5), quoted in full above, provides that if the Fund does not, within 60 days of the delivery of a claim to it, object to the validity thereof, the claim shall be deemed to be valid in law in all respects. There is no evidence before this Court that the Fund ever objected to the validity of the claim. The question which arises is whether such failure triggered the deeming proviso in section 24 (5).

[35] The object and purpose of section 24 (5), in my respectful view, is if the information contained in forms RAF1 or RAF4 do not comply with the particularity required, then in the absence of timeous objection thereto by the Fund, those forms will be deemed to be in substantial compliance with the provisions of the Act and Regulations and thus valid in law in all respects. The deeming proviso thus can only operate where the forms are completed, but suffer from a lack of particularity or clarity as required by section 24 and or other provisions of the Act or Regulations. It cannot operate in circumstances where there is a total lack of compliance such as where the medical report had not been completed or the Serious Injury Report (form RAF4) was delivered out of time.

[36] If it is held that the deeming proviso can be triggered even in circumstances where there has been a total lack of compliance with section 24 or the other provisions of the Act or Regulations, then an invalid claim as envisaged by section 24 (4) (a) will be deemed to become a valid claim. Such a result infringes on the principle of legality in that a factual invalidity is converted to a legal validity. In my respectful view, this could not have been the intention or the purpose of section 24 (5).

[37] The medical report left in blank is, in my view, tantamount to the medical report not having being lodged at all, and thus to a total lack of compliance with section 24. It can never be regarded as being in substantial compliance with the Act and Regulations. It may be disregarded by the Fund and its (unfortunate) failure to object thereto cannot convert an invalid claim to a valid claim under section 24 (5).

[38] If section 24 (5) is construed to trigger the deeming proviso even in circumstances where the medical report on form RAF1 was never completed, then it means that the claim is valid in law notwithstanding that no information at all was placed before the Fund to assess and investigate the merits or quantum. Even if regard may be had to the hospital records and notes, the information contained therein do not supply the particularity required by the Act and Regulations under the sections quoted above. Such an outcome could never have been the intention of the legislature and also does not fulfil the object and purpose of the Act.

[39] A final observation on this issue: section 24 (5) provides that the deeming proviso is triggered within 60 days from the date “... *on which a claim was sent. ...*” The “*claim*” is obviously a claim as contemplated by section 24 (1), and this means a claim for compensation “... *and accompanying medical report ...*”, i.e. form RAF1. Section 24 (1) (a) is peremptory, and requires the medical report to be set out in the prescribed form which “*shall*” be completed in all its particulars. A blank medical report attached to the claim is thus not a “*claim*” as contemplated by section 24 (5), and the 60 day period could not commence running. On this construction, the deeming proviso was never triggered.

[40] In the circumstances I hold that the deeming proviso in section 24 (5) can only be triggered in respect of the content of the claim form — which is obligatory — but cannot be triggered if there had been a total lack of compliance in respect of the submission of the claim — which is peremptory.

[41] Finally, the letter from the Fund dated 19 November 2014 addressed to plaintiff’s attorney is not an acceptance of the validity of the claim, as submitted by Mr *Bodlani*. It is a repudiation of the claim for the reasons set out therein, which paved the way for the issue of summons under section 24 (6).

[42] For the above reasons I believe the Special Plea based on plaintiff’s failure to comply with section 24 (1) read with 24 (2) (a) of the Act, must be upheld.

[43] I accordingly make the following order:

The defendant's Special Plea is upheld and the plaintiff's claim is dismissed with costs.

ALKEMA J

Heard on : 08 March 2016

Delivered on : 09 June 2016

Counsel for Plaintiff : Adv. Bodlani

Instructed by : Ximbi Ncolo Inc. Attorneys

Counsel for Defendant : Adv. Malunga

Instructed by : Smith Tabata Inc. Attorneys