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

DELETE WHICHEVER IS NOT APPLICABLE

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

19 June 2024

DATE

.....

SIGNATURE

CASE NO: 2023-7522

In the matter between:

MOLOKWE: MASHUDU DAVID

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

CAJEE AJ:

1. This is an application for default judgment following the striking out of the Defendant's defence by her Ladyship Hassim AJ (as she then was) on the 28th of September 2023 for its failure to comply with court orders and rules of court aimed at ensuring that the matter was trial ready.

2. At the hearing of the matter, which was held in open court, Mr. Mashao appeared for the Plaintiff. He applied for a separation of issues between liability and quantum and for the matter to proceed only on the issue of liability. I granted the application. I further ordered that I would require the Plaintiff to testify in the matter.

3. Before dealing with the testimony of the Plaintiff, I set out below a short chronology of relevant events leading up to this application:

3.1. The Plaintiff was allegedly involved in a motor vehicle accident on the 5th of December 2021 at around 22h00 in the evening. He was the driver of a Mercedes Benz motor vehicle with registration letters and numbers DR07XSGP when it was allegedly forced off the road by the driver of an unknown truck and trailer which he was trying to overtake on the fast lane, causing the Plaintiff to lose control of his vehicle on the slippery road and collide with barricades on the side of the road. The identity of the driver or make and registration number of the truck and trailer are to the Plaintiff unknown.

3.2. A claim was lodged with the Defendant on the Plaintiff's behalf by his attorneys of record on the 25th of August 2022 encompassing inter alia the following documents:

3.2.1. An RAF1 claim form with the completed statutory medical claim form by Dr. Scheepers dated the 14th of June 2022. According to this form the Plaintiff was admitted to the Chris Hani/Baragwanath Hospital on the 10th of December 2021. The date of discharge is recorded as unknown. He is recorded as having been re-admitted on the 24th of January 2022 and discharged on the 21st of February 2022. His injuries are listed as fracture of an odontoid peg/C2 type III. Treatment is recorded as open reduction and fusion from C2 to C6 of the cervical spine.

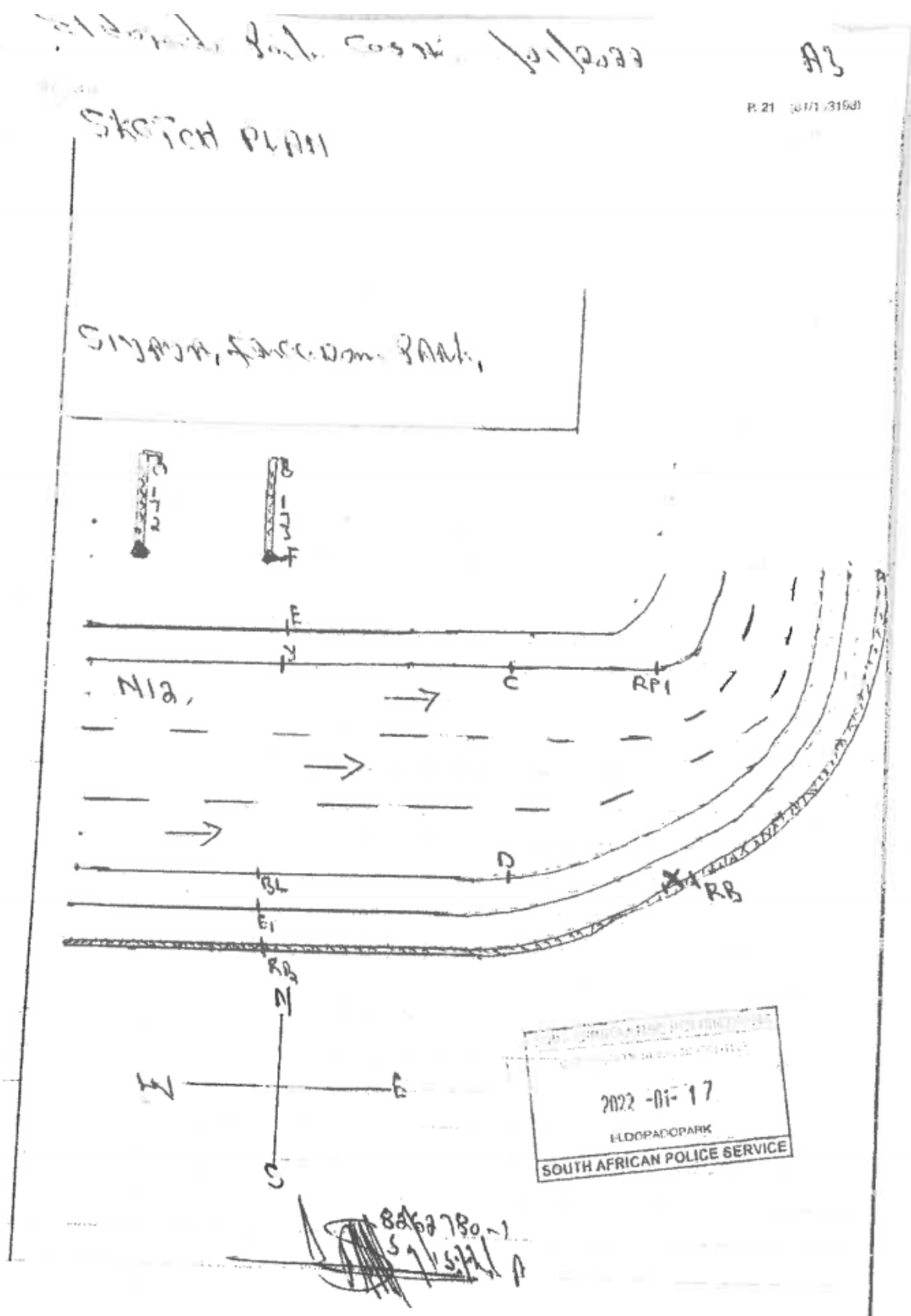
3.2.2. An Accident Report Form (OAR) from the Eldorado Park Police Station which appears to have been completed on the 17th of January 2022, based on the date stamp appearing thereon. According to the section dealing with "brief description of the accident" on the form the following is recorded:

