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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

**CASE NO: 92/2023
NOT REPORTABLE**

In the matter between

N[...] C[...] D[...]

OBO "HD" (HER MINOR CHILD)

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

**JUDGMENT IN RESPECT OF
SEPARATED ISSUE OF TRIAL**

HARTLE J

[1] The plaintiff sues in her representative capacity on behalf of her minor son who was injured in a motor vehicle accident at Mdantsane, East London, on 10 April 2022, whilst a passenger in a motor vehicle.

[2] The particulars of claim allege that the driver was negligent and that as a result thereof her child suffered serious injuries and consequently general damages, loss of capacity and earnings.

[3] Also alleged, going to the issue of compliance, is that the plaintiff complied with the provisions of the Road Accident Fund Act, No. 56 of 1996 (“RAFA”) in lodging the claim on her son’s behalf.

[4] In the plea the Fund only admitted the allegations concerning its own existence, address for service and general obligation on it to compensate victims of road accidents pursuant to the provision of section 17 of the RAFA. The obvious import of this is that the plaintiff is required to establish both *locus standi* to represent her son as well as the fact that she complied with the provisions of the RAFA in lodging a compliant claim.

[5] It is a trite principle that the obligation under the RAFA placed on the Fund to consider the seriousness of an injury is an administrative one and that a court is precluded from adjudicating a claim for general damages until such time as the Fund has determined this jurisdictional ground before any compensation for non-pecuniary damages can be considered by it.¹

[6] The fate of this action is quite unfortunate.

[7] Initially there was an application for default judgment in the absence of the Fund having filed a notice of intention to defend. See order dated 6 June 2022. In the application the plaintiff successfully claimed an order at least declaring that the defendant was liable for the injuries sustained by the child and directing the Fund to pay

¹ *Maqhutyana and Another v Road Accident Fund* (CA 17/2020) [2021] ZAECHMHC 30 (17 August 2021).

100% of the damages suffered by him, resulting from the accident. By agreement, since the Fund was represented by Mr. Mlinganiso at the default judgment proceedings, the plaintiff's further claims relating to quantum were postponed *sine die*.

[8] It is unclear if that order was rescinded because the defendant filed its plea subsequently on 20 July 2023.

[9] Be that as it may on 26 March 2024, and in order to remove the encumbrance that the child's claim for general damages was not justiciable, the plaintiff was constrained to seek a review order compelling the Fund to get on with its statutory obligation to consider whether the plaintiff's child's injuries were serious within the meaning of section 17 (..) of the RAFA read together with regulation 3 (3)(c) or 3 (3)(d) of the RAF Regulations, 2008 (Reg 31249).

[10] Despite the plaintiff's allegations in the particulars of claim that the child's whole person impairment was clinically evaluated at 22% but that she nonetheless considered his injuries to be "*serious*" on the ground that he qualifies under paragraph 5.1 of the "*Narrative Test*", the court first hearing the review application directed the plaintiff to furnish proof that the RAF 4 Form was served on the Fund.

[11] An order was consequently granted by this court on 11 April 2024 directing the Fund to make a decision whether or not the claimant's injuries were serious in terms of the method provided in the RAF Regulations.

[12] It is evident that until today this order has not been complied with.

[13] The matter was thereupon enrolled for trial.

[14] At the pre-trial conference the Fund made absolutely no input regarding the material issues still then in contention between the parties, proffering as a standard

refrain that *“the defendant’s attorney undertakes to take instructions and revert”*. Evidently these instructions were never forthcoming.

[15] The standard refrain was also applied to a discovery related question as well, which resulted in a further unnecessary application against the defendant to compel discovery. That application enrolled for hearing on 3 October 2023 was however evidently struck from the roll.

[16] On 19 November 2024, upon the enrolment of the action for trial, this court issued an order on a default basis, that is in the absence of any representative on behalf of the defendant, again directing that the defendant is declared 100% liable for any agreed or proven damages suffered by the plaintiff’s child as a result of the accident. The court adjourned the matter in respect of quantum to 4 February 2025.

