

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 26191/2019

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED YES |


SIGNATURE

24 April 2024
DATE

In the matter between

MOJALEFE, MARELETSE CLEARENCE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

(On jurisdiction to determine general damages)

WANLESS J

Introduction

- [1] In this matter one MOJALEFA CLEARANCE MARELETSE, adult male (*"the Plaintiff"*) instituted an action (*"the action"*) against the ROAD ACCIDENT FUND (*"the Defendant"*) for damages from injuries sustained by the Plaintiff arising from a motor vehicle collision which took place on the 13th of October 2019.
- [2] The action was defended by the Defendant and finally set down for trial on the 30th of January 2024. On the 31st of January 2024 the matter was allocated to this Court for hearing. At that stage both the issues of liability and quantum remained in dispute. The matter was stood down until the 1st of February 2024 in the hope that the parties would be able to settle the matter. On the 1st of February 2024 this Court made an order (by consent) separating the issues of liability and quantum in terms of subrule 33(4) and that the Defendant would be liable to compensate the Plaintiff in respect of all of his proven damages.
- [3] One of the heads of the Plaintiff's damages claimed by the Plaintiff is in respect of general damages. A dispute has arisen between the parties as to whether this Court has the requisite jurisdiction to determine the Plaintiff's claim for general damages. In this regard, Adv Matika, who appears for the Plaintiff, submits that this Court does have the requisite jurisdiction to entertain the Plaintiff's claim for general damages on the facts of this matter, with particular reference to the fact that the parties

agreed that this was so when the matter was certified ready for trial by Malindi J. On the other hand, Mr Klaas, from the State Attorney, who appears for the Defendant and who is instructed by the Defendant to oppose the Plaintiff proceeding with his claim for general damages before this Court, submits (broadly speaking) that the parties themselves could not agree to place the issue of general damages before this Court and that whether or not this Court ultimately acquires jurisdiction to entertain a claim for general damages depends upon whether the Defendant has made an administrative election to allow that to happen. This is in terms of the *Road Accident Fund Act, Act 56 of 1996* ("the Act") read with the *Road Accident Fund Regulations, 2008* ("the Regulations"). Put somewhat differently, Mr Klaas submitted that the Defendant was a creature of statute and bound thereby.

- [4] This Court, after hearing argument from both parties on the 1st of February 2024, was requested to make a ruling determining whether the Plaintiff in this matter would be entitled to proceed with his claim for general damages before this Court and whether this Court will be entitled to grant judgment in his favour in respect thereof. Hence the necessity for this *ex tempore* judgment at this very early stage of this trial

The facts

- [5] The relevant facts which are either common cause or cannot seriously be disputed by either party in this matter are the following:

- 5.1 at a pre- trial conference held on the 29th of September 2021, it was confirmed by the Defendant that the Plaintiff had complied with section 17(1A) of the Act but it was noted that the contents of the report of Dr Scheepers remained in dispute;
- 5.2 when the matter was certified ready for trial by Malindi J on the 24th of October 2022 the parties were *ad idem* that general damages were *not* to be referred to the HPCSA ("*the tribunal*") in terms of the Act read with the Regulations and that the Court was to determine the quantum thereof;
- 5.3 the issue as to whether or not the Plaintiff's injuries as a result of the collision qualify as "*serious*" has never been referred to the tribunal by the Defendant.

The law

- [6] Subsection 17(1) of the Act provides, *inter alia*, that the Defendant *shall*:

"...be obliged to compensate any person (the third party) for any loss or damage which a third party has suffered as a result of any bodily injury... caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury... is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of

his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum."

[7] Further, section 17(1A) of the Act provides as follows:

"(a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers, and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974)."

