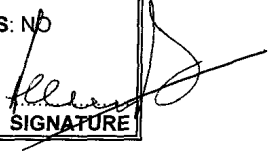


IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

(1) REPORTABLE: NO
(2) INTEREST TO OTHER JUDGES: NO
6/2/13 DATE
 SIGNATURE

CASE No. 38004/2010

6/2/2013

In the matter of:-

K H L SANDER

Applicant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

Van der Byl AJ:-

[1] On 19 April 2009, arising out of injuries sustained in a motor accident, an order was by agreement made in favour of the Applicant in terms of which the Respondent was ordered, *inter alia* -

(a) to pay to the Plaintiff (Applicant) an amount of R202 142,53 in delictual

.../...

damages;

- (b) to supply the Plaintiff (Applicant) with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 1996, in respect of 90 per cent of the accident related future accommodation of him in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him, to compensate him after the costs have been incurred and on proof thereof.

[2] In this application the Applicant now claims an order in terms of which the Respondent is, in addition to a punitive order of costs, ordered -

- (a) to pay the Applicant an amount of R88 200;
- (b) alternatively, to compensate the Applicant for 90 per cent of all proved expenses incurred in respect of -
 - (i) all accident related future accommodation of the Applicant in a hospital or nursing home;
 - (ii) treatment of or rendering of a service or supplying goods to the Applicant.

[3] The relief claimed is based on allegations made in a founding affidavit deposed to by the Applicant's attorney in which mere reference is made to -

.../...

- (a) three expert reports, **Annexures B, C and D** (constituting almost 50 pages) which were discovered in the action proceedings by the Applicant; and
- (b) a letter he addressed to the Respondent on 11 May 2010 requesting payment of R88 200 for certain payments as set out in various so-called pay slips of salaries paid to some five persons he seems to have employed during the period April 2009 to January 2010.

[4] The affidavit or the letter referred to contains no particular reference to paragraphs in the expert reports on which reliance is placed upon for the claim and neither the affidavit nor the letter contain any indication for what purposes the persons were employed or what duties each of the employees are to perform or have been performing.

(I need to mention that, in having failed to refer in detail to the Annexures in so far as the Applicant relies on the contents of those relatively voluminous documents, the Applicant ignored what was held in cases, such as, eg., **Lipschitz & Schwartz NNO v Markowitz 1976 (3) SA 772 (W)** and **Swissborough Diamond Mines (Pty) Ltd v Govt of the RSA 1999 (2) SA 279 (T)**.

In the **Lipschitz case, supra**, the learned Judge held at 775H as follows"

"A litigant cannot, as it were, throw a mass of material contained in the record of an enquiry at the Court and his opponent, and merely invite them to read it so as to discover for themselves some cause of action which might lurk therein, without identifying it. If this were permissible,

.../...

the essence of our established practice which is designed and which still evolves as a means of accurately identifying issues and conflicts so that the Court and the litigants should be properly apprised of the relevant conflicts, would be destroyed."

In the **Swissborough case, supra**, the learned Judge held at **324G** as follows:

"Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met."

Apart from this serious difficulty, the annexures to the founding affidavit were so badly photostated that they were hardly legible.

The attorney concerned who prepared, and counsel, if any, who settled, the papers in this application will, unless they want to risk an adverse order of costs against them in future, be well-advised to follow in future the principles which have over decades been laid down by our Courts in respect of the preparation of applications)

[5] **Annexure C** is a report of a registered physiotherapist, in which she documented the physiotherapy treatment the Applicant was to receive which seems to be of no relevance to the claim of the salaries paid to the various employees he employed.

[6] **Annexure D** is a report of an industrial psychologist to which mere reference is made without any elaboration and which likewise seems not to be of any such relevance.

.../...

[7] **Annexure B** is a report of an occupational therapist in which at pages 11 to 13 to which the Court is, without any elaboration, referred to, the necessary expenses to be incurred by the Applicant are set out.

[8] A reading of those pages discloses that the Applicant will require the following assistance -

- (a) in the home, assistance once a week;
- (b) in respect of maintenance and the garden, assistance once a week;
- (c) at work, assistance with regard to heavy loading, but it is pointed out that he was using his garden worker as labourer to assist with loading.

[9] in relation to transport, it is indicated that "*the cost of transport to appointments related to the accident be allowed at AA rates*", being an indication which I fail to understand.

[10] As far as accommodation is concerned, it is indicated that the Applicant should live in a single storey house with non-slip flooring and that no structural adjustments are required.

[11] As is apparent from the Respondent's answering affidavit, an expert report of another occupational therapist was discovered (**Annexure RAF 1**) by the Respondent

.../...

in the action proceedings which contradicts the opinion of the Applicant's occupational therapist expressed in **Annexure B**.