[17] In November 2024 the plaintiff sought an order in the East London Circuit Court, citing jurisdiction, under the provisions of the Promotion of Administrative Justice Act, No. 3 of 2000 (“PAJA”), review and setting aside the Fund’s objection to the validity of the plaintiff’s claim purportedly in terms of section 24 (5) of the RAFA and related relief. The application was initially opposed but ultimately disposed of as an uncontested opposed application on 15 April 2025 when the court issued an order in the following terms:

- “1. The Respondents objection the validity of the Applicants claim purportedly in terms of section 4 (5) of the Road Accident Fund Act, 1996 (Act 56 of 1996) (“the Act”) be and is hereby reviewed and set aside.
2. The Applicants claim was duly lodged with the Respondent on the 21st of October 2024, and that it substantially complies with the provisions of Road Accident Fund Act, 56 of 1996 as amended.

3. The Respondent is hereby ordered, forthwith, to register and administer the Applicants claim in its system in terms of the provisions of the Road Accident Fund Act, 56 of 1996 as amended.
4. The Respondent to pay the Applicants costs on scale A.”

[18] To track back to what was happening with the litigation itself on 4 February 2025 the matter was postponed to 29 April 2025 for trial on quantum. On 29 April 2025 the matter was postponed to 10 June 2025. On 10th it was rolled until the 11th and then to today's date to explore if administratively the defendant budge on the basic fact of compliance.

[19] This is purportedly the issue and reason why the matter has not gotten out of the starting blocks, so I was informed by Mr. Mlinganiso who appeared on the defendant's behalf, registration compliant on their computer system, according to the Fund it does not regard the plaintiff's claim, which explains why no offers would have been forthcoming in the claim to it and why serious injuries could not be assessed to date.

[20] At the hearing before me on Thursday, 12 June 2025, the plaintiff sought leave to defer the issue of quantum and I directed that the parties deal separately with the issues of *locus standi* and registration compliance from the Fund's system's point of view as these are the factors which has caused the Fund to treat the claim as not existent, this even despite the order of this court granted on 15 April 2025 declaring that the plaintiff is so compliant.

[21] The plaintiff herself testified that she birthed her child who is the subject of the claim and the present action on 24 December 2008. She is further recognized as his legal guardian.

[22] She tendered into evidence his birth certificate which records his date of birth but not who his parents are. This would ordinarily reflect in an unabridged birth certificate

which it seems the defendant is insistent upon as satisfying its “*system*” that the claim is recognized.

[23] Mr. Nohaji, the plaintiff’s attorneys of record also testified. He confirmed that the plaintiff and her family are co-incidentally neighbours and well known to him. He related that he had properly responded to all the Fund’s requirements raised on registration, which were particularized in a letter dated 21 August 2024 bar the unabridged certificate.

[24] His testimony further revealed however that he had issued out the PAJA application referred to above in which this court has definitely ruled that the plaintiff has substantially complied with the provisions of the RAFA concerning lodgment of the claim.

[25] Even this order has been ignored by the Fund who seems to imagine that it enjoys immunity from court directed instructions and can simply insist on its administrative processes as justification for such a stance.

[26] I issue the following order:

1. It is declared that the plaintiff has *locus standi* on behalf of her minor child to have both lodged the claim on behalf of her son under the provisions of PAJA and to have instituted the present action.
2. It is declared again that the plaintiff has established the necessary requirements for registration of the claim.
3. The Fund is directed forthwith to enter the claim on its system as registered and to assess it within fifteen (15) days and thereanent to make an appropriate offer in respect of the child’s claims for statutory compensation.
4. The defendant is liable for the costs of the proceedings today, and of 10 and 11 June 2025, on Scale A.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 12 June 2025
DATE OF JUDGMENT : 13 June 2025

Appearances:

For the applicant: Mr. M E Bishotti instructed by Cinga Nohaji, East London (ref. Mr. Nohaji).

For the defendant: Mr. B Mlinganiso of the State Attorney, East London c/o Shared Legal Services, King William's Town (ref. Mr. Mlinganiso).