[8] Also, section 26(1A) of the Act provides that the Minister may make regulations regarding:

"(a) the method of assessment to determine whether, for purposes of s 17, a serious injury has been incurred;

(b) the injuries which are, for the purpose of s 17, not regarded as serious injuries;

(c) *the resolution of disputes arising from any matter provided for in this Act."*

[9] Regulation 3 of the Regulations provides for the assessment of serious injuries in terms of section 17(1A) of the Act. It prescribes the methods in accordance with which a medical practitioner shall assess whether a third party's injury is serious. In terms of Regulation 3 the third party whose injury has been assessed in accordance with the prescribed methods is obliged to obtain a serious injury assessment report from the medical practitioner concerned and submit the claim for compensation for a non-pecuniary loss in accordance with the Act and Regulations. The Fund is only obliged to compensate a third-party for non-pecuniary loss if (i) the claim is supported by a serious injury assessment report submitted in terms of the Act and Regulations and (ii) the Fund is satisfied that the injury has been correctly assessed as serious in terms of the method provided for in the Regulations. ¹

[10] If the Fund is not satisfied that the injury has been correctly assessed the Fund must, within 90 days from the date on which the serious assessment report was sent to it by registered post or delivered by hand, accept or reject the serious injury report or direct that the third-party submit himself or herself to a further assessment. Where a further assessment was obtained the Fund must either accept or dispute the

¹ *Knoetze and Another v Road Accident Fund*; 2022 ZAGPPHC 819 (2 November 2022) at paragraph [33]

further assessment in the manner provided for in the Regulations.²

- [11] Regulation 3(4) provides for the manner in which either (i) the third-party who wishes to dispute the rejection of the serious injury assessment report (ii) a third-party or the fund who wishes to dispute the "*assessment performed by a medical practitioner*", needs to proceed. The Regulation prescribes that the disputant shall, within 90 days of being informed of the rejection of the assessment, notify the Registrar that the rejection of the assessment is disputed by lodging a dispute resolution form with the Registrar. The ground on which the rejection of the assessment is disputed, including the submission, medical reports and opinions the disputant wants to rely on, must be submitted together with the dispute resolution form.³

- [12] Subregulation 3(5) then provides as follows:

"(a) *If the Registrar is not notified that the rejection of the assessment is disputed in the manner and within the time period provided for in sub-regulation (4), the rejection of the assessment shall become final and binding unless an application for condonation is lodged with the Registrar, as well as sent or delivered to the other party to the dispute.*

² Knoetze at paragraph [34]

³ Knoetze at paragraph [35]

(b) *A written response to the application may be submitted with the Registrar 15 days after the application for condonation, and a reply thereto may be lodged within 10 days.*

.....

(d) *The Registrar shall refer the application for condonation together with any response and reply to the appeal tribunal."* ⁴

[13] The Defendant in the present matter relied heavily upon the matter of *Knoetze and Another v Road Accident Fund* ⁵ and the authorities of the Supreme Court of Appeal ("SCA") referred to therein. ⁶

[14] At the outset, it is imperative to note that in *Knoetze* the issue which the Full Bench of this Division was called upon to decide was, having regard to the specific obligations placed upon the Fund, as set out in Regulations 3(3)(dA) and 3(4) of the Regulations, was a Plaintiff entitled to pursue the adjudication of general damages at trial or, in the default trial court, in the absence either of the Fund having accepted the injuries in question as constituting serious injury as contemplated in subsection 17(1) of the Act or of assessment of such injuries as constituting serious injury by an appeal tribunal in accordance with Regulation 3.

[15] It was conceded by Mr Klaas that the questions that the Court in *Knoetze*

⁴ *Knoetze* at paragraph [36]

⁵ *Ibid.*

⁶ *Road Accident Fund v Duma and three similar cases*; 2013 (6) SA 9 (SCA) at paragraph [19]; *Road Accident Fund v Lebeko*; 2012 JDR 2176 (SCA) [2012] ZASCA

and the SCA in the decisions referred to therein, were asked to decide were different to that which this Court has been asked to provide a ruling upon. This is so, since in the present matter, whilst it is true that the Plaintiff's injuries have not been classified as serious in accordance with the process prescribed in terms of the Regulations, *alternatively*, the Defendant is not in default of failing to act in terms of the obligations placed upon the Defendant in terms of the Act and the Regulations, the parties have agreed that the matter may nevertheless proceed to trial and the issue of general damages be determined by this Court. The question is whether or not this is permissible.

[16] Before moving on, it must obviously be noted that in both of the former instances it was held that the Court did not have jurisdiction to entertain the Plaintiff's claim for general damages. Despite the apparent differences in the questions the respective Courts were asked, Mr Klaas nevertheless continued to rely on *Knoetze* as authority for the proposition that this Court did not have the requisite jurisdiction to entertain the Plaintiff's claim for general damages.

