

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2019/6185

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



SIGNATURE

DATE: 20 February 2025.

In the matter between:

ROBERT MAITA MADUSE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NOKO J

Introduction

1. The plaintiff lodged a claim for damages pursuant to injuries he suffered as a result of a motor vehicle collision on 4 May 2015. The defendant failed to settle the claim and the plaintiff sued out summons and claimed amount of R1,919,306.00 (One Million, Nine Hundred and Nineteen Thousand, Three Hundred and Six Rands. The Road Accident Fund (“defendant or RAF”) is defending the suit and is represented by the Office of the State Attorney.

2. The plaintiff applied for the separation of merits and quantum in terms of Rule 33 of the Uniform Rules of Court which was not resisted by the defendant and same was granted. To this end the matter is proceeding only on merits and quantum would be adjudicated later.

3. The defendant stated that a notice to amend the plea was served late and dies to deliver the amended pages has not expired. By agreement between the parties the defendant delivered an amended plea which introduced a special plea of prescription.

Background.

4. The plaintiff was riding a bicycle along Malibongwe Road towards Cosmos City in Randburg on 4 May 2015 at 17h00. The plaintiff’s bicycle was hit by a motor vehicle from the back. The said motor vehicle did not stop after the collision hence the registration details and identity of the driver are unknown to the plaintiff. The plaintiff suffered fracture of the left arm and was hospitalised. Since the *lis* before me is on merits only not much detail in respect of the nature and the damages will be provided.

5. The plaintiff personally lodged a claim directly with the RAF in 2017 with the assistance of the defendant's officials. The mandate given to the RAF to facilitate the claim was terminated in 2020 by the plaintiff's current attorneys.

Special plea - Prescription.

6. The defendant contended that the RAF objected to the claim as other documents were not furnished and the claim was therefore rejected. Further that as at the time of the termination of mandate the plaintiff had not as yet submitted the outstanding documents. To this end the claim is not compliant and should be dismissed with costs. The said outstanding information includes hospital records detailing the particulars of the patient, dates when the treatment was given and the particulars of the doctor. The objection, argument continued, should have been addressed timeously and since the plaintiff failed then the claim has prescribed.

7. The plaintiff's counsel in retort referred to *Sithebe*¹ where it was stated that the rejection letter in itself is not sufficient for objection purpose and the proper route would be to raise a special plea within a period of 60 days. The practical application hereof is obscure as the rejection would ordinarily be raised before the civil suit is launched.

8. The plaintiff contended that the information requested is provided for in the RAF 1 form which was duly completed by the medical practitioner who specifically indicated that he completed the necessary forms based on the information obtained from the hospital records and that he was not the treating medical practitioner. In any event the information which was requested by the defendant is all in the medical records supplied. The plaintiff's counsel further referred to *Busuku*² where the court held that the RAF need not adopt a

¹ *Sithebe v RAF* (33165/17)[2021] ZAGPPHC 133.

² *RAF v Busuku* (1013/19)[2020] ZASCA 158 (1 December 2020)

mechanical approach and where the hospital records have the details required then there is substantial compliance and RAF must process to claim. It was also stated in *Pretorius*³, the hospital records that were supplied together with RAF1 form placed sufficient information before the defendant to establish the cause and nature of the plaintiff's injuries and the details of the accident.

9. Part 5 and 6 of the RAF 1 form have listed documents required to be lodged for the purposes of discharging an obligation to substantially comply with the statute. The only document which the plaintiff could not lodge was the particulars of the insured vehicle. Since this was a hit and run accident, the plaintiff would be excused from furnishing such information. To this end the prescription which followed the letter of rejection by the defendant under the circumstances be inapplicable.

10. In any event the defendant allowed and encouraged the claimants to lodge claims directly with their offices and cannot therefore be heard to punish claimants and instead should assist them to comply. Lest the invitation for claimants to lodge directly may be construed as a trap. In the premises the plea of prescription is unsustainable and stands to be dismissed.

Parties' Evidence.

11. The plaintiff testified that he was riding a bicycle on 4 May 2015 along Malibongwe Road. The visibility was good, the weather was dry and the road surface was good. The bicycle was hit from behind by a truck which did not stop. He was riding on the left side of the road. He was then assisted by a lady who was a passersby. The driver could therefore not be identified.

³ *Pretorius v Road Accident Fund* (353030/2018) ZAGPJHC 293 (26 August 2019)

12. Plaintiff stated under cross examination that he was riding on a road structured like a freeway with four lanes, two lanes on each side going in opposite directions. Further that there was no pedestrian pavement but there was a yellow lane on the side big enough for a vehicle to drive through. The truck hit the bicycle's rear tyre which was then broken.

13. After the accident the plaintiff fell and was later assisted by another lady who was passing by who called the ambulance. The plaintiff was taken through his section 19(f) affidavit where it was stated that he was assisted by a lady named Cynthia and in retort he stated that its long time and he would not remember everything. He recalls that the name may have been mentioned to him by the ambulance staff.

Submissions.

14. The plaintiff's counsel submitted that the insured driver had a duty to ensure that there is sufficient space to allow for the pedestrians to walk and the cyclists to ride at. That the driver has failed to act reasonably under the circumstances and was therefore negligent.

15. Counsel further submitted that the plaintiff was reliable in his evidence which remained unscathed through-out the cross-examination except only with regard to him having forgotten the name of the lady who called the ambulance. The said evidence does not tarnish the cogency and reliability of his evidence with regard to how the accident occurred.

