

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 48707/2020

DATE: 05-12-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

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

(3) REVISED.

DATE 5/12/2024

SIGNATURE 

10 In the matter between

HENDRIK PETRUS BOTES

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: In the matter of HP Botes versus The Road Accident Fund, case number 48707/2017. Due to the
20 workload in this division of the High Court a dedicated court has been allocated to hear matters on default where the defendant is the Road Accident Fund. In these matters they have either never entered an appearance to defend, or, having done so, failed to file a plea and have been barred from pleading, or, where they have pleaded, failed to adhere

to other interlocutory orders and as a result have had their defence struck out.

For this Court to function optimally there must be a level playing field. All plaintiffs must have equal opportunity to have their matters enrolled and heard as soon as possible. For this reason, there must be adherence to both the Uniform Rules of Court and the Consolidated Practice Directives applicable in this division.

In this matter the plaintiff commenced the process of
10 amending his particulars of claim shortly before the hearing of the matter and as a result the *dies* provided for in Rule 28(8) had not yet expired on the day of hearing.

In the ordinary course this would have meant that the plaintiff must either secure the defendant's consent to anticipate the *dies*, remove the matter or abandon the amendment, if the plaintiff wanted to utilise the day to hear the matter.

Counsel acknowledged that the plaintiff's proposed amendment does not comply but counsel then, as he is
20 entitled to do, in terms of the Uniform Rules of Court moved an amendment to the particulars of claim from the bar in terms of Rule 28(10).

Rule 28(10) states:

"The court may, notwithstanding anything to the contrary in this rule, at any stage before

judgment grant leave to amend any pleading
or document or on any such terms as to
costs or other matters as it deems fit".

Counsel further argued that the rules are there for the court
and not the court for the rules. This Court thus could grant
the amendment.

Counsel also argued that in terms of the
Constitution the Court has the right to structure itself and
determine its own process.

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Counsel is of course correct in that:

Rule 28(10) does make provision for an amendment of the
particulars of claim at any stage prior to the granting of
judgment. There is a significant body of case law addressing
the interaction between the uniform rules and the court.

The Constitution does confer rights and obligations on our
courts.

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However, that is not where the enquiry ends.

The Consolidated Practice Directives, 1 of 2024 as
amended must be complied with prior to an attorney applying
for a trial date in terms of the practice directives.

The following, as a minimum, has to take place:

Pleadings must have closed,

No amendments to the pleadings may be outstanding or anticipated,

No interlocutory applications may be outstanding or anticipated,

Discovery must be complete,

All expert witness reports must have been filed.

After the list of requirements as per paragraph 19 of
10 the Consolidated Practice Directives have been complied
with every attorney signs a compliance statement confirming
that there has been adherence to the requirements of the
practice directive.

The accident from which this litigation flows
occurred on the 28 September 2016, approximately eight
years ago. Counsel was asked whether any new information
came to light after his attorney signed the compliance
statement and whether it was anticipated at that stage that a
late amendment to the particulars of claim will be required.
20 Counsel confirmed that nothing new occurred since the filing
of the compliance statement. In fact, from the discussion
between the Court and counsel the impression left with the
Court was that counsel initiated the proposed amendment
once he was placed in possession of his brief.

The plaintiff, and his attorney, were content with the

matter and their preparation at the time when the attorney applied for the trial date. As set out above, the only way in which this Court can carry out its mandate and every plaintiff is assured of an equal chance to have his matter heard at the earliest possible opportunity is if the rules and directives apply equally to all.

The plaintiff's application in terms of Rule 28(10) to amend his particulars of claim is refused. As the matter is before Court on default nothing needs to be said about
10 costs.

According to paragraph 9 of the particulars of claim the plaintiff's primary injury was a fracture of the left femur. We know from the medico-legal reports filed of record that this was a particularly bad fracture with the result that the plaintiff has suffered some devastating consequences. The evidence further suggests that currently, eight years after the fact, he still has unresolved medical issues as a result of the fracture.

In respect of negligence the plaintiff placed before
20 Court his version as well as the statements of a number of witnesses. These are neatly curated by counsel in his Heads of Argument and the Court is indebted to counsel. There is no evidence to gainsay the plaintiff's version, and the defendant is accordingly a hundred percent liable for such damages as the plaintiff may be able to substantiate.

Moving on to the plaintiff's claim for loss of income.

The plaintiff is employed by City Power in Johannesburg and has been so employed for the past approximately 31 years. He is a qualified electrician having qualified in 1996 at City Power. As at the date of the accident he was working in City Power's Test Branch where his main responsibility was the testing of refurbished items.

Had the accident not occurred he would have remained in his pre accident position as he had reached his
10 career ceiling.

Post accident he had been moved to a position where he is seated behind a machine which does the engraving of instructions stuck to machines. His income and employment conditions have not been affected.

His post-accident earning capacity has been set out by the industrial psychologist on CaseLines 7-75. This factual position had been calculated by the actuary and which calculation incorporates early retirement and medical disability. This calculation is on CaseLines at 7-84 and is
20 accepted by the Court. The amount falls within the amount contained in the original particulars of claim.

Counsel also invited the Court to make an award in respect of past hospital and medical expenses. The amount reflected in the original particulars of claim is significantly lower than the amount for which judgment is sought. To

enable the plaintiff to effect an appropriate amendment to the particulars of claim the request for default judgment on past hospital and medical expenses is refused.

My order is therefore as follows:

1. The application in terms of Rule 38(2) to deduce evidence on affidavit is granted.
2. The claim, if any, in respect of general damages is postponed *sine die*.
3. The plaintiff's claim in respect of past hospital and medical expenses is refused.
4. The defendant is declared 100% liable for the plaintiff's proven damages resulting from the motor vehicle collision which occurred on the 28 September 2016.
5. The defendant shall provide the plaintiff with an undertaking as contemplated by section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 (as amended), to compensate for the cost of future accommodation of the plaintiff in a hospital and or nursing home, and or treatment and or, rendering of service or supplying of goods to the plaintiff, after the costs have been incurred and on prove thereof, resulting from the injuries sustained as a result of the motor vehicle collision which took place on the 28 September 2016.
6. Defendant is to pay the plaintiff the amount of R490

398 in respect of loss of earnings and or earning capacity.

The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on a High Court scale which costs shall include, in respect of the fees of counsel, for the 3 December 2024 on scale C and for the 5 December on scale A.

That is my order.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 5/12/2024

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