THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1013/19

In the matter between:

ROAD ACCIDENT FUND **APPELLANT**

and

ZUKO BUSUKU **RESPONDENT**

Neutral citation: *Road Accident Fund v Busuku* (Case no 1013/19) [2020] ZASCA 158 (1 December 2020)

Coram: WALLIS, MOCUMIE and DLODLO JJA and EKSTEEN and WEINER AJJA

Heard: 17 November 2020

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 1 December 2020.

Summary: Section 24 of Road Accident Fund Act 56 of 1996 – failure to complete 'Medical Report' section of RAF 1 form – submission of hospital records together with lodgement of claim constituting substantial compliance with s 24(1) and (2)*(a)* of Act – failure of the Fund to object within 60 days – claim deemed to be valid in all respects.

ORDER

On appeal from: Eastern Cape Division of the High Court, Mthatha (Nhlangulela and Majiki JJ, Bloem J dissenting, sitting as court of appeal):

1 The orders of the High Court, Mthatha and the Full Court, Eastern Cape Division, are set aside and are substituted by the following:
'The special plea is dismissed with costs.'

2 Save as above, the appeal is dismissed with costs.

JUDGMENT

Eksteen AJA (Wallis, Mocumie and Dlodlo JJA and Weiner AJA concurring)

[1] This appeal turns on the interpretation and application of s 24 of the Road Accident Fund Act 56 of 1996 (the Act). Mr Busuku, the respondent, claimed damages from the appellant (the Fund) in respect of future medical expenses, loss of earning capacity and general damages suffered as a result of bodily injury sustained in and as a result of a motor vehicle accident, which occurred while trying to avoid a collision, on 21 June 2012. The Fund raised a special plea contending that the plaintiff had failed to deliver a medical report to it as contemplated by s 24(1) and (2)*(a)* of the Act and that his claim has accordingly become unenforceable against it. I shall revert to the provisions of s 24.

[2] In the High Court, Mthatha (the trial court) Alkema J upheld the special plea and dismissed his claim. He successfully appealed to the Full Court of the Eastern Cape Division (the court *a quo)* where the majority (Nhlangulela and Majiki JJ) set aside the order of the trial court and referred the matter back to it to consider the special plea afresh. The minority (Bloem J) agreed with the conclusion of the trial court. The current appeal against the judgment of the court a quo is with special leave of this Court.

[3] The factual background to the dispute is as follows. Mr Busuku had sustained a severe closed head injury as a result of a motor vehicle collision with an unidentified vehicle. His claim was predicated, as it had to be, on s 17(1)*(b)* of the Act.[1] On 30 April 2014 he caused his claim, set out on the prescribed RAF 1 form, to be lodged with the Fund.[2] However, the final portion of the form which provides for the medical report was not completed. In its stead Mr Busuku submitted a copy of the original records of the Mthatha Hospital which reflected particulars of his hospitalization, the medical assessment of his condition from time to time, medical treatment received and surgical procedures carried out together with the identity of the doctors involved therein. The hospital records were, of course, handwritten and, in part, they were difficult to decipher.

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[1]Section 17(1)*(b)* provides that the Fund or its agent shall: '*(b)* subject to any regulation made under s 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, 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 . . . caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury . . . is due to the negligence or other wrongful act of the driver or 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 obligations of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in ss (1)A and shall be paid by way of a lump sum.'

[2] Regulation 7(1) of the Regulations made under s 26 of the Act provides: 'A claim for compensation and accompanying medical report referred to in s 24(1)*(a)* of the Act, shall be in the Form RAF 1 attached as annexure A to these Regulations, or such amendment or such substitution thereof as the Fund may from time to time give notice of in the gazette.'

[4] The delivery of the claim elicited no response from the Fund and a serious injury report was subsequently delivered on 1 September 2014, which has been accepted as correct. The serious injury report is a prerequisite for compensation in a claim for non-pecuniary loss as contemplated in s 17(1).

[5] On 24 October 2014 Mr Busuku issued summons, which was initially met only with a plea on the merits. In November 2015 the Fund amended its plea to introduce the special plea. The material portion of the special plea records:

'1. . . .

