

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

Case No: 72204/2014

26/8/2016

Reportable: No

Of interest to other judges: No

Revised.

In the matter between:

ROAD ACCIDENT FUND

Defendant/Applicant

and

ALI, ALEMAYEHU

Plaintiff/Respondent

(Passport No: ...)

JUDGMENT

HF JACOBS, AJ:

[1] In this application the Road Accident Fund ("the Fund") applies for the rescission of a default judgment granted by Potterill J on 24 February 2015. When the matter was called there was appearance on behalf of the Fund but no heads of argument, practice note or replying affidavit was filed. With my consent the Fund filed a replying affidavit, practice note and heads of argument later the week and the matter was argued late Thursday afternoon, all with the consent of the respondent's counsel. The respondent challenged the deponent to the Fund's founding affidavit's authority to represent the Fund in these proceedings. Mr Smit, appearing on behalf of the Fund, correctly in my

view conceded that the deponent failed to prove her authority to represent the Fund. In the replying affidavit (deposed to by a person other than the person who deposed to the Fund's founding affidavit) did not remedy the Fund's application in that respect.

[2] However, it was submitted on behalf of the Fund, that the order of Potterill J was granted in error where it reads¹ "*That default judgment be and is hereby granted in favour of the applicant against the respondent in respect of the merits of the action on the basis that the applicant is entitled to recover 100% of his proven or agreed damages, resulting from the collision which occurred on 14 May 2011*". Mr Smit on behalf of the Fund draw my attention to a judgment such as *Road Accident Fund v Duma* and three similar cases, 2013 (6) SA 9 (SCA) and *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA) where it was held that the Road Accident Fund Act 56 of 1996 limits the Fund's obligation to compensate third parties for general damages (non-pecuniary loss) to those instances in which a claimant has suffered "*serious injury*" and that no objective standard for deciding on the seriousness of the injuries contained in the Act and that assessment thereof should be made by a medical practitioner on the basis of the method prescribed by Regulation 3 of the Regulations made under the Act.

[3] On authority of the aforementioned judgments it was submitted on behalf of the Fund that, regardless the inadequacies of its founding papers in the application for rescission of judgment, the judgment should in any event be rescinded.

[4] In his particulars of claim the respondent claims payment of, *inter alia*, general damages.

[5] Having regard to the contents of the respondent's particulars of claim the order granted in his favour by reason of the Fund's default included general damages. Such an award is invalid on authority of *Duma*.² There is nothing to indicate that the respondent submitted himself to an assessment as contemplated by Regulation 3(1)(a) of the Regulations promulgated in terms of Act 56 of 1996. There is nothing to suggest and it was not alleged on behalf of the respondent that Regulation 3(3) had been complied with before the date of default judgment. Had the respondent brought that

¹ See par 1 of the order dated 26 February 2015.

aspect to the attention of Potterill J the judge would not have granted an order allowing him to be entitled for 100% of the damages claimed by him in his particulars of claim.

[6] Under the circumstances I cannot but conclude that the order of 26 February 2015 was erroneously granted in the absence of the applicant and should be rescinded in terms of Rule 42(1)(a).

[7] The current state of affairs including the late filing of its replying affidavit is the result of the conduct of the applicant. Had the applicant performed its statutory obligations to handle and manage the claim instituted by the respondent this application would not have been necessary. In my view the applicant should be ordered to pay the costs of this application.

I make the following order:

1. The judgment granted by Madam Justice Potterill on 26 February 2015 against the Road Accident Fund is rescinded; and
2. The Road Accident Fund is ordered to pay the costs of this application for rescission.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Date: 23 August 2016

² Road Accident Fund v Duma & three similar cases 2013 (6) SA 9 (SCA).