



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

**Reportable / Not
reportable**

Case no: 6056/2023

In the matter between:

HERMAANS MOHLALEFI RANOSI

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Neutral citation: XXX

Coram: Cronje AJ

Heard: 10 September 2024

Delivered: 20 September 2024

Summary: Vehicle accident - Road Accident Fund prescribed claim form – Board Notice 2022 – special plea of non-compliance with the Board Notice read with section 24 of the Act - substantial compliance - special plea dismissed.

ORDER

1. The defendant's special plea is dismissed.
 2. The costs of the preparation and appearance in respect of the special plea shall be costs in the cause.
-

JUDGMENT

Cronje AJ

Introduction:

[1] The plaintiff instituted action against the Road Accident Fund (RAF) pursuant to a motor vehicle accident that took place on 17 July 2022. He was a pedestrian. The plaintiff alleged compliance with the relevant statutory requirements and claims compensation for future medical and related expenses, general damages, past loss of income, and loss of earning capacity.

[2] The defendant raised a special plea alleging that s 24(4)(a) of the Road Accident Fund Act 56 of 1996 (the Act), provides that any form referred to in that section which is not completed in all its particulars shall not be accepted as a claim under the Act. Precise details shall be given regarding each item under the heading '*compensation claimed and shall, where applicable, be accompanied by supporting vouchers*'.

[3] A perusal of the claim form shows that the details of the accident and the employment status were provided. Dr Kocoma completed the medical report. The accident report and medical records were filed in the court file.

[4] The parties agreed that the special plea be adjudicated prior to the matter

proceeding on the merits, if at all. The plaintiff's argument is that there are numerous cases where the defendant's special plea was dismissed. Mr Barlow, on behalf of the plaintiff, refers to *Pithey v Road Accident Fund*¹ where the Supreme Court of Appeal (SCA) held:

'[19] It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in *SA Eagle Insurance Co Ltd v Pretorius* reiterated that the test for substantial compliance is an objective one.

[20] In *Multilateral Motor Vehicle Accidents Fund v Radebe* [1995] ZASCA 80; 1996 (2) SA 145 (A) at 152E-I, Nestadt JA said:

"It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation. . . . These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant. . . ."

Although these remarks were made in a different context they articulate, in my view, the purpose that the claim form is intended to serve.' (Footnotes omitted.)

[5] In *Road Accident Fund v Busuku*² the SCA held that the Act constitutes social legislation and that claimants should be afforded the widest possible protection:

'In considering the context in which the provisions appear and the purpose to which they are directed it must be recognized that the Act constitutes social legislation, and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle. For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection. On the other hand, courts should be alive to the fact that the Fund relies entirely on the fiscus for its funding and they should be astute to protect it against illegitimate or fraudulent claims. In the current matter there has, however, been

¹ *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA); [2014] 3 All SA 324 (SCA).

² *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA).

no suggestion of any illegitimate or fraudulent claim.’³ (Footnotes omitted.)

[6] In *Pretorius v Road Accident Fund*⁴ the court held that what is required is not formal mechanical compliance but substantial compliance. This approach allows practicalities to govern the debate and a pragmatic stance to prevail.

[7] He submits that there has been substantive compliance and that there is no merit in the special plea.

[8] Ms Banda, appearing for the RAF, refers to a letter (generally known as the objection letter) sent to the attorneys of the plaintiff dated 23 August 2023. The letter states:

‘To administer claims effectively and efficiently, the Road Accident Fund (RAF) pursuant to Section 4(1)(a) of the Road Accident Fund Act, 1996 (“the Act”) published the stipulated terms and conditions upon which claims for compensation shall be administered (the “terms and conditions”) in Board Notice. 271 of 2022 which was published in Government Gazette no. 46322 on 6 May 2022. The terms and conditions, read with Section 24 of the Act, stipulate what documents must accompany the claim documentation when submitting a claim for compensation.’

