

## REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

15/5/14

CASE NO: 39872/2012

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
15 May 2014	<i>ELM busi</i>
DATE	SIGNATURE

IN THE MATTER BETWEEN:-

C LABUSCHAGNE

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

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 J U D G M E N T
 

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KUBUSHI, J

[1] The plaintiff was injured in a motor vehicle collision. The matter was settled between the parties and on 25 November 2008 the court granted an order against the defendant wherein an undertaking in terms of s 17 (4) of the Road Accident Fund Act 56 of 1996 (the Act), was granted to the plaintiff.

[2] In terms of the medico legal report of the occupational therapist, which formed part of the record in the main case, it was recommended that the plaintiff attend Pilates training sessions using a rehabilitative approach. Such exercises would facilitate strengthening of postural muscles known as core stabilisers. This would affect an improvement in strength, flexibility and posture, an improvement in postural endurance, and relief of pain and discomfort. The plaintiff was referred to a certified Pilate's instructor using the Body Control Pilates Method and/or the Pilates Conditioning Method (Top Condition SA).

[3] Consequent to the said undertaking and the recommendation of the occupational therapist, the plaintiff went for and received treatment from Kristen Capazorio, a pilates' instructor. Capazorio, who gave evidence on behalf of the plaintiff, is a certified pilates' instructor. She has the following qualifications: a degree in BA in Human Movement and BASI – an international certification in Pilates. She belongs to an organisation called the South African Pilates Association which certifies people giving Pilates.

[4] Capazario's account for the services amounted to R17 960. She confirmed in her evidence in court, which evidence was not challenged, that the plaintiff paid for the services in monthly instalments out of own pocket. The defendant is refusing to pay the plaintiff this amount on the basis that Capazario is not registered with the Health Professional Council of South Africa (HPCSA). The contention is that if the service provider does not belong to the HPCSA he or she will not be able to do a proper diagnosis and as such the service rendered is not covered by the Act.

[5] S 17 (4) (a) of the Act provides

“(4) Where a claim for compensation under subsection (1) –

(a) includes *a claim for the costs of the future* accommodation of any person in a hospital or nursing home or treatment of or *rendering of a service* or supplying of goods to *him or her*, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking to compensate – . . .” (My emphasis.)

[6] It is indeed so that there is no specific provision of the Act or a regulation that stipulates that treatment should be given by a person registered under the Health Professional Council of South Africa – the defendant's counsel conceded as much.

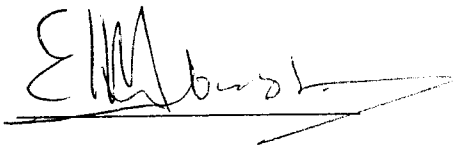
[7] The plaintiff's counsel submits that the scope of the 'services to be provided' in terms of s 17 (4) (a) should be regarded as wide enough to include the services of the Pilates' instructor who rendered the services required by the plaintiff. He referred me in this regard to the judgment in Brink v Guardian Nasionale Versekering Bpk 1998 (1) SA 178 (OPA) at 180A – B/C. His contention is that if in that case the court could widen the scope of 'services to be provided' to include the costs which might be incurred for the services of a person who will assist the plaintiff in his farming activities, then, in his opinion such scope is wide enough to include the costs of the services provided by the Pilates' instructor in this instance.

[8] In the Brink – case above at 180A – B/C the court held that the services to be provided in terms of s 43 (a) of the Agreement Establishing a Multilateral Motor Vehicle Accident Act 93 of 1989 (which article made provision for an undertaking by the Fund or its appointed agent to compensate the plaintiff for certain costs which he or she might incur in the future) is wide enough to cover the costs which a plaintiff might incur in the future by approaching somebody to assist him in his farming activities as a result of the injuries sustained in the collision which gave rise to the action.

[9] And in Reyneke NO v Mutual & Insurance Co Ltd 1992 (2) SA 417 (T) the court held that the rendering of services in terms of s 8 (5) of Act 84 of 1986 (the old Act) was wide enough to cover the costs which a *curatrix bonis* would incur to acquire the services of a person who would administer the estate of a person referred to in s 8 (1) of that Act.

[10] My view, therefore, is that, taking the above judgments in consideration, the plaintiff's counsel is correct to submit in this instance, that the scope of 'services to be provided' in terms of s 17 (4) (a) of the Act is wide enough to include the services of the Pilates' instructor who rendered the services required by the plaintiff. The qualifications and experience of the said instructor as testified in the court are not in dispute. The methods which she applied to diagnose the plaintiff and the manner in which she treated her are also not in dispute. And the defendant is in agreement that the services rendered were indeed required by the plaintiff.

[11] Consequently the <sup>defendant</sup> ~~plaintiff~~ is ordered to pay to the plaintiff the amount of R17 960.



KUBUSHI J

JUDGE OF THE HIGH COURT

APPEARANCES

HEARD ON THE	: 05 MAY 2014
DATE OF JUDGMENT	: 15 MAY 2014
PLAINTIFF'S COUNSEL	: ADV P J COETZEE
PLAINTIFF'S ATTORNEY	: CHRISTO BOTHA ATTORNEYS
DEFENDANT'S COUNSEL	: ADV L VORSTER
DEFENDANT'S ATTORNEY	: DYASON INCORPORATED