



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

Case number: 2023/011918

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

12 JUL 2024

In the matter between

SIDINILE TSEBO

Plaintiff

and

ZIYABUYA OUTSOURCING CC

Defendant/Excipient

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JUDGMENT

July



OSBORNE AJ:

1. The Plaintiff pleads that on or about 20 September 2022, he was at his place of employment. He worked there as a patcher. While using a grinding machine on a roof, the ladder collapsed under him. He suffered an injury to his upper arm and was hospitalised. He filed summons claiming compensation from his employer at the time (the "Excipient" or "Defendant") in the amount of R1 500 000.
2. The latter lodged an exception alleging that no cause of action was pleaded because the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 ("COIDA") bars personal claims for matters within the scope of that act. The Defendant also excepts to the Plaintiff's particulars of claim on the basis they are vague and embarrassing.

3. An exception based on the contention that no cause of action is disclosed is aimed at obtaining a decision on a point of law which will be dispositive of the case, obviating the need to lead evidence at trial.¹ However, an exception can be upheld on this ground only if the claim is bad in law, not if it *may* be bad in law.² The onus is on the excipient to persuade the Court that upon *every* interpretation that can be placed upon the facts, the pleading is excipiable.³
4. As for an allegation that the particulars are vague and embarrassing, the excipient must show that the pleading lacks particularity, such as to render it vague *and* that the vagueness is embarrassing, such that the excipient is prejudiced.⁴ To put it another way: The Court must ask whether the exception goes to the heart of the claim and, if so, "whether it is embarrassing to the extent that the defendant does not know the claim he has to meet".⁵
5. Manifestly, a plaintiff is not held to an exacting standard in formulating the particulars of claim. Olivier AJ in Giant Leap Workspace Specialists (Pty) Ltd v Scoin Trading (Pty) Ltd T/A, The South African Gold Coin Exchange,⁶ quoted Herbststein & Van Winsen (at p 636), to the effect that "*it is sufficient if a defendant knows 'adequately' what a plaintiff's case is or 'sufficiently' shows the Defendant the case which he is called upon to meet.*"
6. It is worth quoting at length a venerable but illuminating passage:

"The true object of an exception is either, if possible, to settle the case, or at least part of it, in a cheap and easy fashion, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.' In my opinion, the Court should not look at a pleading with a magnifying glass of too high power. If it does so, it will be almost bound to find flaws in most pleadings - except formal replications, but certainly including the present exception itself. It is so very easy, especially for busy counsel, to make mistakes here or there, to say too much or too little, or to

¹ Alphina Investments Ltd v Blacher 2008 (5) SA 479 (A) at para 11.

² Vermeulen v Goose Valley Investments (Pty) Ltd 2001 (3) SA 986 (SCA) at para 7.

³ Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others 2013 (2) SA 213 (SCA) at 232C-E.

⁴ Barloworld Logistics Africa (Pty) Ltd and Another v Ford and Others 2019 (5) SA 133 (GJ) at para 40.

⁵ Jowell v Bramwell-Jones And Others 1998 (1) SA 836 (W) at p 905.

⁶ 2016 JDR 2297 (GJ) at para 34.

express something imperfectly. In my view, it is the duty of the Court, when an exception is taken to a pleading, first to see if there is a point of law to be decided which will dispose of the case in whole or in part. If there is not, then it must see if there is any embarrassment, which is real, and such as cannot be met by the asking of particulars, as the result of the faults in pleading to which exception is taken. And, unless the excipient can satisfy the Court that there is such a point of law or such real embarrassment, then the exception should be dismissed.”⁷

DOES COIDA BAR THE PLAINTIFF'S ACTION?

7. Section 1 of COIDA contains the following definitions that are salient to this matter.
 - 7.1. “*Disablement*” means “temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement”, as the case may be.
 - 7.2. “*Occupational injury*” means “a personal injury sustained as a result of an accident”.
8. Section 22 of COIDA reads:

“If an employee meets with an accident resulting in his *disablement* or *death*, such employee or the dependents of such employee shall, subject to the provisions of this Act, be entitled to the benefits provided for and prescribed in this Act.”
9. The basis of the Defendant’s exception under this head is s. 35(1) of COIDA.

