



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

CASE NO: 4459/2024

In the matter between:

LOUISA MARIA GREYLING

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

JUDGMENT

POTGIETER J

INTRODUCTION

[1] The plaintiff has instituted an action for damages against the defendant ('RAF') in respect of bodily injuries that she sustained in a motor vehicle collision on 8 August 2021 on the N2 national road between Gqeberha and Humansdorp when the vehicle in which she was a passenger, driven by her husband, left the road and overturned.

[2] The defendant recently filed a special plea of prescription, on the basis that the plaintiff failed to comply with the provisions of section 24(1)(b) of the Road Accident Fund Act, 56 of 1996 ('RAF Act') relating to the lodgement of her claim.

[3] The parties sought an order in terms of rule 33(4) separating the issue of compliance from the other issues in the case. I acceded to this request, and the matter proceeded only in respect of the issue of compliance. The parties prepared a stated case, and the plaintiff compiled a bundle of documents for purposes of adjudicating this issue.

[4] The following relevant facts appear from the stated case. The plaintiff's attorney caused the plaintiff's claim to be delivered to the RAF by a courier under cover of a letter dated 8 March 2024. The RAF acknowledged receipt of the claim documents by means of a letter dated 18 March 2024, but required further documents and information, and returned the claim documents to the plaintiff's attorney. The plaintiff's attorney delivered an updated RAF 1 claim form, together with the necessary annexures, by courier to the East London offices of the RAF on 13 June 2024. An employee of the defendant, L.Xolisa, signed an acknowledgement of receipt of the relevant waybill at 14:52 on 13 June 2024. Summons was served on the defendant on 18 November 2024.

[5] Section 24(1)(b) of the RAF Act regulates the lodgement of claims in the following terms:

‘A claim for compensation and accompanying medical report under section 17(1) shall –

...

(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.’

[6] The sole issue for determination presently is whether the lodgement of the plaintiff’s claim by a courier qualifies as delivery by hand in terms of section 24(1)(b). The issue is a novel one. No decided case in point has come to my attention.

[7] Mr. Pienaar, on behalf of the plaintiff, indicated when the matter served before me yesterday, that there might be a decision on this point in the Western Cape High Court. However, during argument today, he indicated that despite his best efforts, which included enquiries among his colleagues at the local bar and those practising in Cape Town, he was unable to find any decided case in point. He added that his Cape Town colleagues indicated that they were unaware of any decision in their division or elsewhere dealing with the present issue.

[8] Mr. Pienaar referred me to the matter of *Chetty*¹, where the lodgement of the claim was effected a day before the date of prescription by the plaintiff’s attorney, who placed the documents in a mailbox in the foyer at the RAF offices in Durban. The mailbox was provided by the RAF for the reception of documents, and claims thus submitted were treated as hand-delivered. The attorney travelled to the RAF officers

¹ *Chetty v Road Accident Fund* 2009(5) SA 193 (NPD).

from Chatsworth in order to hand deliver her client's claim. This was on Thursday, 28 March 2002, the day before Good Friday. She found the offices closed when she arrived at approximately 14:00 and was refused access by a security guard in the foyer, who instead directed her to the RAF mailbox after she had explained her predicament to him. The situation was that the claim had to be delivered by the following day, which was a public holiday, and the attorney was mindful of the fact that the offices would be closed on the public holiday. It also appeared that the RAF's Durban office had, unbeknown to the attorney, developed a custom to close at noon on the day before a public holiday. The court was thus called upon to decide whether depositing the claim in the mailbox amounted to hand delivery thereof in terms of section 24(1)(b). The court answered this in the affirmative. Mr. Pienaar submitted that by analogy, delivery by courier *a fortiori* amounts to delivery by hand, especially where receipt is acknowledged in writing, as in the present case. He accordingly asked for the special plea to be dismissed together with ancillary relief.

[9] Mr. Dlamini, on behalf of the RAF, submitted that the requirement that prior notice must be given to the RAF before action may be instituted has been circumscribed in section 24(1)(b), which provides two options to the claimant, namely delivery of a claim either by registered post or by hand. He submitted that delivery by means of a courier does not comply with these requirements. Couriers are independent parties and not the agents or employees of the claimant. As he put it, the courier's hand is not the hand of the claimant. Mr. Pienaar retorted that the real issue is whether the claim was received by the defendant, which fact is common cause. He expressed the view that delivery by courier is a better means of lodging the claim than transmitting the claim by registered post.

