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

Case no: 2018/29169

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

In the matter between:

MAKHOPO TUMELO JAN

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR, AJ

Introduction

[1] This is an action for damages brought by the Plaintiff against the Road Accident Fund in terms of the provisions of the Road Accident Fund Act 56 of 1996 (“the RAF Act”), as amended.

[2] The Plaintiff, sues for personal injuries sustained in a motor vehicle accident on 04 October 2014 at House no 6[...] Ext 0[...], E[...], V[...], Gauteng. He was a passenger at the time of the accident.

[3] I requested the parties to upload their Heads of Arguments onto Caselines to assist the court in determining this matter. However, this request has not been complied with by either party.

[4] During the trial, three specific legal questions arose. These questions are:

(a) The Defendant has not entered an appearance to defend

(b) whether a Plaintiff’s failure to respond to an objection letter under Section 24 read with Section 17(1) of the RAF Act, leads to the prescription of a claim, and

(c) The Defendant did not raise the issue of the special plea during the pre-trial conference;

[5] On 26 August 2024 the Plaintiff served upon the Defendant a notice of intention to amend at Trial and their amended pages. According to the amended pages it is averred that the Plaintiff suffered damages in the sum of R3 400 054 for Loss of earnings and R650 000,00 for General Damages. Counsel for Plaintiff, Adv Pompo confirmed that the issue of Loss of earnings should be postponed sine die, because there is no confirmatory affidavit of Dr Tabane and that the Rule 28 is late.

[6] The parties initially agreed to proceed by way of merits only, in that regard a separation of merits and quantum was then sought in line with Rule 33(4) of the Uniform

Rules of Court. This was granted with the issue of quantum postponed sine die. In light of thereof, the Plaintiff bears the onus prove the negligence on the part of the Insured Driver for the Defendant's liability to be established.

[7] Following arguments, I reserved judgment on the special plea and directed the parties to continue with the main case. What follows are the reasons for my decision to proceed.

Procedural history

[8] As can be gleaned from the above, an analysis of the procedural history of the matter is necessary and will provide context. The history of those procedural steps relevant to the issues can be summarized as follows:

Date of accident 04 October 2014

Lodgment at the RAF 11 September 2015 by P P Milazi Attorneys

Objection letter to the Plaintiff 09 October 2015 emailed to P P Milazi Attorneys

Summons was issued 7 August 2018 by P P Milazi Attorneys

Notice of intention to defend 20 August 2018 by Tasneem Moosa Inc

Special Power of Attorney 10 June 2022 from Ncube Incorporated

Notice of set down served on the RAF 13 July 2023, but according to the notice of set down, the trial date is on the 07 February 2024

[9] The State Attorney, Ms Mhlanga appeared on behalf of the Defendant. Adv Pompo appeared on behalf of the Plaintiff. Counsel for the Plaintiff raised the issue that the Defendant is not proper before the court, because the Defendant failed to file a notice of intention to defend.

[10] The Defendant raised the issue that the RAF object to the validity of the claim on the basis that the Medical section of the RAF 1 form has not been completed by the treating doctor in terms of Section 24(2)(a) of the ACT. Paragraph 8 of the RAF 1 form is not completed.

[11] Counsel for the Plaintiff, Adv Pompo made submissions that the objection letter was emailed to the previous plaintiff attorneys of record, they only came on board on the 10th of June 2022. The Special Power of Attorney and termination letter was served on the RAF on 10 June 2022, and the RAF never raised the issue of the objection. A pre-trial conference was held on 15 December 2022 between Ms Mnisi (for the plaintiff) and Miss Tivana (for the defendant), and there was a no special plea raised by the Defendant.

[12] In the matter of *Jugwanth v Mobile Telephone Network (Pty)(Ltd)*¹ the Supreme Court of Appeal confirmed the party that invokes prescription bears the full onus to prove it and, the question of the prescription itself is fact-driven. The relevant portions read as follows:

“It is settled law that a person invoking prescription bears a full onus to prove it. In Gericke v Sack, Diemont JA explained: It was the respondent, not the appellant, who raised the question of prescription. It was the respondent who challenged the appellant on the issue that the claim for damages was prescribed this he did by way of a special plea five months after the plea on the merits had been filed. The onus was clearly on the respondent to established this defence”.

[13] Consequently, I find that since the Fund did not present any evidence of a Special Plea, the allegations remain unproven.

[14] The Defendant is not proper before the court, because they failed to enter an appearance to defend. There is no notice of intention to defend on Caselines.

[15] A hearing was set for 27 August 2024, with the plaintiff serving a notice of set-down on 13 July 2023 on the Defendant. According to the notice of set down the trial is on the 07 February 2024.²

¹ [2021] ZASCA 114; [2021] 4 ALL SA 346 (SCA) at paras 6 and 8.

² Caselines : Section 11 Notice of set down, item 1

[16] The plaintiff erroneously served a notice of set down that depicted an incorrect date of 7 February 2024. The Defendant was well aware of the correct date of the hearing on 27 August 2024.

Plaintiff's evidence:

[17] In the statement by Mr Tumelo Jan Makeup he alleged that he was involved in an accident on 2014 while being a passenger in a Mazda bakkie with registration number X[...]. According to the SAP stamp it was commissioned on 10th July 2018.

[18] The Accident Report (AR) alleged that they were +- two passengers in the bakkie. Alternatively, according to the statements in the docket, there was also other passengers at the back of the bakkie.

[19] In his statement under oath there is no mention how the accident occurred, what was the date of the motor vehicle accident or negligence against the Insured driver.

[20] Mr Makhopo's statement was made under oath **4 (four) years** after the accident. In terms of Section 19(f) (i) the Fund is not obliged to compensate a third party who fails or refuses "to submit to the Fund, together with his claim form as prescribed 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 concerned are fully set out". It is submitted that this affidavit be drafted at the earliest opportunity while the particulars of the accident are still vivid in the memory of the claimant.

[21] The Plaintiff's section 19 (f) affidavit deposed on 10 July 2018 (**four years after the accident**), the Plaintiff stated under oath that he was a passenger of Mazda bakkie Silver and hold registration number X[...]. The Plaintiff's affidavit lacks full details of the accident. Plaintiff failed to disclose how the accident occurred. He only states that he was involved in an accident during 2014.

[22] The Plaintiff's name does not appear on the OAR report or in the case docket of the Police.

[23] The Plaintiff bears the onus to prove that the wrongdoer caused the damages he suffered; He must create a causal link between the damages he suffered and the actions of the wrongdoer.

[24] The Plaintiff has failed to discharge the onus.

Order

In the circumstances, the following order is made:

1. The Plaintiff's claim is dismissed with no order as to costs.

PIENAAR M (AJ)
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

Date of Hearing : 28 August 2024

Date of Judgment : 28 November 2024

APPEARANCES:

Counsel for the Plaintiff : Advocate Pompo

Instructed by : Ncube Incorporated Attorneys

Counsel for the Defendant : Ms Mahlangu

Instructed by : The Office of the State Attorney

Road Accident Fund