

NOT REPORTABLE

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 46854/2009

DATE: 29/04/2011

DELETE WHICHEVER IS NOT APPLICABLE	
REPORTABLE: YES/NO	
OF INTEREST TO OTHER JUDGES: YES/NO	
REVISED	
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DATE	SIGNATURE

In the matter between:

MBONGISENI MAKHOMBOTHI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

C. J. CLAASSEN J:

[1] This is an action for damages against the Road Accident Fund in terms of Act 56 of 1996. The issue currently before me is the validity of a special plea filed by the defendant wherein the following is stated:

“The defendant pleads that the plaintiff’s claim is in terms of the Road Accident Fund Act 56 of 1996 as amended by Act 19 of 2005. In the case of any claim for compensation brought under the aforesaid Act the third party shall comply with regulation 3 made under section 26 of the Act. In the premises the plaintiff has failed and/or neglected to comply with the regulation. Therefore the plaintiff’s claim is under the circumstances unenforceable.”

[2] Let me say immediately that the special plea does not disclose any defence whatsoever. It states that the plaintiff's claim is unenforceable. That can never be the case. It is either enforceable in this Court or in a tribunal which has to be established in terms of the Amendment Act No 19 of 2005. But to say that it is unenforceable for lack of compliance with regulation 3, does not disclose a defence.

[3] Be that as it may, the special plea has to be read in the light of the pleadings as a whole. In paragraph 3 of the plaintiff's particulars of claim the following is alleged:

"At all relevant and material times hereto the defendant is liable in terms of the Act and its regulations to compensate the plaintiff in respect of the damages sustained by him as a result of the accident referred to in paragraph 4 below."

[4] The defendant pleads to this paragraph as follows:

"Save to admit its liability in terms of section 17 (a) of the Road Accident Fund 56 of 1996, the defendant has no knowledge of the balance of the allegations herein contained and accordingly does not admit same and puts the plaintiff to the prove thereof."

[5] Mr du Plessis for the plaintiff submitted that this manner of pleading in fact constitutes an admission that this Court has jurisdiction to hear the matter. The plaintiff is entitled to enforce the claim in this Court and need not have the claim for general damages referred to a tribunal. The correctness of his submission depends upon what is meant by the defendant in paragraph 3 of its plea. Mr Pilusa for the defendant submitted that the reference to "section 17(a)" is actually incorrect and it should have referred to section 17(1)(a) of the Act.

[6] This particular section has two pre-suppositions. The first is that it deals with an instance where the identity of the driver or the owner of the insured vehicle has been established. The second refers to a situation where the identity of the driver or the owner has not been established. These two

pre-suppositions are contained in subparagraphs (a) and (b). They are two directly opposing pre-suppositions for purposes of applying section 17(1).

[7] The admission that section 17(1)(a) applies and that the defendant is liable in terms thereof, has to be investigated. This subsection states the following:

“17(1) The fund or an agent shall –
(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) ...

be obliged to compensate any person [the third party] for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

(1A)(a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act 56 of 1974.”

[8] Mr Pilusa for the defendant sought to argue that the admission extends only to the first pre-supposition contained in subparagraph (a) and not the remainder of the subsection. In effect he submitted that the phrase starting with the words, “be obliged to compensate...” is excluded from the admission that section 17(1)(a) applies. I cannot agree with such an interpretation. Subsection 1(a) does not form a completed sentence. It merely states a supposition of the identity of the driver having been established and says nothing further. In order for that subparagraph to make any sense it has to be read with the balance of the section wherein

the obligation of the fund or the agent is set out namely, to compensate the third party for any loss or damage.

[9] The portion commencing with the words, “be obliged to compensate...” forms an integral part of subsection (a) in the same way as that portion will also form an inherent part of subsection (b). One cannot read subsection (a) without reference to the balance of the section because that would make no sense at all. Subsection (a) does not import any liability to do anything on the part of the fund or the agent. It is only when read in the light of the remainder of the main section that the obligation resting upon a fund or an agent where the identity of the driver has been established, is described.

[10] I am therefore of the view that the admission made in paragraph 3 of the defendant’s plea constitutes an admission that the plaintiff is entitled to seek compensation in this Court from the fund as a result of the collision.

[11] The special plea raising a lack of compliance by the plaintiff of regulation 3 is, in any event, directly contradictory to the plea in paragraph 3. I am therefore of the view that Mr du Plessis’s submission is correct that it constitutes an admission that the plaintiff is entitled to seek compensation in this Court and that the jurisdiction of this Court is not ousted.

[12] However, if I am wrong in this conclusion, it is noteworthy that the pre-trial minute puts the issue beyond any question. In paragraph 4.3 thereof, regarding the parties’ agreement as to quantum, the following is stated:

“Consequently the parties agreed that the quantum aspect of the matter shall proceed on the claims for general damages accrued and prospective loss of income. The defendant referred the plaintiff to paragraph 2.”

[13] In paragraph 2 there is a reference to the question of separation of issues. In paragraph 2.1 it is recorded that the defendant suggested that the issue

of general damages be postponed to afford the plaintiff an opportunity to comply with regulation 3.

[14] In my view, that does not detract from the clear admission contained in paragraph 4.3 of the pre-trial minute that the plaintiff's entitlement to pursue a claim for general damages in this Court was agreed to and admitted. It is expressly stated that the parties agreed thereto.

[15] In these circumstances I am of the view that there is no substance in the special plea and I make the following order:

The special plea is dismissed with costs.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS 27th DAY OF JUNE 2011.

A handwritten signature in black ink, appearing to read 'C.J. Claassen', written in a cursive style.

C.J.CLAASSEN

JUDGE OF THE HIGH COURT