16. The defence on the other hand submitted that the plaintiff testified that he was riding the bicycle on a freeway which is prohibited. In addition, the plaintiff appears to have been negligent as he did not take reasonable measures to avoid the accident. To this end the claim ought to be dismissed. Further that the evidence of the plaintiff cannot be relied on as he was not able to provide evidence consistent with what he stated in the section 19(f)

affidavit. In his testimony he said he does not know the name of the person who assisted him whilst the affidavit identified the helper. With the above background, it is argued, the court should return an order dismissing the claim alternatively apportioning the damages by at least 50% in accordance with the Apportionment of Damages Act 34 of 1956.

Issue.

17. The issue for determination is whether the plaintiff has proved his claim by demonstrating he has complied with the requirements set out in the RAF Act including demonstrating that the collision arose as a result of the negligent driving of a motor vehicle as envisaged in the RAF Act.

Legal principles and analysis.

18. In the adjudication process the Court is enjoined to consider the evidence presented, and where inferences would be drawn and with a measure of common sense be able to locate where probabilities are.⁴ It was further stated by Issacs and Leveson⁵ in relation to cyclists that

“A driver is expected to keep a proper lookout for cyclists. It is difficult to ride a bicycle in such a manner that it remains precisely and securely on a fixed course. There is always a degree of sideways movement - first to the one side and then to the other. If the cyclist is a young child and in addition there is strong wind blowing, the possibility that a bicycle may deviate considerably more than normally from its course is greater. For the aforementioned reasons a driver in such a case is expected to give a cyclist timeous warning of his/her approach and in his/her judgment will, in addition, also leave sufficient space between him/her and

⁴ *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* 2001(3 SA 1188 (SCA) at 1201 G-H.

⁵ Issacs and Leveson: *The Law of Collision of South Africa* 8th E, 2012, nu Kloppe).

the bicycle in order to be able to overtake with reasonable safety.’⁶

19. Section 323 of the National Traffic Act 96 of 1993 read with the National Road Traffic Regulations provides that no pedal cycle shall be permitted to be driven on a freeway. Regulations further prohibits the riding of a pedal cycle without wearing a helmet.⁷ There is no evidence to confirm that the plaintiff was wearing a helmet. This would ordinarily justify a contribution to the damages suffered for which the court must exercise discretion situated within the repository of the presiding judge though to be exercised judiciously. It was stated in *Smith*⁸ that

‘I cannot exclude as a possibility even if the impact was low enough that the injuries responsible for the Claimant’s residual disabilities were caused by a contre-coup injury – an injury from which a helmet would not have protected the Claimant. Accordingly, I make no finding of contributory negligence against the Claimant.’

20. Just like any other road users there are obligations to observe rules of the road and respect other road users. The plaintiff, as a cyclist was also enjoined to respect the rights of other road users. The evidence presented is that there is enough space where the cyclist was driving outside the yellow lane with a margin of safety with a size enough to accommodate another vehicle. There is no evidence from the defendant or insured driver controverting with the plaintiff’s testimony and his version appears to be credible despite having forgotten the name of the lady who was first in the scene.

⁶ Id at 64.

⁷ Section 207,

⁸ *Smith v Finch* [2009]EWCH 53 QB.

21. Though the defendant pleaded in the alternative for contributory negligence there is no shred of evidence supporting the stance that the plaintiff was also to blame for the accident.

22. It therefore follows that the fact that the claimant was not wearing a helmet does not *ipso facto* imply that there was contributory negligence. It is common cause that the plaintiff suffered a fracture of the arm. This part of the body would not have been saved by the helmet and to this end the argument upon which the contributory negligence is predicated is unsustainable.

Conclusion.

23. The question of the plaintiff's failure to remember the name of the helper does not tarnish the evidence in relation to the insured driver having negligently caused the collision. There is further no persuasive evidence to support the submission by the defendant's counsel that there was negligence on the part of the plaintiff to warrant apportionment. There is no cogent evidence to support the submission that indeed Malibongwe Road is a freeway and absent any such evidence that defendant's contention that the claim is bound to be dismissed as the plaintiff acted illegally by cycling on a freeway.

24. I am persuaded that the evidence of the plaintiff is unquestionable and that he has discharged the onus to prove that the defendant is liable in terms of the Road Accident Fund Act.

Costs.

25. The determination of legal costs are ordinarily within the discretion of the court which must be exercised judicially having regard to the relevant factors. It was held in

*Affordable Medicines Trust and Others*⁹ that “[T]he award of costs is a matter which is within the discretion of the Court considering the issue of costs. It is a discretion that must be exercised judicially having regard to all relevant considerations.” It is also trite that the costs follow the result and, in this instance, no persuasive argument was mounted warranting deviation from the well-trodden path.

Order

26. In the result I make the following order:

1. The defendant is liable to compensate the plaintiff 100% of the damages as proven.
2. The defendant shall bear the costs of trial.



M V NOKO
Judge of the High Court,
Gauteng Division, Johannesburg.

DISCLAIMER: This judgment was prepared and authored by Judge Noko and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 20 February 2025.

Dates:

Hearing: 22 August 2024.

Judgment: 20 February 2025.

⁹ *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC).

Appearances:

For the Plaintiff

: K Masie

Instructed by

: TM Nemasitoni Attorneys.

For the Respondent

: T Tivane.

Instructed by

: Office of the State Attorneys, Johannesburg.