



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case No: 1683/24

In the matter between:

KGOTOJENG WILHEMINAH SEBOKO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Coram: Reddy J

Judgment reserved: 27 February 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be on 10 March 2026 at 16h00.

Summary: Road Accident Fund- Claim for compensation- Procedure- Special plea - Premature summons -Claim for past and future loss of earnings included in summons but not explicitly quantified in RAF1 claim form.

Road Accident Fund Act 56 of 1996- Section 24(5) - Deeming provision - Fund failing to object to the validity of the claim within 60 days of lodgement- Claim

deemed valid in law in all respects -Fund precluded from later challenging the sufficiency of the claim form via special plea. Action for damages - Cause of action - Single and indivisible cause of action -Plaintiff seeking to quantify loss of earnings in summons arising from injuries disclosed in initial claim -Such inclusion not constituting a new claim requiring separate lodgement - Principle in *Nonkwali v Road Accident Fund* applied - Summons not premature - Special plea dismissed.

JUDGMENT

REDDY J:

Introduction

[1] What forms the subject of the dispute before this Court is the defendant's first special plea that the plaintiff's summons is premature in respect of her claim for past and future loss of earnings. This is to be adjudicated as a self-contained inquiry.

[2] On 8 May 2021, the plaintiff, Kgotojeng Wilheminah Seboko, (Seboko) was involved in a motor vehicle accident. Pursuant to this, Seboko instituted an action against the defendant, the Road Accident Fund, (the RAF) for damages suffered as a result of bodily injuries sustained in the accident. The merits and the claim for general damages have since been settled between the parties.

Factual background

[3] The facts that underpin the RAF's special plea are simply these. On 8 May 2021, Seboko was involved in a motor vehicle accident. On 20 November 2023 she lodged a claim with the RAF for compensation arising from the injuries sustained in that accident. It is unassailable that Seboko completed the claim form (RAF1) which amplified her claim. The RAF contends that Seboko did not with specificity claim for past and future loss of earnings.

[4] The RAF did not object to the validity of Seboko's lodgement within 60 days as provided for in s24(5) of the Road Accident Fund Act 56 of 1996 (the Act). Given the RAF's litigation posture, it remained silent on the question of whether the RAF1 had been completed in all material respects.

[5] On 5 April 2024, Seboko issued summons out of this Court. The particulars of claim included claims for general damages¹ and for past and future loss of earnings. The RAF defended the action and subsequently filed a special plea taking issue with Seboko's claim for loss of earnings which had never been lodged with the RAF, and that the summons was therefore premature in respect of that head of damage. It bears underscoring that it is incontestable that at no stage prior to the issuance of summons did Seboko submit an amended RAF1 specifically setting out a claim for loss of earnings.

[6] The RAF contends that Seboko failed to lodge a claim for loss of earnings with the RAF before issuing summons, and that she was therefore required to observe the 120 day moratorium period prescribed in s24(6) of the Act before instituting action. Having failed to do so, the RAF submits that the summons

¹ As alluded to the claim for general damages have been settled.

issued on 5 April 2024 is premature and that the claim for loss of earnings falls to be dismissed.

[7] Seboko, in turn, contends that she lodged her claim with the RAF on 20 November 2023. The RAF raised no objection to the validity of that lodgement within the 60 day period prescribed in s24(5) of the Act. The subsequent inclusion of a claim for loss of earnings in the summons, Seboko avers, does not constitute a new claim requiring separate lodgement, but rather a further quantification of the same indivisible cause of action arising from the motor vehicle accident.

The RAF's submissions

[8] The RAF maintains that the summons is accordingly premature and Seboko's claim for loss of earnings is invalid and unenforceable. The RAF contends that the provisions of s24 of the Act are peremptory and constitute jurisdictional prerequisites to litigation. Further, Seboko cannot fall foul of the statutory scheme by introducing new heads of damage in the summons which were not properly lodged within the statutory context of s24 of the Act. Consequently, the RAF proposes that the special plea be upheld and that Seboko's claim for loss of earnings be dismissed.

Seboko's submissions

[9] Seboko advances three main arguments in opposition to the RAF's special plea. First, the RAF failed to object to the validity of her lodgement within 60 days as required by s24(5) of the Act. Seboko submits that in view of the RAF's legal inactivity the RAF was rendered impotent and is now disallowed from raising an objection to the sufficiency of the RAF1 form.

[10] Second, Seboko's cause of action is single and conjoined, arising from a single motor vehicle accident. To this end, the subsequent quantification of a loss of earnings does not require the lodgement of an amended claim form. Therefore, it suffices to include this head of damage in the summons.

[11] Third, Seboko sets much store by the decision of the Supreme Court of Appeal in *Nonkwali v Road Accident Fund*² (SCA), where it was held that a plaintiff is not required to lodge an amended claim form when further injuries or heads of damage are discovered after the initial lodgement, provided such claims arise from the same cause of action.

[12] It follows, Seboko concludes, that the special plea is legally untenable and stands to be dismissed. Moreover, Seboko contends that a costs order on the attorney and client scale is warranted, contending that the RAF has abused the court process by raising a special plea where the body of law makes it clear that this special plea is unsustainable.

The law

[13] Evaluating the special plea requires an interrogation of the legal framework underpinning Seboko's claim and the synergy found within the substance of the applicable statutory provisions. Section 24 of the Act provides:

'Procedure

- (1) A claim for compensation and accompanying medical report under section 17(1) shall
 - (a) be set out in the prescribed form, which shall be completed in all its particulars;

² [2009] ZASCA 143; 2010 (2) SA 541

(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

....

(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) If 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.

(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent -

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19(f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.'

