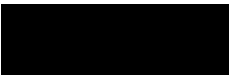


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 31809/22

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
4 July 2025	
DATE	SIGNATURE

In the matter between:

EMILE KAREL MEYER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 04 July 2025.*

Summary: Action against the Road Accident Fund (RAF). Plaintiff bears the onus to prove negligent driving of a motor vehicle as contemplated in section 17(1)(b) of the Road Accident Fund Act, 56 of 1996 (RAFA). Where a Court is not satisfied with the evidence of the plaintiff, a Court may refuse to grant default judgment. The evidence of the plaintiff must be credible. This Court is not satisfied that the injuries sustained by the Plaintiff arose out of the negligent

driving of the unidentified driver of the alleged vehicle. Accordingly, the plaintiff has failed to establish a claim against the RAF as contemplated in section 17(1)(b) of RAFA. Failure to enter appearance to defend timeously does not amount to an irregular step. Held: (1) The application for default judgment is refused. Held: (2) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

[1] For a plaintiff to succeed with a claim for compensation against the RAF, the requirements of section 17(1) of the RAFA must be met. Pertinent to the present application for default judgment, the provisions of section 17(1)(b) ought to have been established. It must be stated upfront that those requirements are:

(a) Driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established.

(b) Any bodily injury to any other person, caused by or arising from the driving of a motor vehicle, if the injury is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle.

[2] A default judgment is a judgment authorised by section 23 of the Superior Courts Act¹, to be granted in the circumstances prescribed in the rules. Rule 31(2)(a) of the Uniform Rules of Court prescribes that after hearing evidence a Court in the exercise of its discretion may grant judgment against the defendant or make such order as it deems fit. Section 16 of the Civil Proceedings Evidence Act (CPEA)² provides that judgment may be given in any civil proceedings on the evidence of any single competent and credible witness.

¹ Act 10 of 2013 as amended.

² Act 25 of 1965 as amended.

- [3] Having said that, before this Court serves an application for a default judgment against the RAF after its failure to enter notice to defend timeously. It was intimated that the plaintiff shall be following the provisions of rule 30 to set aside the belated notice of intention to defend since the notice allegedly constitutes an irregular step. The plaintiff sought to employ the provisions of section 34(2) of the CPEA for the admission of statements as evidence. As at the time of the hearing of the default judgment application, the contemplated rule 30 procedure was not invoked as yet.

Factual matrix and evidence

- [4] The plaintiff, Mr Emile Karel Meyer (Mr Meyer) sustained bodily injuries on 16 December 2017. At that time Mr Meyer was a driver of a Tuk-Tuk. According to a statement admitted into evidence in terms of section 34(2) of the CPEA, deposed to on 6 December 2019, the testimony of Mr Meyer was the following:

“I was driving in Charles Layds Street in Eersterus direction towards Eersterus. I was driving in the left lane. A grey Mercedes Benz, (the further details which are unknown to me), came from the front, and swerved into my lane (I believe she tried to avoid a pothole in the road, on her side of the road). As a result, I then swerved to the left to avoid a collision, and **I then lost control of the tuk-tuk vehicle and overturned** the vehicle.”

- [5] For reasons that are not altogether clear, Mr Meyer decided to report the accident three weeks after the accident. Not only did Mr Meyer report the accident after three weeks, but he also sought medical attention almost 5 hours after the accident. He was attended to by the emergency centre of Mamelodi Hospital at around 17:59. When he personally reported at the hospital, he was stable and had no obvious blood on his clothes. He presented with swollen tender left ankle with abrasions over medial and lateral malleolus. The x-ray performed did not reveal any fracture. He was treated with Panadol and Brufen.
- [6] On 27 November 2019, LHI Attorneys lodged a claim with the RAF on behalf of Mr Meyer. The lodgement letter was not accompanied by an Accident Report (AR), even though the accident was reported in January 2018. Eight years later, on 5 February 2025, Mr Meyer reported the accident afresh at Eersterus Police

station. According to the AR report completed on 5 February 2025, the accident allegedly happened at 15h30 on 16 December 2017.

- [7] It is unclear whether the RAF repudiated the claim or not. However, on 14 June 2022, Mr Meyer issued summons against the RAF. The RAF belatedly, as it is customary, entered appearance to defend outside the prescribed period. Consequently, Mr Meyer applied for a default judgment. The application emerged before this Court on 10 June 2025. After hearing submissions from counsel for Mr Meyer, a judgment was reserved.

Evaluation

- [8] This being a default judgment, this Court must be satisfied that credible evidence was tendered to prove on the preponderance of probabilities that the bodily injuries sustained by Mr Meyer was due to the negligent driving of a motor vehicle by an unidentified driver. On Mr Meyer's own evidence, he sustained bodily injuries after he lost control of the Tuk-Tuk and rolled it. As to how and why he lost control, this Court has not been appraised. On his version, Mr Meyer avoided colliding with the Mercedes Benz. Having successfully done so, he for unknown reasons lost control of the Tuk-Tuk. This Court is not satisfied that there was any credible evidence that the injuries sustained by Mr Meyer arose from the negligent driving by the driver of the Mercedes Benz. In due course, this Court shall revert to other concerns it harbours about the granting of the default judgment sought by Mr Meyer. This Court first need to briefly deal with the question whether the late delivery of notice of intention to defend constitutes an irregular step within the contemplation of rule 30 of the Uniform Rules of Court.