“It is recorded that on Friday 10/12/2021 a White Mercedes Benz Registration D[...] while travelling on the N12 Siyaya Freedom Park. I slipped , lost control and I bumped into Road barricade.”

Attached to the OAR is a sketch of the accident scene. No mention is made of any other vehicle, either on the report or the sketch. The Plaintiff's name, identity number and address is recorded on the form. All of these are reproduced hereunder.

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3.2.3. Copies of the hospital records. According to these, the Plaintiff was admitted on Sunday the 5th of December 2021 at 17h05. He was

referred from a Clinic complaining of MVA related headache, painful neck and back pain. It is recorded that he was in a motor vehicle accident two days earlier at 22h00, still complaining of ongoing headache and neck pain.

The following note is made:

"Low velocity MVA - hit barrier after swerving for rock in Road".

This is reproduced hereunder.

013-99

**ONDERSOEK/BEHANDELING/VORDERING
EXAMINATION/TREATMENT/PROGRESS**

Datum - Date	
CHRIS HANI BARAGWANATH ACADEMIC HOSPITAL	
03 DEC 2021	
NAME: _____	

0130 called, no answer

21h10
Pain
- 12h

[Signature]

Stego in
O Allergies
O Carbamides
Referral from Private
? Ct - C2 Dislocation
In head blocks

Hx MVA Friday 24/7 ago 22h00
12h00 earlier
Still ongoing headache + neck pain
Low velocity MVA - hit barrier after
swerving for rock in Road
- Restrained; O Head trauma
O Concussion
O Vomiting
O worsening headache
- fully mobile - was walking around
until bp dtize
O neurological fallout

0130

3.2.4. A statutory affidavit by the Plaintiff in terms of section 19(f)(i) of the RAF Act 56 of 1996, commissioned before a commissioner of oaths on

3.1 On the 05th day of December 2021 at approximately 22:20pm, I was a driver of a Mercedes Benz motor vehicle bearing the registration numbers and letter [REDACTED]

[REDACTED] On the said day I was driving on the N12 Freeway going in an easterly direction behind a truck "insured motor vehicle" bearing unknown registration letter and number, driven by a driver those full and further particulars are unknown to me "unknown insured driver".

3.2 The insured vehicle with a heavy load trailer was proceeding slowly ahead of me. Whilst I was in process of overtaking the insured vehicle, the insured vehicle lost control and zigzag towards my path of travel. I took evasive action to avoid

the 17th

the collision with the insured vehicle, resulting in me losing control of my motor vehicle.

- 3.3 The road was wet and slippery, which aided in me losing control of my motor vehicle and colliding with the barricade on the side of the road. The insured motor vehicle or alternatively the insured driver failed to stop at the scene and due to the collision having occurred in the evening whilst it was dark, I could not note the registration number and letters of the insured vehicle. The collision is more evident in the accident report / police docket from Eldorado Park Police Station under CAS number 274/01/2022 however they noted the accident as having occurred on the 10.09.2021.