2. The plaintiff lodged an RAF 1 claim form with the defendant in terms of the Act on the 30th April 2014 . . .

3. . . . (T)he plaintiff's claim against the defendant, is in terms of Section 17(1)*(a)* & *(b)* of the Act, and as such is subject to the requirement of the Section 24, and more specifically Section 24(1) & (2)*(a)* which prescribes that the statutory medical report shall be completed on the prescribed form by the medical practitioner who treated the . . . injured person for the bodily injuries sustained in the accident from which the claim arises (or his or her representative), of the hospital where the . . . injured person was treated for such bodily injuries; provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that, as a result of the passage of time, the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding . . . the nature and the treatment of the bodily injuries in respect of which the claim is made.

4. The plaintiff failed to comply with the requirements of Section 24(1) and sub-section (2)*(a)* in that the period within which to lodge the statutory medical report has lapsed.

5. In the circumstances the plaintiff's claim herein, as pleaded in his Particulars of Claim, has become prescribed against the defendant, or alternatively is no longer enforceable against the defendant.'

[6] Before I turn to consider the legislative framework applicable to the special plea it is necessary to reflect on the principles relating to the interpretation of the Act. The principles generally applicable to the interpretation of documents are well settled and have been repeatedly restated in this Court.[3] In considering the context in which the provisions appear and the purpose to which they are directed it must be recognized that the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle.[4] For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection.[5] On the other hand, courts should be alive to the fact that the Fund relies entirely on the fiscus for its funding and they should be astute to protect it against illegitimate or fraudulent claims. In the current matter there has, however, been no suggestion of any illegitimate or fraudulent claim.

[7] There is also the further consideration explained by Nestadt JA in *Multilateral Motor Vehicle Accident Fund v Radebe* 1996 (2) SA 145 (A) at 152E-I where he said:

'It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand the benefit which the claim form is to give the Fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the early investigation of the case. In addition, it also promotes the saving of the costs of litigation . . . These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be

[3] See, for example, *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.
[4] *Road Accident Fund v Masindi* [2018] ZASCA 94; 2018 (6) SA 481 (SCA) para 13.
[5] See, for example, *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) 286E-F; and *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA) para 18.

expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant.'

Bearing these principles in mind the legislation must be interpreted contextually, purposefully and holistically.[6]

[8] As I have said, Mr Busuku's claim was predicated on s 17(1)*(b)*. The section provides for compensation 'subject to any regulation made under s 26'.[7] Regulation 2 provides for the prescription of a claim under s 17(1)*(b)* and the material portion records:

'(1)(a) a claim for compensation referred to in s 17(1)*(b)* of the Act shall be sent or delivered to the Fund in accordance with the provisions of s 24 of the Act within two years from the date upon which the cause of action arose.

(b) a right to claim compensation from the Fund under s 17(1)*(b)* of the Act in respect of the loss for damage arising from the driving of a motor vehicle in the case where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of the period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of para (a).

(c) In the event of a claim being lodged in terms of para (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.'

Regulation 7 prescribes that a claim for compensation and accompanying medical report referred to in s 24(1)*(a)* of the Act shall be in the Form RAF 1 which is attached as an annexure to the regulations.

[9] That brings me to s 24 which lies at the heart of the special plea. It requires that the claim for compensation and the accompanying medical report shall be set out in the prescribed form, being the RAF 1 form.[8] The essence of

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[6] See *Assign Services (Pty) Ltd v National Union of Metal Workers of South Africa and Others* [2018] ZACC 22; 2018 (5) SA 323 (CC) (26 July 2018) para 41.
[7] The Road Accident Fund Regulations, GN R770, *GG* 31249, 21 July 2009 apply.
[8] Section 24(1)*(a)*.

subsec 2*(a)* is recorded in the special plea. It requires the medical report to be completed on the RAF 1 form by the doctor who treated the injured person for the injuries which form the subject of the claim, or by the superintendent (or their representative) of the hospital where the injured person was treated for such bodily injuries. In the event that the medical practitioner or superintendent (or their representative) fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim may become prescribed the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the nature and the treatment of the bodily injuries.