[10] To recap, the issue in this matter is whether the lodgement of a claim by means of a courier amounts to delivery by hand as envisaged in section 24(1)(b). The matter of *Chetty*² is not of direct assistance in determining this issue. The *ratio decidendi* of that

² Note 1 above.

case is that depositing claim documents in a mailbox provided for that purpose by the RAF amounts to hand delivery in terms of section 24(1)(b), in that the RAF was placed in possession of the documents, given that the requisite elements of possession, namely *animus decidendi* and *detentio*, were established. I find it unnecessary to deal with that matter in any more detail, save to express some reservation about equating delivery in terms of section 24(1)(b) to 'placing in possession' as the court did on the strength of the decision in *Ficksburg Transport*³. The latter case dealt with the exercise of an option to purchase immovable property and indicated that in the absence of any contractual provision to the contrary, the legal position is that the offeror must be informed that the option is being exercised, i.e., it must be brought to the knowledge of the offeror. The court held that the provision in the contract being considered in that case, requiring the 'delivery of a written notice to the owner'⁴ to exercise the option in question must be understood to encompass that 'the ordinary and popular sense of delivering a thing to another is to hand over the thing to him'⁵ (approving the dictum to that effect in *R v Rudd* 1912 TPD 195 at 199). The court found that delivery of the notice exercising the option by leaving it with an employee at the home of the offeror in the temporary absence of the latter did not amount to a valid exercise of the option. The express wording of the relevant clause requires notice to be given to the offeror, and the meaning to be given to the wording is that the offeror must be placed in possession of the notice, i.e., it must be handed personally to the offeror or his authorised representative⁶. It is clear from the judgment that this interpretation applies to the particular wording and context of the option being dealt with by the court in that case. I am not persuaded that this context-specific interpretation could, without more ado, simply be applied to section 24(1)(b). In my respectful view, the term 'deliver' in the section should not be interpreted as requiring 'personal service' (i.e. handing over to 'him' as applies in the case of exercising an option in general or in the specific circumstances of *Ficksburg Transport*), but rather as handing over at the proper

³ *Ficksburg Transport (Edms) Bpk v Rautenbach & n Ander* 1988(1) SA 318 (A).

⁴ The contract was in Afrikaans and required that the option '*skriftelik uitgeoefen moet word deur lewering van n skriftelike kennisgewing aan die eienaar tot die effek dat die opsie uitgeoefen word ...*'. (emphasis added)

⁵ At 332G.

⁶ At 334D. The term used in the judgment for 'authorised representation' is 'gevolmagtigde'.

address, which in terms of the section is the principal, branch, or regional office of the RAF⁷.

[11] Returning to the present matter, the issue raised by the RAF is that couriers do not fall within the category of those empowered to deliver claim documents. This is, however, not apparent from the wording of section 24(1)(b), which does not limit, in any way, those who are authorised to deliver claim documents. The section only circumscribes the recipients and the place of delivery of the claim. No reason commends itself why there should be a limitation on who may deliver claims. It is clearly only important that claims are properly delivered. By whom this is done is of no moment, and there is no need or justification to impose limitations in this regard. Furthermore, the RAF Act is social legislation with the primary purpose of giving the greatest possible protection to claimants who enjoy the right of access to justice guaranteed by section 34 of the Constitution.⁸ The provisions of the RAF Act must be interpreted as extensively as possible in favour of third parties to afford them the widest possible protection.⁹

[12] In my view, there is no justification for interpreting section 24(1)(b) to exclude the delivery of a claim by a courier. There is no basis in reason, principle or logic for adopting such an interpretation. I find some support for this stance in the decision of *John & Another v RAF*¹⁰ where it was not challenged that delivery of a claim by means of the Document Exchange (Docex), also a form of courier service that delivers documents for its members, (which included firms of attorneys and at the time the Multilateral Motor Vehicle Fund the predecessor to the RAF), was proper and consistent with the requirements of the Multilateral Motor Vehicle Accidents Fund Act, 93 of 1989, which is substantially similarly worded to the provisions of the RAF Act.

⁷ Given that the RAF is a corporate entity personal service would not be possible and delivery would inevitably be to a natural person who might not be a 'gevolmagtigde'. It, however, remains necessary to record that the meaning attached to the term delivery ('leowering') in *Ficksburg Transport* does not finally settle the meaning of that term in s24(1)(b) which must be interpreted in the context of the RAF Act. The issue must therefore remain open in my view.

⁸ *Road Accident Fund v Masindi* 2018(6) SA 481 (SCA) at para 13.

⁹ *Road Accident Fund v Busuku* 2023(4) SA 507 (SCA) at para 6.

¹⁰ *John & Another v Road Accident Fund* 2000(1) SA 459 (TPD).

[13] It follows that the plaintiff has, in the circumstances, complied with the requirements of section 24(1)(b) in so far as the delivery of her claim by a courier is concerned, and that there is no merit in the defendant's special plea.

[14] The plaintiff has asked, in the event of the special plea being dismissed, for counsel's costs be awarded on Scale C. This is not justified. The issue in this matter was confined and not complex. It is accordingly fair and reasonable to allow counsel's costs on Scale B.

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

(a) the defendant's special plea is dismissed;

(b) the defendant is ordered to pay the costs of suit, including the costs of counsel on scale B;

(c) the remaining issues in the action are postponed *sine die*.

D.O. POTGIETER

JUDGE OF THE HIGH COURT

This judgment is handed down electronically by circulation to the parties or their legal representatives by email. The date for hand-down is deemed to be 05 March 2026.

APPEARANCE

Counsel for the Plaintiff: Adv B Pienaar, instructed by Jock Walter Inc., 246
Main Road, Walmer, Gqeberha

Counsel for the Defendant: Mr. N Dlamini, instructed by State Attorney, 29
Western Road, Central, Gqeberha

Date of hearing: 04 March 2026

Date of delivery of judgment: 05 March 2026