4.

The accident occurred because of the sole negligent driving of the unknown insured driver who drove at a dangerous and inopportune moment thus causing the accident *inter alia*:

- 4.1 The unknown insured driver failed to keep a proper lookout.
- 4.2 The unknown insured driver drove the unknown insured vehicle in a reckless manner.
- 4.3 The unknown insured driver failed to apply brakes of the unknown insured vehicle timeously, adequately or at all.
- 4.4 The unknown insured driver failed to avoid the collision when, by the exercise of reasonable care and consideration, he could and should have done so.

“

4.5 The unknown insured driver failed to maintain the unknown motor vehicle in a roadworthy manner.

4.6 The unknown insured driver failed to keep the unknown insured vehicle under proper and/or adequate control.

5.

Alternatively, the collision occurred as a sole result of negligence of the unknown insured drivers for which he failed to maintain adequate control of the unknown insured vehicle, whereby, in my attempts to avoid the collision, resulted in my motor vehicle losing control.

6.

At the time of the collision, I couldn't have avoided the collision as it occurred without warning out of a sudden.

7.

As a result, thereof I sustained several bodily injuries which resulted in my physical and mental impairment, psychological trauma and incapacity to do work with a temporally disability, for which I was then transported and admitted at Chris Hani Baragwanath Hospital for medical and hospital treatment.

4. Summons was issued and served on the Defendant on the 2nd of February 2023. An appearance to defend and plea emanating from the offices of the State Attorney dated the 13th of May 2023 was served on the Plaintiff's attorneys of record. It is for the most part a bare denial.

5. It is noted from paragraph 4 of the plea that it is denied that the Plaintiff complied with the relevant provisions of the Road Accident Fund as far as the lodgement of the necessary and statutorily required documentation is concerned. This issue was thus one that the Plaintiff was still required to prove at the hearing of this matter.

6. An order compelling the Defendant to comply with several requests in terms of the rules of court was granted by Pienaar AJ on the 14th of August 2023. The Defendant failed to comply and its defence was struck out on the 28th of September 2023.

7. At the hearing of this matter the Plaintiff was lead by Mr. Mashao. The Plaintiff testified testified through the services of a Venda interpreter that:

7.1.He was on the N12, intending to join the N1. He was travelling from Protea Glenn to Croesus. He was the driver of a Mercedes sedan at the time. It had just stopped raining. It was around 22h00 at night.

7.2.He was travelling behind a truck with an attached trailer. They were going uphill and approaching a bend in the road.

7.3.He decided to overtake the truck and trailer and moved into the middle lane. He noticed the truck and trailer move in a zig zag manner. The trailer then moved into the middle lane. The Plaintiff moved to the fast lane to avoid the trailer, when he lost control of his vehicle because the road was slippery and collided into a barricade on the right side.

7.4.The Plaintiff testified that he sustained injuries and was not even able to stand up. He testified further that he was injured on his spine, neck and sustained a wound to the back of his head which grew even more in hospital and that his mind has not been right since.

7.5.Upon questioning the Plaintiff stated that he accelerated into the fast lane in order to avoid the fast approaching vehicles behind him in that lane.

7.6.He confirmed that the sketch plan attached to the OAR report correctly depicted the scene of the accident and was drawn in his presence by the police, after he was first discharged from hospital. He stated that the point marked "X" in the sketch accurately depicted where he collided with the barricade. He could

however not explain why no other vehicles in particular the truck and trailer are depicted on the sketch.

7.7. The Plaintiff explain why no mention is made in the OAR itself of any other vehicle. He claimed that he had not seen the OAR before he learned from his lawyers that they had received it from the police. He was unable to explain why the date of accident in the OAR is reflected as the 10th of December 2021. All he could say was that the accident happened in early December 2021. He was unable to explain why the date of accident was reflected as the 5th of December 2021 in the statutory affidavit. All he could say is that it happened on a Friday late in the evening.

7.8. The Plaintiff was unable to explain why the hospital records mentioned that he swerved to avoid a rock in the road. It was suggested to him by his counsel that it may be because he is Venda speaking and the hospital staff spoke to him in English. The Plaintiff stated that while he was Venda speaking he was able to communicate in English.

7.9. The Plaintiff explained further that after the accident he was taken home by his brother Lawrence, who was called at his request by one of the people who came to the scene after the accident. He wasn't feeling well the next day and couldn't get up and was taken to a doctor in Chiawelo who referred him to Baragwanath Hospital which he was only able to attend the next day. This explains the approximately two day delay mentioned in the hospital records. However, it also means that the collision did not occur on the 10th of December 2021 as stated in the OAR and the RAF medical form, nor the 5th of December 2021 as stated in the statutory affidavit and the particulars of claim.

