

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG, PRETORIA)

CASE NO: 20991/10

7/12/2012

(1)	REPORTABLE: YES ☒ NO ☒
(2)	OF INTEREST TO OTHER JUDGES: YES ☒ NO ☒
(3)	REVISED.
	2012.12.07. DATE
	 SIGNATURE

In the matter between:

BOTHMA GERHARDUS JOHANNES

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAKGOKA, J:

[1] This is an action in terms of the Road Accident Fund Act, 56 of 1996. The plaintiff issued summons against the defendant, the Road Accident Fund pursuant to certain bodily injuries he sustained on 13 December 2006, when he was involved in a motor vehicle collision.

[2] The matter was set down for trial on 30 October 2012, on which occasion the defendant applied for a postponement, which was opposed by the plaintiff. After full argument, I granted the postponement and ordered the defendant to pay the costs occasioned by the postponement. I reserved the scale of such costs, and the question as to whether such costs should be paid *de bonis propriis* by the defendant's claims handler or its attorney. For that part of the order, I directed the attorney and/or the claims handler to furnish reasons why I should not make a punitive costs order referred to above.

[3] The reason why I made the directive is that I had gained an impression that the defendant's attorney and/or claims handler did not pay sufficient attention to the matter, in particular to the trial preparations. It appeared that the defendant had decided at a very late stage to apply for a postponement. In fact, the substantive application for a postponement is dated 30 October 2012, the day on which the trial was supposed to commence.

[4] Mr David Matome Mogale of Sekati Monyane Attorneys Inc, the defendant's attorneys of record, has deposed to an affidavit furnishing the reasons why he or the claims handler should not be visited with a costs order *de bonis propriis*. In light of the conclusion I arrive at in this judgment, I did not deem it necessary for counsel to address me further on this aspect.

[5] In a nutshell, Mr Mogale explains that the report of the plaintiff's orthopaedic surgeon was served on him on 31 August 2012. Upon perusal of the report, it came to his attention, for the first time, that the plaintiff had been involved in a subsequent

accident in September 2011. This would have a major impact on the *quantum* of the plaintiff's damages. As a result, he was of the view that the defendant should instruct its own expert to examine the plaintiff, in order to determine the impact of the injury on the assessment of damages. He was not able to secure an appointment with any expert as they had all been fully booked for the year. On 26 October 2012 he prepared an executive summary containing settlement recommendations, for the defendant. The defendant did not agree with his recommendations without the benefit of a second opinion on the impact of the subsequent injury on the assessment of the plaintiff's damages. On 14 September 2012 the plaintiff delivered an amendment to his particulars of claim, in terms of which the plaintiff increased the total claim amount from the initial R300 000 to R3 180 000.

[6] Having regard to the above, I am satisfied that Mr. Mogale was not lackadaisical in his preparations for trial. He was faced with two difficult situations - the sudden knowledge of the plaintiff's subsequent injury and the plaintiff's far-reaching amendment of his claim amount. Both these developments necessitated the defendant to reconsider its position with regard to the assessment of the plaintiff's damages. Mr. Mogale was not in a position to secure the relevant experts in time to examine the plaintiff and compile expert reports.

[7] Mr. Mogale's explanation is therefore accepted. As a result, there is no need for any costs order *de bonis propriis* against him or the defendant's claim handler.

[8] In the result the costs order made on 30 October 2012 ordering the defendant to pay the wasted costs, stands.



TM MAKGOKA
JUDGE OF THE HIGH COURT

DATE OF HEARING	: 30 OCTOBER 2012
JUDGMENT DELIVERED	: 7 DECEMBER 2012
FOR THE PLAINTIFF	: ADV T C MAPHELELA
INSTRUCTED BY	: <i>DREYER & DREYER ATTORNEYS</i> , PRETORIA
FOR THE DEFENDANT	: ADV R STRYDOM
INSTRUCTED BY	: <i>SEKATI MONYANE ATTORNEYS</i> , PRETORIA