“No action shall lie by an employee or any dependent of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the *disablement* or *death* of such employee against such employee’s employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such *disablement* or *death*.” (Emphasis added)
10. Citing this language, Defendant alleges that Plaintiff has failed to show that COIDA does not apply to his claim, and he is hence barred from approaching the High Court.
11. Manifestly, the Plaintiff survived the fall. We need to consider only whether he has pleaded that he was *disabled*, as that term is used in the Act. The Plaintiff

⁷ Kahn v Stuart 1942 CPD 386 at 391. See Van Wyk v FNB of South Africa Ltd 2016 BIP 44 (CP) at para 43 (defendant complaining of dearth of detail in particulars of claim may invoke Rules 21(2) and 37(4) and may file a plea consisting of only bare denials).

alleges that he sustained a *left arm injury to biceps* [sic]. But he nowhere alleges that he has been disabled in consequence. It might be thought that "partial" disablement is implied by the fact that the Plaintiff was hospitalised after the fall. But it does not necessarily follow from having been hospitalised that a person has been rendered *disabled* within the meaning of COIDA. The Plaintiff also pleads that he suffers from serious back pain and post-traumatic disorder. But this does not *ipso facto* denote physical disablement in the relevant sense. Acute symptoms may not render a person disabled, whilst chronic conditions might well have that effect.

12. One bears in mind that the purpose of COIDA is, according to the preamble, to provide compensation for death or "disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment". COIDA was enacted to ensure that those who are prevented from working owing to injuries on the job are not left destitute - bearing in mind that a lawsuit against an employer may be fruitless if it lacks financial resources or has gone out of business. Instead of seeking relief in the High Court, employees who became disabled as a result of being injured at work must look for compensation to the fund established under s. 15(1) of the Act, which is funded by employers at large.
13. One must be guided by a familiar statutory interpretive principle: A legislative provision that purports to oust the jurisdiction of the High Court is to be read narrowly:

"[C]ourts should be extremely wary of closing their doors to any litigant entitled to approach a particular court. The doors of the courts should at all times be open to litigants falling within their jurisdiction. If congested roles tend to hamper the proper functioning of the courts, then a solution should be found elsewhere, but not by refusing to hear a litigant or to entertain proceedings in a matter within the court's jurisdiction and properly before the court."⁸
14. The underlying constitutional right is s. 34, which protects the right of access to courts. This right may, under s. 36, be limited only in accordance with the

⁸ Standard Credit Corporation Ltd v Bester and others 1987(1) SA 812 (W) p 820.

constitutional values and principles enumerated in that provision. It is trite that the burden of proof falls upon the litigant who asserts such limitations.

15. Then s. 21 of the Superior Courts Act, No. 10 of 2013, provides for the jurisdiction of High Courts "over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to the law take cognisance". The provision is couched in the widest terms, suggesting a legislative wish to interfere with the principles of common law principles of jurisdiction as little as possible. In sum, in the absence of clear and definitive provisions limiting the Court's jurisdiction, the instrument should be read as widening rather than as limiting the scope of jurisdiction.
16. The Court, therefore, dismisses that component of the Defendant's exception founded on the claim that the High Court lacks jurisdiction to hear the Plaintiff's case and that no cause of action has hence been pleaded.

CONTENTION THAT PARTICULARS ARE VAGUE AND EMBARRASSING

17. Plaintiff avers in his particulars of claim that he:

"Suffered, *inter alia*; personal injuries which required medical treatment, including medical costs; post-traumatic stress disorder which has required professional medical treatment, and such other damages as may manifest or become known in the future."

"As a result of the injuries, which the Plaintiff sustained as a direct link (*sic*) of the incident, the Plaintiff has the following sequelae and symptoms: Still experiences loss of consciousness, excruciating back pain, pain and suffering; incurred hospital and medical expenses and will in the future incur further hospital and medical expenses; and suffered emotional stress trauma and shock."

18. As to quantum:

"As a result of the sustained bodily injuries and sequelae thereof, the Plaintiff suffered damages in the estimated amount of R1 500 000.00 (one million five hundred thousand Rand), which is calculated as follows:

- (i) Non-pecuniary damages for the physical impairment, emotional and psychological trauma, discomfort, pain and suffering and loss of amenities of life for R600 000.00 (the Plaintiff alleges that it is not reasonably practical to allocate portions of this amount into different subheadings);

- (ii) Estimated past loss of earnings, employability and diminished earning capacity of R300 000.00;
 - (iii) Estimated future loss of earnings, earning capacity and employability for R400 000.00;
 - (iv) Estimated past and future medical and hospital expenses for R200 000.00."
19. An amount of R200,000 is claimed with respect to future medical exposure expenses, including physiotherapy, painkillers, and occupational therapy. And R300 000 is claimed in respect of loss of earnings and earning capacity.
 20. The particulars assert that it is not reasonably practical to allocate the amount of R600 000 claimed in respect of non-pecuniary damages into different subheadings.
 21. Undeniably, the particulars are characterised by the kind of sloppy, over-inclusive, broad-brush allegations that are all too common. Yet I do not think these flaws go to the heart of the claim; they are not so vague as to render it impossible for the Defendant properly to plead.
 22. No one could quarrel with the claim that the Plaintiff's particulars do not comply with many of the strict requisites of Rule 18(10) of the Uniform Rules. Yet I do not believe that the Plaintiff's failures support the exception. A plaintiff is not required to articulate his claim in a manner that will enable the defendant to ascertain whether or not the plaintiff's assessment of the *quantum* is correct; the defendant has a duty to arrive at a reasonable assessment of the damages sustained by the plaintiff.⁹
 23. I am fortified in my finding by Mandlala v City of Johannesburg and Another (23236/2017) [2019] ZAGPJHC 80 (28 February 2019). The plaintiff plunged into an uncovered manhole on the pavement on a public street and sustained injury. She sued on the basis that the defendant was responsible for the design, maintenance, repairs and development of footways,