Is late delivery of an intention to defend an irregular step?

- [9] Rule 19(1) provides that the defendant is allowed 10 days after service of summons to deliver a notice of intention to defend. Rule 31(2) entitles a plaintiff to apply for default judgment in the event the defendant defaults in the delivery of a notice of intention to defend. Rule 30(1) deals with irregular proceedings. Entering an appearance to defend is not an irregular step after service of a summons. In fact, it is an expected step in terms of the rules. Rule 30A deals with non-compliance with rules. Entering an appearance to defend after the 10

days period amounts to a non-compliance with the Rules, namely rule 19(1) regarding the prescribed period.

[10] Rule 27(1) suggests that litigating parties may agree on the extension of any time prescribed by the rules failing which the Court may upon application and on good cause shown make an order extending or abridging any time prescribed by the Rules. In my view, the late delivery of an appearance to defend only means that the plaintiff is opportuned to apply for default judgment and not invoke the rule 30 procedure. Rule 30 is aimed at an irregular as opposed to late step. This Court is unable to agree with any view that a late delivery of an appearance to defend amounts to an irregular step within the contemplation of rule 30. That view is at odds with the provisions of rule 27(1) where provision is made for an extension of time periods. It seems incongruent to contend that something that is extendable or abridgeable by agreement or Court order would be seen as an irregular step. Additionally, rule 19(5) specifically provides that notice of intention to defend may be delivered even after the expiration of the time before the granting of a default judgment.

[11] Accordingly, in my considered view, it would have been a worthless exercise for Mr Meyer to have invoked the provisions of rule 30. Allied to the issue of irregular step or not, is the question whether a Court should be satisfied to grant default judgment in the face of a late delivered notice of intention to defend. Since this issue did not arise before me, in passing, this Court takes a view that the granting of a default judgment in those circumstances will be at odds with section 34 of the Constitution.

Other concerns with regard to the granting of a default judgment.

[12] Over and above the fact that this Court is not satisfied that there exists credible evidence to prove any negligence on the part of the unidentified driver, this Court is doubtful about the validity of the claim. It has been long held that in instances where the driver or owner is unidentified, the possibility of fraudulent claims is greater. It is concerning that Mr Meyer sought medical attention almost 5 hours after the accident. When he walked in at the hospital, his clothes were not bloodstained. He was not brought to the hospital by an ambulance or by any

person. The hospital records reveals that he walked in. He reported to the hospital staff that he was involved in a motorbike accident +- 5 hours ago. He arrived at the hospital at 17h59. According to the re-issued accident report 8 years later, the accident happened at 15h30. Regard being had to the arrival time, it is apparent that he visited the hospital two and half hours after the accident.

[13] Therefore, this Court is not satisfied that it should exercise its discretion and grant judgment by default. It must be emphasised that a default judgment is not granted simply on the basis that the defendant does not have a defence in law, but it is one granted in terms of the rules of Court.

[14] Before this Court concludes, it is necessary to return to the negligence issue. Mr Meyer led no evidence as to why he lost control of the Tuk-Tuk. This being a different question from that of why he opted to swerve. On his uncontested version he did so in order to avoid a collision with the Mercedes Benz vehicle which had swerved into his lane of travel. Nevertheless, a driver of a motor vehicle is under a duty to take reasonable care for the safety of other traffic on the road to avoid collision. This duty involves taking all reasonable measures to avoid collision. Once a possibility of a danger emerging is reasonably apparent, and no precautions are taken by that driver, then the driver is negligent notwithstanding that the other driver or road user is in breach of some traffic regulations or even negligent.³ Had Mr Meyer not lost control and rolled the Tuk-Tuk (an act of negligence) he would not have sustained bodily injuries. Therefore, the bodily injuries he sustained were because of his own negligence and not the negligence on the part of the driver of the Mercedes Benz.

[15] On his own version, the Mercedes Benz did not push, in the sense of making physical contact, the Tuk-Tuk out of its lane of travel. Mr Meyer himself swerved, and the swerving made him loose control and rolled the Tuk-Tuk. As to why he did not simply stop the Tuk-Tuk as opposed to swerving, this Court is non the wiser. Whether it was opportune for him to perform a swerving manoeuvre, this Court is in the dark. In the circumstances, on the available evidence, it is

³ See *Paulo Kato vs Uganda Transport Corporation* (1975) HCB.

improbable that the driver of the Mercedes Benz was negligent. On Mr Meyer's own version, the driver was avoiding a pothole. This suggests that Mr Meyer had an opportunity to observe a pothole avoidance manoeuvre. As to why he did not take safety precautions, this Court remains in the dark.

Conclusions

[16] In summary, the late filing of a notice to defend does not constitute an irregular step. On the available evidence, this Court is not satisfied that the injuries sustained by Mr Meyer was because of a negligent driving of the alleged driver of the Mercedes Benz. Mr Meyer simply lost control and sustained injuries after the Tuk-Tuk rolled. This Court doubts the validity of the claim. The accident was first reported three weeks later and again 8 years later. When Mr Meyer arrived at the hospital five hours later, his clothes were not bloodstained.

[17] Because of all the above reasons, I make the following order:

Order

1. **The application for default judgment is refused.**
2. **There is no order as to costs.**



GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff:

Instructed by:

For the Defendant:

Date of Hearing

Date of judgment:

Mr R J De Beer SC

LHI Inc Attorneys, Pretoria.

No appearance

10 June 2025

04 July 2025