[17] Adv Matika drew the attention of this Court to the decision of the Full Bench of this Division in the matter of *Mertz v Road Accident Fund*.⁷ In *Mertz* (decided shortly after *Knoetze* with the Court acknowledging that it was fully aware of the *Knoetze* decision) the Full Bench was also (amongst other issues) asked to resolve the issue as to whether the Court

⁷ Case number A96/2021 (2 December 2022)

a quo lacked the jurisdiction to make any award in respect of general damages because the jurisdictional facts necessary to qualify the Appellant's injuries as a "*serious injury*" had not been established.

[18] However, in *Mertz* ⁸ the Court was asked to resolve whether, in light of the contents of various pre-trial minutes, the Respondent (*the RAF*) and the Defendant in the Court *a quo*, had reserved its right to refer the Appellant's claim for general damages to the HPCSA (the tribunal).

[19] Following an examination of the aforesaid pre-trial minutes, together with an acknowledgement of the decision of the Full Bench in *Knoetze* and a discussion of Regulation 3, the Full Bench in *Mertz* (at paragraph [29]) held, *inter alia*, the following:

"Regulation 3 does not expressly require the RAF to in writing accept the injuries as serious, whereas it expressly provide (sic) that reasons for rejection must be in writing. The RAF is the decision-maker pertaining to accepting or rejecting the injury as serious. There is no doubt that in general where the RAF had offered an amount as compensation for general damages, without expressly informing the third party that the injury was serious, an implied acceptance constitutes that the injury was serious. Similarly, an omission that injuries are serious, contained in a pre-trial minute is an acceptance of the injuries as serious. Admissions made in a pre-trial hold the party admitting same bound thereto."

⁸ Paragraph [22] onwards.

[20] In the premises, in *Mertz*, the injuries were deemed to be accepted on the basis that the RAF did not revert by a fixed date and therefore, all serious injury reports were admitted. Putting aside that in the present matter this Court has been advised that all expert reports have been admitted, which may well include such a serious injury report, thereby putting the present matter on all fours with *Mertz* (this was not argued before this Court), this Court cannot sustain the further argument put forward by Mr Klaas that *Mertz* is still distinguishable from the present matter. The reasons relied upon for this submission were that *Mertz* did not *directly* hold that the Court *a quo* had jurisdiction to decide the claim for general damages on the basis of the admissions in the pre-trial minutes, referred to above.

[21] In contrast thereto, this Court must accept the argument put forward by Adv Matika that, in the present matter, the facts are even clearer (and support the case of the Plaintiff even further) in that there is a clear acceptance (*with no rejection, as dealt with by the Full Bench in Mertz*) of the fact that the injury of the Plaintiff is serious and will not be referred to the tribunal. This, of course, is clearly included in the certification that the matter was ready for trial referred to earlier in this judgment.

[22] In light of the foregoing the attitude now adopted by the Defendant and the last minute instructions provided to Mr Klaas are difficult to understand. Unarmed without a formal application to withdraw an

admission, Mr Klaas is now forced, on behalf of his client, for reasons apparently unknown to him (which remain unknown to this Court) to attempt to forestall the finalisation of the Plaintiff's claim for general damages. This, despite the fact that the Defendant has been in possession of the report of the medical practitioner who has assessed the Plaintiff's injuries as serious for some considerable time but has failed to take any steps in respect thereof.

Conclusion

[23] In the premises, this Court holds that the point *in limine* raised by the Defendant that this Court does not have the requisite jurisdiction to determine the Plaintiff's claim for general damages, is dismissed. The Plaintiff is entitled to proceed with his claim therefor (as set out in the notice certifying this matter ready for trial) and this Court will grant judgment in respect thereof. It is so ordered.



WANLESS J
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

Date of hearing:	2 February 2024
Date of <i>ex tempore</i> Judgment:	2 February 2024
Date of revised Judgment:	24 April 2024

APPEARANCES

On behalf of the Plaintiff:

Adv. F. Matika

Instructed by:

K Titus & Associates Attorneys

On behalf of the Defendant:

Mr. L. Klaas (State Attorney)