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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 20804/2017

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 19 June 2024

SIGNATURE:

In the matter between:

M[...] K[...] J[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

PIENAAR (AJ)

JUDGMENT

[1] The Plaintiff sued the Defendant in her personal capacity as the mother and natural guardian of her minor child, K[...] J[...] (“the minor”) for damages arising out of bodily injuries sustained by the minor in a motor vehicle accident that occurred on the **1 May 2010**, at Thindisa Street, Atteridgeville, Gauteng Province, who at all times was the pedestrian.

[2] At the time of the accident, the minor was a pedestrian when a motor vehicle with registration letters unknown there and then driven by the **unknown driver** (“the insured driver”) collided with the minor.

[3] A Notice of Substitution was served on the Defendant on 08 November 2023 when the minor became major (“M[...] K[...] J[...]”).

[4] On a daily basis, this Court is faced with an avalanche of applications for default judgment against the Road Accident Fund (RAF).

[5] The present action came before this Court as an application for default judgment against the RAF. The Plaintiff, Adv Mashau Madula, sought to proceed on merits and quantum of the claim. With regard to the merits, Adv Madula made submissions based on the Article 19(f) affidavit without calling any witnesses. With regard to the quantum, a bundle containing reports of Orthopaedic Surgeon, Educational Psychologist, Occupational Therapist, Clinical Psychologist, Industrial Psychologist and One Pangaea Actuaries report. An order in terms of Rule 38(2) of the uniform rules was sought and granted in respect of the evidence of those experts.

Pertinent background facts to the present default action

[6] On **01 May 2010** at 20h19 the minor was admitted to hospital noted that he was “knocked down” by a motor vehicle and injured his left foot. He was discharge on 3 May 2010 with final diagnosis soft tissue injury left foot.

[7] On or about **11 August 2016** one Constable (surname - hand writing is not clear) stationed at Attridgeville South African Police Service (SAPS) completed an Accident Report (AR) form. In the AR he recorded that the alleged accident happened on 1 May 2010 at 15:05 at Thindisa Street, Attridgeville, Pretoria. With regard to the brief description of the accident, he recorded the following:

Pedestrian: “A was walking along Thindisa street from west to east direction and motor

vehicle was traveling the same direction from west to east and bump pedestrian from the back”

[8] A claim was lodged by Baloyi Attorneys with the RAF, but there is no RAF stamp on the lodgment letter. On 07 March 2024 (RAF stamp) the notice of set down was served on the Defendant. Ultimately, the action was enrolled for hearing on 12 February 2024.

[9] The Court pointed out to Counsel that the accident was only reported to the SAP six years later on 11 August 2016. According to the lodgment letter the claim was lodged on **25 October 2016**.

Invalid Claim lodged

[10] Where the identity of the driver and owner of the vehicle concerned is unknown (hit-and-run) a third party claim prescribes after two years have expired. Regulation 2(1)(a): “(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.

[11] The Court is not satisfied with the lodgment letter dated 25 October 2016 with no RAF stamp and it was “lodged” out of time.

Analysis

[12] Rule 31(2) of the Uniform Rules provides that in an action claim where a defendant is in default of their obligations to deliver a notice of intention to defend, a Court may, after hearing Counsel submissions, grant judgment abasing the defendant or make such order as it deems fit. It is important to state that a default judgment is granted not because the defendant against whom it is granted does not have a defence to the action but it is one granted in terms of the rules with the discretion of the Court.

[13] According to the lodgment letter dated 25 October 2016 there is no RAF stamp.

[14] Was the Collision Report (AR) created in order to meet the requirements of the Regulation 2, which requires the third party to submit within 14 days, an affidavit to the police? Regulations 2(b) requires that the third party takes all reasonable steps to establish the identity of the owner or driver of the motor vehicle concerned, otherwise the RAF shall not be liable to compensate any third party.¹

[15] Before this Court concludes, Adv Maphutha made submissions on the issue of quantum. Ms Mashau Madula also made submissions that the Defendant haven't raised the above mentioned concerns of the Court with a Special Plea also that the Defendant is not here at Court.

[16] In light of all the above, this Court is not willing to exercise its discretion and grant default judgment against the RAF. In these circumstances, this Court, in the interest of justice, is also not prepared to dismiss the action or grant absolution from the instance. The evidence presented of the lodgment of the Claim at the RAF, and that the Claimant hasn't reported the motor vehicle accident within 14 days at the SAPS.

ORDER

[17] For all the above reasons, I make the following order:

1. The application for default judgment is refused.
2. There is no order as to costs.

M PIENAAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

¹ Act 2 of 2000 amended

Delivered: This judgment was prepared and authorised by the Judge whose name is reflected and is handed down electronically by circulation to the parties/ their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 19 June 2024.

Date of hearing :12 April 2024

Date of Judgment :19 June 2024

APPEARANCES

For the Plaintiff : Adv Mashau Madula

Instructed by : Molefe Machaka Attorneys Inc

For the Defendant : Road Accident Fund - No appearance
Link no: 3996369