[10] Section 24 provides further that any form referred therein, which includes the RAF 1 form, which is not completed in all its particulars shall not be acceptable as a claim under the Act.[9] Nevertheless, whatever shortcomings there may be in a claim form duly delivered, the claim shall be deemed to be valid in law in all respects unless the Fund, within 60 days from the date upon which the claim was delivered, objects to the validity thereof.[10]

[11] I turn to the findings of the courts below. In upholding the special plea the trial court considered these sections of the Act and concluded:

'Three consequences flow from the aforesaid: first, the claim and accompanying medical report must be set out on Form RAF 1 (which constitutes the prescribed from), which form must be delivered to the Fund within two years from the date upon which the cause of action arose. These two documents constitute the claim for compensation. Two, the medical report shall be completed in all its particulars by the medical practitioner who treated the injured person for those injuries. Three, and on the strength of *Pithey* (*supra*), and if the words used in Regulations 2 and 7 read with s 24(1)*(a)* of the Act are taken

[9] Section 24(4)*(a).*
[10] Section 24(5).

seriously, the submission of the claim and accompanying report must comply strictly with the statutory requirements which are peremptory.'

[12] Later, the trial court proceeded to consider s 24(5). It concluded:

'The medical report left in blank, is in my view, tantamount to a medical report not having been lodged at all, and thus to a total lack of compliance with s 24. It can never be regarded as being in substantial compliance with the Act and Regulations. It may be disregarded by the Fund and its (unfortunate) failure to object thereto cannot convert an invalid claim to a valid claim under s 24(5).'

[13] The argument on behalf of the Fund in this Court supported the correctness of these findings by the trial judge. By contrast, the Full Court considered that the trial judge had failed to enquire whether or not the hospital notes and the subsequently submitted RAF 4 assessment report satisfied the provisions of s 24(2)*(a)*, hence the reference back to the trial court.

[14] For the reasons which follow the findings of the trial court cannot be supported. The special plea proceeds on an acceptance that the claim was timeously lodged in terms of the Act on 30 April 2014.[11] The complaint relates exclusively to the absence of the 'accompanying medical report' which forms part of the RAF 1 form. In respect of the submission of a claim this Court, in *Pithey*, held:[12]

'It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in "*SA Eagle Insurance Co Limited v Pretorius*" reiterated that the test for substantial compliance is an objective one.'[13]

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[11] Para 2 of the special plea set out earlier.
[12] Fn 5 para 19.
[13] *In All Pay Consolidated Investment Holdings (Pty) Ltd and Others v The Chief Executive Officer, South African Social Security Agency and Others* [2014] ZACC 42; 2014 (1) SA 604 (CC) para 30 the

This approach is confirmed by the terms of the form which says in part 20 that substantial compliance is required in regard to inter alia the medical report.

[15] I have referred earlier to the objectives of the Act and the approach to its interpretation. In the context of the Act the purpose of the early submission of the claim form is to enable the Fund to investigate the merits of a plaintiff's claim in order to consider its approach to the pending litigation before costs are incurred. By parity of reasoning the medical report is intended to enable it at an early stage to investigate the cause and seriousness of a plaintiff's alleged injuries in order to make an offer to settle the claim, if so advised. Section 24(2) seeks to ensure the reliability of the information provided, primarily to protect the Fund against fraud, by requiring the form to be completed by the treating doctor, the superintendent of the hospital or their representative, as the case may be. In the event of their failure to comply, the form may be completed by another doctor who has satisfied himself of the nature and treatment of the injury. Where, one might rightly ask, would the superintendent of the hospital, or any other doctor, source such information from? It seems to me that they could only acquire such information from the hospital records.

[16] The RAF 1 form does not call for detailed information. It is not intended, of itself, to enable the Fund to assess the quantum of the plaintiff's claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so the RAF 1 form requires the disclosure of information to guide and facilitate the investigation. On the first page of the 'medical report' section of the form it seeks particulars of any emergency transport which had been required; whether the plaintiff had been hospitalized, and if so, whether

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Constitutional Court considered that the distinction between 'peremptory and "directory" statutory provision' was inappropriate to find the purpose of the approach to the interpretation of the statute.

he was in ICU. All of this was contained in the hospital records. The third page of the report requires the provision of particulars of the medical facilities where treatment was received and the identity of practitioners who treated the plaintiff. This, too, was recorded in the hospital records.