[12] In this report it is indicated -

- (a) that the Applicant would require no assistance in the home or the garden;
- (b) that, as far as transport is concerned, he can be expected to experience more comfort with the use of recommended assistive devices;
- (c) that, as far as accommodation is concerned, no adjustments need to be made.

[13] Apart from the dispute between the two occupational therapists, the founding affidavit and the expert reports, particularly **Annexure C**, do not in my view constitute any proof for the employment of five employees (one of whom is his daughter he employed to perform certain administrative duties) who were on the face thereof employed on a full time basis.

[14] -- The Applicant for the first time attempted to deal with the functions and duties of the five persons he employed and, in addition in a further attempt to justify the employment of his daughter, incorporated a new allegation in his case which seems not to have formed part of his case the action proceedings, to the effect that as a result of the accident he has a "*very bad short term memory, and suffer severe headaches*".

.../...

[15] It is trite that in motion proceedings an applicant must in his or her supporting affidavit set out fully his or her cause of action. It is not for the applicant to simply make general allegations, and then when those allegations are dealt with in reply, to come forward with replying affidavits giving details supporting the general allegations originally set out in the affidavit supporting the notice of motion (*Mauerberger v Mauerberger*, 1948(3) SA 731 (C) at 732; *Director of Hospital Services v Mistry*, 1979(1) SA 626 (A), 635H - 636A; *Shephard v Mitchell Cotts Seafreight (SA) (Pty) Ltd*, 1984(3) SA 196 (T), 205F; *Johannesburg City Council v Bruma Thirty-Two (Pty) Ltd*, 1984(4) SA 87 (T), 91C - 93E; *Bowman NO v De Souza Roldao*, 1988(4) SA 326 (T), 327D-H).

[16] No reasons were furnished or submissions were made why I should consider the contents of the Applicant's replying affidavit in so far as it contains allegations which should have been included in the founding affidavit and it so far as it contains new matter.

[17] Even if regard can or should be have to the replying affidavit, it appears -

- (a) that the claim in respect of the domestic worker is abandoned (because of his failure to submit any salary advices in respect of that worker);
- (b) that his gardener is indeed used to attend to "*do certain jobs within the business*".

[18] Relying on the report of his occupational therapist (**Annexure B**) that in so far

"as the assistance at work in respect of heavy loading as per the advice of Wilma van der Walt (ie., his occupational therapist)", he is, as is apparent from his replying affidavit, making use of the following employees -

- (a) Meshack Molefe who is his main driver who *"does the heavy lifting himself when there are no large barrels"*;
- (b) Ben Olifant who drives the forklift *"which is used to load the stock at (their) premises and offload the empties"*;
- (c) Koos Ramaishu who is no longer in his employ, but *"was used to assist when the driver needed an extra person to offload (more particularly when there were 22kg drums for delivery)"*.

[19] As far as the employment of his daughter is concerned, he points out that she is employed to deal with the management and administration *"of the business"* because it is necessary for her to work there because, as I have already indicated, as a result of the accident he has a *"very bad short term memory, and suffer severe headaches"*.

[20] In my view there is, for at least two reasons, neither in the founding affidavit nor the replying affidavit sufficient proof for the relief claimed in either prayer 1 or the alternative prayer.

.../...

[21] In the first place I am, because of the discrepancy between the two occupational therapists, in no position to determine exactly what services the Applicant indeed require which can be considered to be accident related.

[22] In the second place, even if regard is had to the report of the Applicant's occupational therapist, the evidence submitted by the Applicant seems to justify no more than the employment of -

- (a) a domestic worker once a week (which claim is, as I have already indicated, abandoned);
- (b) a gardener once a week who can be used to assist with heavy loading and who, although it is not quite clear, may, perhaps, be used all week for that purpose.

[23] Instead the Applicant's by far, and opportunistically, so exceeds what he seems, subject to acceptable evidence, be entitled to claim.

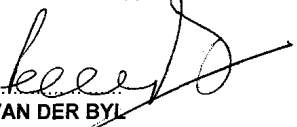
[24] In the result I am unpersuaded that the Applicant has made any case for the relief he is claiming and that his application is wholly ill-conceived.

[25] In the premises I make the following order:-

1. **THAT** the Applicant's application be dismissed.

.../...

2. THAT the Applicant be ordered to pay the Respondent's costs.


P C VAN DER BYL
ACTING JUDGE OF THE HIGH COURT

ON BEHALF OF THE APPLICANT

ADV J VORSTER

On the instructions of

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ON BEHALF OF THE RESPONDENT

ADV J A KLOPPER

On the instructions of

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Ref: CB Rangata/mmr/BR1096
(012) 662-3571
3420523
28 January 2013

DATE OF HEARING

28 January 2013

JUDGMENT DELIVERED ON

6 February 2013