7.10. According to the Plaintiff he stayed in Baragwanath Hospital until the end of December 2021, and was re-admitted in January 2022 until his final discharge in February 2022.

8. I found the testimony of the Plaintiff to be very confusing. He did not make a favourable impression. Apart from all the discrepancies pertaining to the date of

accident, and that no other vehicle is mentioned in the OAR and sketch plan, I find his version of events in court to be highly improbable. The first indication of an untoward movement by the truck and trailer would have come from the truck itself, not the trailer. If such a movement was made the Plaintiff should have slowed down and stayed in his own lane before overtaking at a safe and opportune time, especially considering that according to him there were fast approaching vehicles approaching him on the fast lane, and that the road was slippery as it had just stopped raining. I find his reason for accelerating and moving into the fast lane to be implausible.

9. I further find the Plaintiff's failure to explain why the hospital records indicate that he swerved to avoid a rock in the road to be unconvincing. In fact he provides no explanation save to say the note in the records is incorrect. The fact that the OAR mentions no other vehicle, and has an incorrect date of accident, means that he has failed to comply with the provisions of regulation 2(1) of the Road Accident Fund regulations of 2008. The police can only investigate a claim based on the negligence of the driver of an unidentified vehicle if they are informed about it. This would appear to be the rationale for the lodgement period in these claims being the strict two years from the date of an accident¹ instead of the three years in respect of identified vehicles. Unlike the lodgement period for identified vehicles, the two year lodgement period for unidentified vehicles applies even to persons suffering a legal disability.

10. The plaintiff, by deposing to an affidavit with an incorrect date of accident has also failed to comply with the provisions of section 19(f)² of the RAF Act 56 of 1996.

¹ Geldenhuys & Joubert v Van Wyk; Van Wyk v Geldenhuys & Joubert 2005 (2) SA 512 (SCA) at paragraph [19]

² The section reads as follows:

The Fund or an agent shall not be obliged to compensate any person in terms of section 17 f or any loss or damage-

(f) if the third party refuses or fails-

(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out;

See in this regard the case of Nonxago v Multilateral Motor Vehicle Accidents Fund³, which dealt with the similarly worded provisions of article 48(f)(i)⁴ of the Schedule to Act 93 of 1989, which was the predecessor of section 19(f)(i).

11. In the premises the Plaintiff's case falls to be dismissed.

12. Before concluding, I highlight once again the unsatisfactory manner in which this matter was handled and thereafter defended by and on behalf of the Defendant. A highly meritorious defence was not only very badly pleaded but was also allowed to be struck off due to inaction on the part of the RAF and those representing it in court. From the time the claim was lodged until the time summons was issued it appears very little, if anything, was done by the Defendant. The plea, as I've stated, was a bare denial. Very little thought and preparation went into it. The Defendant had access to all the documents it needed to prepare a comprehensive defence. This would have entailed consideration being paid to the raising of at least one special plea. After the filing of the plea nothing further was done by the Defendant or its legal representatives leading to the striking out of the defence.

13. I have noted from Caselines that the Plaintiff's attorney prepared a fairly hefty bill of costs relating to the measures they had to take to compel compliance from the Defendant with the rules of court and to thereafter have its defence struck off. The bill of costs was finalized and taxed unopposed in the total amount of R44 143-71. the upshot of this is that despite the Plaintiff not succeeding with his claim, the Defendant will still end up paying his attorneys and counsel a fairly large sum of money. The Defendant has clearly not fulfilled its mandate of properly investigating and defending yet another highly meritless claim.

³ [2005] 4 All SA 567 (SE) at paragraph [34]

⁴ The article read as follows:

"The MMF or an appointed agent, as the case may be, shall not be obliged to compensate any person in terms of Chapter XII for any loss or damage –

(f) if the claimant refuses or fails –

(i) to submit to the MMF, or the appointed agent, together with his claim form, as prescribed by the Board, or within a reasonable period thereafter and if he is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim are fully set out;

14. I make the following order:

14.1. The Plaintiff's application for default judgment is dismissed.

CAJEE AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

APPEARANCES:

COUNSEL FOR THE PLAINTIFF:	Mr. Mashao
INSTRUCTED BY:	Z & Z Ngogodo Attorneys Inc
DATE OF HEARING:	16 th November 2023
DATE OF JUDGMENT:	19 th June 2024