[17] On behalf of the Fund it was argued that not all the information called for in the claim form could have been gleaned from the hospital records. The argument may be accepted. However, the provision of a duly completed RAF 1 form, including the accompanying medical report is a procedural requirement prescribed only by s 24 of the Act. It has always been common cause that a claim, set out on the RAF 1 form, had been lodged in terms of the Act. The RAF 1 form consisted of 14 pages. The claim, requiring the personal particulars of Mr Busuku and information relating to the occurrence comprised the first ten pages thereof. It concluded with the declaration signed by Mr Busuku that, to the best of his knowledge, the information provided in the claim form was true and correct. The blank medical report followed thereafter.

[18] The hospital records were submitted together with the claim in order to enable the Fund to investigate the significance of the injuries sustained by Mr Busuku. They contained most of the information called for in the RAF 1 form. In my view, furnishing medical records constituted substantial compliance with the requirements of s 24 in this case. There was no suggestion that any significant information demanded by the form was missing.

[19] Irrespective of whether the hospital records constituted substantial compliance there is another compelling reason why the appeal cannot succeed. I have alluded earlier to the purpose of the medical report. In this

regard the comments of Galgut AJA in *Constantia Insurance Co Ltd v Nohamba* 1986 (3) SA 27 (A) at 39G-H, with reference to the claim form are appropriate where he stated:

'As we have seen from the *Commercial Union* case supra at 157 [*Commercial Union Insurance Co of South Africa Ltd v Clarke* 1972 (3) SA 508 (A) at 517E] and the *Gcanga* case supra at 865 [*AA Mutual Insurance Association Ltd v Gcanga* 1980 (1) SA 858 (A)] the purpose of the form is to enable the insurance to "enquire into a claim" and to investigate it. It is designed to "invite, guide and facilitate" such investigation. It follows, in my view, that, if an insurance company is given sufficient information to enable it to make the necessary enquiries in order to decide whether "to resist the claim or settle or compromise it before any costs of litigation are incurred", it should not thereafter be allowed to rely on its failure to make such enquiries.'

[20] These sentiments resonate in the provisions of s 24(5). The purpose of s 24(5), in the context of the Act and bearing in mind the principles of interpretation set out earlier, is to enable a plaintiff who has timeously lodged a claim, but has failed to comply fully with the procedural requirement of s 24(1) and (2) to remedy any deficiencies which arise from the completion of the RAF 1 form. The medical report is part of the RAF 1 form, but it is a report that accompanies the claim, not the claim itself. Where the Fund fails, within 60 days, to object to such deficiencies the claim is deemed to be valid in law in all respects. The effect thereof is indeed to convert a claim which might otherwise be unacceptable under the Act, as provided in s 24(4)*(a)*, into one deemed to be valid in all respects.

[21] In *Thugwana v Road Accident Fund* [2005] ZASCA 14; 2006 (2) SA 616 (SCA) para 6 to 8 this Court held that s 24(5) could not assist a plaintiff in respect of non-compliance with matters on which the statutory liability depended and not specified in s 24 itself. The difference between a requirement on which liability depends and one which is procedural, to which

s 24(5) applies, was helpfully discussed in *Road Accident Fund v Beerwinkel* [2009] ZAWCHC 97 para 8 to 12. As the requirement for the accompanying medical report arises from the provisions of s 24 itself, s 24(5) is conclusive of the issue.

[22] For these reasons the appeal must fail. By virtue of the conclusion to which I have come, however, there can be no purpose in referring the matter back to the trial court to consider the special plea afresh. The appropriate order is for the special plea to be dismissed.

[23] Finally, the question of costs remains. The matter is not complicated. As I have said, the provisions of s 24(5) clearly put paid to the entire debate. In these circumstances it does not seem to me to be a matter in which the employment of two counsel was justified.

[24] In the result:

1 The orders of the High Court, Mthatha and the Full Court, Eastern Cape Division, are set aside and are substituted by the following:
'The special plea is dismissed with costs.'
2 Save as above, the appeal is dismissed with costs.

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J W EKSTEEN

ACTING JUDGE OF APPEAL

Appearances

For appellant:	A Jeffreys SC (with him P Mnqandi)
Instructed by:	Bonoko & Maphokga Inc, Hatfield
	Honey Attorneys, Bloemfontein
For respondent:	H Pienaar SC
Instructed by:	Ximbi Ncolo Inc Attorneys, Mthatha
	Matsepes Attorneys, Bloemfontein