[14] In sum, the import of the relevant provisions of the Act are:

- (i) Section 24(1)(a) provides that a claim for compensation shall be set out in the prescribed form and shall be lodged in the prescribed manner.
- (ii) Section 24(1)(b) provides that the prescribed form shall be completed in all its material respects.
- (iii) Section 24(4)(a) provides that the Fund shall not be obliged to compensate a third party unless the claim is set out in the prescribed form and completed in all its material particulars.
- (iv) Section 24(5) provides that if the Fund does not object to the validity of a claim within 60 days from the date on which the claim was lodged, the claim shall be deemed to be valid in all respects.
- (v) Section 24(6) provides that no action shall be instituted before the expiry of 120 days from the date on which the claim was sent or delivered by hand to the Fund.

Finding

[15] What falls for determination is whether Seboko was required to lodge a separate claim for loss of earnings with the RAF before she could include that head of damage in her summons, and whether her failure to do so renders the summons premature in respect of that claim. Within this context it is mandatory to consider the effect of the RAF's failure to object to the validity of Seboko's lodgement within the 60 day period prescribed in s24(5). That subsection provides that if the RAF does not object within 60 days, "the claim shall be deemed to be valid in all respects."

[16] Significantly, the RAF did not object to Seboko's lodgement of 20 November 2023 within 60 days. The non possumus stance of the RAF had a particular legal consequence. The plain language of s24(5), is that the claim lodged by Seboko was "deemed to be valid in all respects." The import of this deeming provision serves to preclude the RAF from raising objections in the future to the form or content of the claim as lodged. Notwithstanding the impact of the deeming provision, the RAF persists with the narrative that Seboko's claim for loss of earnings was "not lodged" at all. That being so, the RAF asserts that Seboko cannot rely on the deeming provision in respect of a head of damage that was never claimed. This argument requires careful examination.

[17] The RAF1 completed by Seboko on 20 November 2023 set out with sufficient particularity the details of the claim, the details of the accident, and the injuries sustained. The RAF has taken issue with the fact that Seboko did not specifically claim loss of earnings. Seboko does not dispute that the RAF1 form may not have quantified or specifically claimed loss of earnings. Seboko opines that the RAF1 form gave notice of the accident and the injuries sustained. Aside from the latter, Seboko reasons that the loss of earnings is a natural consequence of those injuries.

[18] To my mind, the RAF's contention is a textbook example of elevating form over substance. The purpose of lodging a claim under s 24 has three fundamental objects, first is to notify the RAF of the accident, second, to disclose the nature of the claim, and third, to provide the RAF with an opportunity to investigate the claim before litigation is instituted. It follows as a matter of course that once the RAF has been notified of the accident and the injuries sustained, and has had an opportunity to investigate, the statutory purpose has been served.

[19] The facts in *Nonkwali* are apposite. *Nonkwali* lodged a claim form that did not list a head injury among the injuries sustained. Some years later, she sought to amend her particulars of claim to include damages consequent upon the head injury. The RAF raised a special plea contending that the claim for the head injury had not been lodged and had prescribed. Maya JA (as she then was) held as follows³:

"It was thus not necessary for her to lodge an amended claim form. The respondent had, from the outset, been placed in possession of the essential information regarding the collision and the injuries sustained by the appellant, albeit that the head injury was not specified. The appellant's cause of action was single and indivisible. The subsequent amendment to her particulars of claim did not introduce a new cause of action, but merely amplified the existing one."

[20] The reasoning in *Nonkwali* applies with equal force to the present matter. Seboko's cause of action arises from a single motor vehicle accident on 8 May 2021. The RAF was notified of that accident and of the injuries sustained by the plaintiff when the RAF1 was lodged on 20 November 2023. The RAF had an opportunity to investigate the claim, including the potential for loss of earnings arising from those injuries.

[21] It stands to reason that the subsequent inclusion by Seboko of a claim for loss of earnings in the summons does not introduce a new cause of action. It merely amplifies the existing cause of action by quantifying a further head of damage arising from the same accident. Seboko was not required to lodge an amended claim form before including this head of damage in her summons.

³ Ibid at 10.

[22] Moreover, had the RAF entertained any doubt about whether the RAF1 had been completed in all material respects, it was afforded a statutory remedy in s 24(5) to raise an objection within 60 days. It failed to do so. The consequences of same have been dealt with in conjunction with the effect of the deeming provision as evinced in s 24(5). From my standpoint, the RAF now appears through the vehicle of a special plea to achieve precisely what it is precluded from doing directly, namely, objecting to the sufficiency of the claim form.

[23] It follows that the RAF's special plea is bad in law. Seboko's claim for loss of earnings was properly included in the summons, and the summons was not premature in respect of that claim.

Costs

[24] Seboko claimed costs on the attorney and client scale, asserting that the RAF abused the court process by filing a special plea where the legal position is settled. While I am of the view that the special plea was without merit, I am not persuaded that it was so frivolous or vexatious as to warrant a punitive costs order. The RAF raised a legal point that, while incorrect, it was not entirely without argument. The appropriate order is that the RAF pay Seboko's costs on a party-and-party scale B.

Order

[25] In the result, I make the following order:

1. The defendant's first special plea is dismissed.
2. The defendant is ordered to pay the plaintiff's costs of opposition to the special plea on a party- and-party scale B.

3. The action is to be enrolled before Reddy J for trial on the merits on a date duly arranged with the Registrar in conjunction with the Office of the Judge President.



A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Plaintiff : Adv T Makgatho

Instructed by: Mokhetle Attorneys
Mahikeng

For the Defendant : Ms N Mathebula

Instructed by: State Attorneys
Mahikeng