



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

Not reportable

CASE NO. 1944/2016

In the matter between:

MONDE VICTOR MNCAMENI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

LAING J

[1] The plaintiff sued for damages arising from an accident on 11 April 2015, at Mooiplaas, in the East London district. In his particulars of claim, the plaintiff alleged that the sole cause of the accident was the negligence of the unknown driver of an unknown motor vehicle. The defendant raised a special plea, contending that the plaintiff's claim had prescribed.

[2] The provisions of section 17 (1) (b) of the Road Accident Fund Act 56 of 1996 ('the Act') govern the defendant's liability in a situation where the identity of neither the driver nor the owner of a motor vehicle has been established. The defendant is liable to compensate the third party, i.e. the plaintiff, for any loss or damage suffered, but subject to the regulations made under section 26. To that effect, regulation 2 (1)

(a) of the Road Accident Fund Regulations, 2008 stipulates that a claim referred to in section 17 (1) (b) of the Act shall be delivered to the Fund in accordance with section 24 and within two years of the date upon which the cause of action arose. Furthermore, regulation 2 (1) (b) provides that:

‘ . . . a right to claim compensation from the Fund under section 17 (1) (b) of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a).’

[3] For the sake of completeness, it is necessary to mention that section 24 of the Act sets out the procedure for lodging a claim. In that regard, section 24 (1) indicates that a medical report must accompany the claim; section 24 (2) (a) states that the report must be completed on the prescribed form by the relevant medical practitioner or the superintendent, as the case may be; and section 24 (4) (a) stipulates that any form that is not completed in all its particulars shall not be acceptable as a claim under the Act. Pertinently, section 24 (5) provides that:

‘ . . . [i]f the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.’

[4] It was common cause that the plaintiff submitted his claim to the defendant on 30 October 2015. The medical report accompanying the claim was, however, blank; it was never completed. The defendant asserted that the plaintiff failed to submit a report that complied with section 24 (2) (a), alternatively failed to submit a proper report within the two-year period contemplated under regulation 2 (1). Consequently, said the defendant, the claim has prescribed.

[5] During argument of the special plea, counsel for the plaintiff referred to *Pithey v Road Accident Fund*,¹ where the Supreme Court of Appeal confirmed that the requirement relating to the submission of a claim form is peremptory. The prescribed requirements concerning the completeness of the form are, however, directory; substantial compliance with such requirements suffices. The test for substantial compliance is an objective one.² The plaintiff also referred to *Road Accident Fund v Busuku*,³ in which the Supreme Court of Appeal dealt with a situation where the respondent lodged his claim with the appellant in terms of the prescribed form but failed to complete the portion pertaining to a medical report. Instead, the respondent submitted copies of the medical records, detailing his hospitalization, assessments of his condition, treatment received, and surgical procedures carried out, as well as the identities of the doctors involved. Eksteen AJA pointed out that:

‘ . . . the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle.⁴ For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection.’⁵

[6] The learned judge held that the claim form was not intended, of itself, to enable the appellant to assess the quantum of the respondent’s claim. It simply permitted the appellant’s investigation of the impact of the injuries sustained. To this end, the form required the disclosure of information to guide and facilitate such an investigation.⁶ Eksteen AJA went on to find that:

‘[t]he hospital records were submitted together with the claim in order to enable the Fund to investigate the significance of the injuries sustained by [the respondent]. They contained most of the information called for in the RAF 1 form. In my view, furnishing medical records

¹ 2014 (4) SA 112 (SCA).

² Paragraph 19. The principle was relied upon in the recent decision of *Maarman v Road Accident Fund* (993/2023) [2025] ZAWCHC 106 (12 March 2025), paragraphs 56 – 59, and 63.

³ 2023 (4) SA 507 (SCA).

⁴ *Road Accident Fund v Masindi* 2018 (6) SA 481 (SCA), paragraph 13.

⁵ The court referred to *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A), 286E–F, and to *Pithey*, n 1 above, paragraph 18.

⁶ Paragraph 16.

constituted substantial compliance with the requirements of section 24 in this case. There was no suggestion that any significant information demanded by the form was missing.¹⁷

[7] The facts in the present matter are similar to those in *Busuku*. The plaintiff lodged a claim within the prescribed two-year period but submitted a blank medical report. The claim was, however, accompanied by the relevant medical records;⁸ the defendant never objected to its validity. This would seem to be a case that falls squarely within the ambit of the principles set out in *Busuku*. There was substantial compliance with section 24 (1) and (2) of the Act. Furthermore, if an expansive approach is to be adopted regarding the interpretation of the Act, as emphasised by the Supreme Court of Appeal in *Pithey* and *Busuku*,⁹ then absent the defendant's objection to the validity of the plaintiff's claim within 60 days of submission, section 24 (5) means that the claim must be deemed legally valid in all respects, notwithstanding a blank medical report.

[8] Consequently, the special plea cannot succeed. The plaintiff's claim has not prescribed. Regarding costs, there is no reason why the general rule should not be followed.

[9] In the circumstances, it is ordered that:

- (a) the special plea is dismissed; and
- (b) the defendant is ordered to pay the plaintiff's costs on a party-and-party basis, Scale B.

JGA LAING
JUDGE OF THE HIGH COURT

⁷ Paragraph 18.

⁸ Counsel for the plaintiff confirmed the position in response to the court's enquiry in that regard. There was no appearance for the defendant at the hearing.

⁹ See, too, *Masindi*, n 4 above.

Appearances

For the plaintiff: Adv Teko
Instructed by: Mabentsela & Associates
Office No. 2
110 High Street
MAKHANDA
Tel: 043 722 3451 / 073 687 7936
Ref: Mr Mabentsela/lm/0061
Email: unathi@mabentsela.co.za /
info@mabentsela.co.za

No appearance for the defendant.

Date heard: 9 September 2025.
Date delivered: 10 September 2025.