[9] The RAF objected to the claim's validity, stating that medical reports or documentation establishing or substantiating the disability (medico-legal reports), an itemised tax invoice of a medical practitioner or hospital for past medical expenses, proof of payment of medical costs and medico-legal reports were outstanding. These are requirements emanating from the Board Notice and the new claim form. She submits that the status of the Board Notice will be serving before the SCA and that it will be premature to make a finding in the matter before the SCA pronounces itself.

Evaluation

[10] In *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road*

³ Ibid para 6.

⁴ *Pretorius v Road Accident Fund* [2019] ZAGPJHC 293.

*Accident Fund and Others*⁵ the full bench of the North Gauteng High Court, Pretoria made the following order:

‘ . . .

(iii) Board Notice 271 of 2022 published in Government Gazette No 46322 of 6 May 2022 (‘the Board Notice’) is declared unlawful and is reviewed and set aside;

(iv) Form RAF 1, prescribed by the Minister of Transport (‘the Minister’) in terms of s 26 of the Road Accident Fund Act 56 of 1996 (‘the RAF Act’), and published in Board Notice 302 of 2022 in Government Gazette No 46653 of 4 July 2022 (‘the RAF 1 Form’) is declared unlawful and is reviewed and set aside;

(v) It is declared that Claimants whose claims were accepted by the Second Respondent (‘the RAF’) to have been lodged in compliance with the Board Notice and/ or the RAF 1 Form are deemed to have been lodged in terms of the RAF Act, and the RAF will continue to investigate and process these claims as lodged claims;

(vi) From 6 May 2022, the prescribed form contemplated in s24 (1)(a) of the RAF Act shall be deemed to be the RAF 1 third party claim form (‘the 2008 RAF 1 Form’), forming part of the Regulations published by the Minister on 7 July 2008 in Government Gazette No 31249, until such time as the Minister prescribes an amendment to the 2008 RAF 1 Form in terms of s 26 of the RAF Act;

(vii) Claimants who sought the lodgment of their claims in terms of the Board Notice or the RAF 1 Form, but lodgment was declined by the RAF or was not acknowledged by the RAF , are afforded a period until 30 September 2024 to resubmit their claims to the RAF in terms of the 2008 RAF 1 Form and those claimants who thereby secure lodgment will enjoy the benefits of such lodgment as from the date on which lodgment was originally sought by them;

(viii) The RAF will take all reasonable measures to inform Claimants referenced in (v) and (vii) above of the contents of this order, which measures shall include the publication of this order in at least three newspapers circulated nationally, and, in addition, the RAF will take reasonable measures to inform the public of this order;

(ix) The Minister is ordered to adopt and publish a revised RAF 1 Form within 6 months hereof.’⁶

[11] It is against this order that the RAF appeals to the SCA. Having considered the pleadings, the documents filed, and *Legal Practitioners Indemnity Insurance*, I cannot

⁵ *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

⁶ Ibid para 55.

conclude that there needed to be more than substantial compliance with the requirements.

[12] The plaintiff was a gardener at the date of the accident and the medical records show that he was treated in a public hospital. The requisite tax invoice of a medical practitioner and/or hospital would probably be non-existent. Treatment in a public health facility, furthermore, does not require payments for medical expenses. Medico-legal reports may eventually become available. However, one has to be careful to burden victims of accidents with requirements that do not materially impact the investigation of a claim where as much available as possible information was provided.

[13] I conclude that the special plea cannot succeed and stands to be dismissed. As to costs, they ought to be costs in the cause of the trial when it is heard.

ORDER

[14] Therefore, I make the following order:

3. The defendant's special plea is dismissed.
4. The costs of the preparation and appearance in respect of the special plea shall be costs in the cause.

CRONJÉ, AJ

Appearances:

For the plaintiff:

Adv EE Barlow

Instructed by:

Mavuya Attorneys
Bloemfontein

For the defendant:

Ms P Banda
Office of the State Attorney
Bloemfontein