⁹ Minister van Wet en Orde v Jacobs 1999 (1) SA 944 (O) at 952I–953C.

pavements, sidewalks and management of manhole covers.

24. The defendant contended that the pleadings were excipiable for reasons rather similar to those raised by the Defendant herein. Many of the exceptions focused upon lack of particularity as to quantum. To this, the plaintiff responded that she had yet to undergo full assessment by medical experts and that the amount claimed would be quantified upon receipt of relevant medical reports.
25. Dismissing the exception, the Court in Mandala observed that medical reports are, as a matter of practice, filed after the plea to clarify the extent of the injuries and sequelae. (Rules 24 and 35 would allow the defendant to obtain further information as needed.) In the event that the plaintiff failed to file the reports, the matter would not be certified as ready for trial or, if certified, would be subject to dismissal if expert reports were not forthcoming. Similarly, claims for compensation for lost income and the like are left for actuaries to assist the Court in arriving at a just and equitable compensation.
26. Much of the above reasoning applies no less *in casu*. Although it would no doubt be preferable to plead a fully itemised breakdown – to the extent that figures are available - the fact that the particulars of claim may have been drawn in more precise terms does not *ipso facto* render them so vague as to frustrate the plea.¹⁰ Courts have rejected exceptions based on a failure to provide an itemised breakdown of the quantum concerned. For example, it was held that an exception could not be said to go to the root of the claim owing to the lack of particularity in how the damages were itemised since this could be cured by evidence.¹¹
27. Everyone understands that the figures in the particulars of personal injury claims often appear to be thumb-sucks, to use the vernacular. This is, in part, a consequence of the fact that precise assessments are often not available within the

¹⁰ Giant Leap Workspace Specialists (Pty) Ltd v Scoin Trading (Pty) Ltd 2016 JDR 2297 (GJ), para 39 ("An excipient is required to show that he will be seriously prejudiced if the exception is not upheld.")

¹¹ Rolando Electrical CC v Munaka General Trading (Pty) Ltd and Others (2011/6076) [2015] ZAGPJHC 238 (16 October 2015) para 48.

time allowed to file. Projections of future expenses unavoidably have a speculative quality. And then there is the perennial tendency to exaggerate expected medical and other expenses. To this, a court will often turn a blind eye - save where the sum claimed in the first instance is so exorbitant as to suggest bad faith. It seems to be a pragmatic appreciation of the foregoing that accounts for the judicial leniency one finds when it comes to pleading quantum in personal injury claims.

28. None of the Defendant's other grounds of exception go to the heart of the claim, and those deficiencies that remain may be condoned under the forgiving standards - some may say overly generous - our courts have, for better or worse, applied in exception proceedings.
29. Some of the Defendant's complaints simply demand too much of the particulars of the claim. For example, it is pointed out that the Plaintiff refers to a duty of care but fails to say whether the same or different duties of care are pleaded under each head. But courts do not demand this level of subtle parsing in particulars.
30. It is said also that Plaintiff fails to provide key information regarding past and future employment. The particulars do say that he worked for the Defendant, lost his employment, forfeited employment opportunities and has a reduced earning capacity. I do not think this renders the particulars of claim excipiable. No doubt, actuarial information will be forthcoming as the prospects of further employment and income.
31. Then, Defendant complains that Plaintiff has failed to plead the nature and extent of the injuries. But the particulars do, in fact, describe the nature of the injuries and *sequela*, albeit in a cursory and somewhat opaque fashion. As for the Plaintiff not providing details of the disability, we have already seen that disability *per se* has not, in fact, been alleged. (If it had been, the High Court's jurisdiction would have been ousted.)
32. In the premises, I find that the Defendant's exception is without merit.
33. As to costs, they shall be costs in the trial, calculated at Scale A in Rule 69(7) of

the Uniform Rules with respect to those incurred from 12 April 2024 onwards.

ORDER

34. It is ordered that:

34.1. The exception is dismissed.

34.2. Costs shall be costs in the trial.


OSBORNE AJ

Acting Judge of the High Court

Gauteng Division, Johannesburg

02 July 2024

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