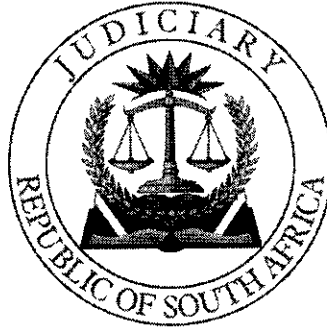


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 36977/2014



2/12/2016

DATE OF JUDGMENT: 02 December 2016

(1) REPORTABLE: YES/NO ☒ NO

(2) OF INTEREST TO OTHER JUDGES:
YES/NO ☒ NO

(3) REVISED. Yes

[Signature]

In the application between:

MMM NTOI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

[1] The Defendant raised two special pleas in this matter.

[2] The first point raised was that the Plaintiff did not comply with Section 24(4) of the Road Accident Fund Act 56 of 1996 (as amended), (the Act) which requires that the (RAF 1) form referred to, should be completed in all its particulars or it shall not be accepted. In this instance, the Defendant has failed to furnish details identifying the vehicle in which she was a passenger. The insured driver as well as the particulars of the insured vehicle as required in paragraphs 6, 7 and 8 of the RAF 1 form.

[3] Section 24(5) of the Act, entitles the Defendant to object to the validity of the claim within a period of 60 days from the date on which the claim was served on the Defendant. Section 24(5) stipulates that:

"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."

[4] The Defendant had formally objected thereto by way of a notice on 18 March 2014.

[5] The second plea relates to the non-compliance with the provisions of Section 24(6) of the Act which deals with the Plaintiff's failure or refusal to furnish a compulsory affidavit in terms of Section 19(f)(i) of the Act.

Section 19(f)(a)(i) stipulates that the Plaintiff must fully set out in the compulsory affidavit the particulars of the accident which gave rise to her claim. Section 19(f)(i) of the Act provides that the Fund is not obliged to compensate a third party who fails or refuses:

"to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out."

- [6] It is a peremptory requirement that every claimant submits the prescribed affidavit. A claimant is not excused from submitting an affidavit due to the fact that the particulars as to how the collision arose did not fall within his/her personal knowledge.
- [7] The aforesaid pleas were served on the Plaintiff on 5 September 2014. The Plaintiff failed to comply thereto. However, on 18 March 2016, the Plaintiff served said affidavit on the Defendant. The Defendant argued that such late submission is unreasonable.
- [8] The Defendant had not repudiated the Plaintiff's claim, but only objected to the validity of the claim as a result of non-compliance with Section 24(4) of the Act.
- [9] The Defendant seeks dismissal of the Plaintiff's claim in the first

instance, or alternatively, requests the Court to declare that the summons was prematurely served on the Defendant by virtue of Section 24(6)(a) and (b) of the Act, and cause the Defendant to exercise its rights in terms of Regulation 6(2)(a) and (b) of the Act. Section 24(6)(a) and (b) of the Act provides that the summons may only be served on the RAF after:

- a period of 120 days have elapsed from the submission of the claim; and
- the claimant has furnished the compulsory Section 19(f) affidavit and all copies of statements and documents relating to the accident within a reasonable period after coming into possession thereof.

[10] In this instance the Plaintiff not only failed to identify the insured driver but the registration details of the vehicles involved as well.

[11] The issue which persists is that the Plaintiff had failed to comply with Section 19(f)(i) and the objection raised by the Defendant was justified. I therefore disagree with the Plaintiff's submission that the summons was not prematurely served. It is settled law that service of

a premature summons remains ineffectual and does not interrupt prescription.

[12] The Plaintiff had further failed to respond to the enquiry of the Defendant in terms of Regulation 6(2)(a) and (b) of the Act.

[13] The claim was lodged within a three year period. The date of the accident was 3 October 2013, and the claim was submitted on 21 February 2016. The affidavit in terms of Section 19(f)(i) was filed on 18 March 2016 (before the expiry of the three year period).

[14] It is settled law that if a summons be prematurely served but the claim had not as yet prescribed, that the Plaintiff should be afforded an opportunity to rectify the situation. In the premises therefore I find that the Plaintiff be given an opportunity to furnish the requested information and documentation required by the Defendant.

[15] Cognisance is further taken of the discrepancies in respect of the claim submitted, particularly in respect of the claim submitted and the cause of the injury sustained by the Plaintiff. The differing versions on the papers are recorded as follows:

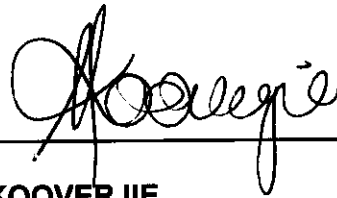
- accident report – the Plaintiff was a passenger in an unknown vehicle;
- in the "patient report form" – she was found "seating" by the road and the cause of the accident was recorded as "motor vehicle";
- "radiology report" - she was a "passenger involved in MVA" and was a passenger in a "bucky" as front seat passenger.

[16] The full details of the accident, the identity of the insured driver and the details of the motor vehicle remain outstanding.

In the premises therefore, I deem that the appropriate order be as follows:

1. It is declared that the summons was prematurely served on the Defendant and has no force and effect;
2. The Plaintiff is ordered to re-issue and serve a fresh summons in compliance with Section 24 of the Act within 90 days of date of this order;

3. The Plaintiff is further ordered to comply with Regulation 6(2)(a) and (b) of the Act, within a period of 90 days of date of this order;
4. The Plaintiff bears the costs occasioned by the proceedings relating to pleas raised.

A handwritten signature in black ink, appearing to read 'H Koooverjie', is written over a horizontal line.

**H KOOVERJIE
ACTING JUDGE OF THE
GAUTENG DIVISION**