

127/1958

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

{ Appellate ~~Provincial Division.~~
~~Provisiale Afdeling.~~

Appeal in Civil Case.
Appèl in Siviele Saak.

ADMINISTRATOR of TRANSVAAL Appellant,

versus

ROSE V. HUSBAND Respondent.

Appellant's Attorney Gade M. Respondent's Attorney
Prokureur vir Appellant Gade M. Prokureur vir Respondent
Appellant's Advocate W.J. Human Respondent's Advocate O. Rathhouse, P.C.
Advokaat vir Appellant G.H. van Rens Advokaat vir Respondent + P. Labiet

Set down for hearing on Friday, 28th Nov, 1958.
Op die rol geplaas vir verhoor op

(PD) 1.4.16.9.10. (A) (9.45-9.55)

Mr. Rathhouse not called upon.

— Appeal dismissed. — (Reasons later)

Schreiner, A.C.T. de Buss
Malan, Huel (Ag) &
Priest (Ag.) — T.J.A.

Regr. 28/11/58

Record.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :

ADMINISTRATOR OF TRANSVAAL

Appellant

&

ROSE VALERIE HUSBAND

Respondent

CORAM : Schreiner A.C.J., de Beer, Malan, JJ.A. Hall et
Price A.JJ.A.

Heard : 28th November 1958. Reasons Handed In : 8.12.58.

Reasons for JUDGMENT.

MALAN, J.A. :- This matter comes before us on appeal from a decision of Dowling and Boshoff, JJ., sitting in the Transvaal Provincial Division. After argument, the appeal was dismissed with costs and it was intimated that reasons for our decision would be given at a later date. Those reasons now follow.

The appellant was the defendant in an action instituted by the respondent for damages alleged to have been sustained by her as a result of a collision between a motor car, in which she was a passenger, and a lorry which belonged to the appellant.

The collision occurred on the 26th of September, 1956, on the Johannesburg-Durban main road and it is alleged that the

collision was due to the negligence of the driver of the lorry and that as a result of such negligence the respondent sustained serious bodily injury.

The action was brought under the provisions of Section 11(1) read with Section 19 sub-sections 2 and 3 of Act 29 of 1942.

The appellant filed more than one plea but the only issue which we are concerned at this stage is a plea in bar based upon Section 99(a) of Ordinance 9 of 1933 (Transvaal) which provides that :

" No action shall lie against the Administration for or in respect of damages sustained or alleged to have been sustained by reason of the default or negligence of the Administration in connection with any matter relating to the state of the roads or bridges under its charge, or in consequence of any act performed by an officer of the Administration in the execution of his duty in connection with such roads or bridges unless -

(a) written notice thereof clearly and explicitly stating the cause of action and details of the claim shall have been served upon the Provincial Secretary within a period of thirty days after the cause of the action arose. "

Preliminary allegations which bring the case within the first portion of Section 99 are set out in the plea which proceeds :

" The plaintiff's notice of the 22nd October 1956 does not comply with the provisions of section 99(a) of Ordinance No. 9 of 1933 in that it does not state the details of the plaintiff's claim ; it does not state the cause of action expressly and explicitly. "

After evidence had been heard the Court a quo dismissed the plea.

Dowling, J., relied upon the remarks of Murray J. in the case of Theron v Pretoria City Council, 1955 (2) S.A. 255, "that "the legislation has created a position of uniformity in regard "to every exempted person if he or it should adopt the role of "or act as a registered" ^{Company held} and that as the appellant had adopted such a role, ^{did} Section 99 ~~does~~ not apply.

Theron's case was approved in this Court in Natal Provincial Administration v Buys, 1957 (4) S.A. 646. In the latter case action was instituted against the Administrator under Act 29 of 1942 for damages sustained as a result of a collision between a motor ^{car} and a lorry owned by the Administration. Section 34 of Ordinance 11 of 1942 (Natal) limits the period within which such actions may be brought to four months calculated from the date upon which the claimant had knowledge or could reasonably have had knowledge of the act or omission complained of. It was held that Act 29 of 1942 and not the Provincial Ordinance governed the period of prescription. The principle involved in

the former case was identical.

These decisions clearly strike Section 99(b) of the Ordinance under consideration which limits the time within which actions falling under Section 99 may be instituted but, as different considerations apply to the giving of notice under Section 99(a), those decisions do not appear to me, directly and authoritatively, to dispose of the question whether Section 99(a) is likewise repugnant to Section 11(1) of Act 29 of 1942. There is no indication that the question was debated on those lines in the Court below and the learned Judge does not specifically discuss it in his reasons.

The question is crisply raised in the appellant's heads of argument, but Mr. Human, who appeared on behalf of the appellant, contented himself with inviting us to assume, for the purposes of the present appeal, that Section 99(a) applied in so far as the provision of notice to the Provincial Administration of an intention to institute proceedings is concerned, and to decide in limine whether or not the notice directed by the respondent's attorneys to the appellant on the 22nd October, 1956, was a compliance with that sub-section. If such conclusion was adverse to the appellant it followed that the necessity to deal with the applicability of Section

99(a) did not arise.

The letter of the 22nd of October runs :-

" We have been instructed by our client, Miss ROSE VALERIE HUSBAND to advise you that she intends to bring a claim against your Administration for the sum of £15000.0.0. or such other amount as she may be advised when it is possible more accurately to assess her claim. Our client's claim arises out of a motor accident which took place on or about the 25th September 1956, near Standerton, Transvaal, when a motor car in which our client was a passenger collided with a motor lorry number TPA. 3458.

According to our instructions the accident was due to the negligence^t driving of a servant of the Administration acting within the course and scope of his employment as such."

In considering whether this letter is a compliance with Section 99(a), it should be borne in mind that the primary object ^{of the provision} ~~thereof~~ is to ensure that the Administration shall be apprised, within reasonable time, of an intention to hold it liable in damages sustained as a result of the default or negligence of any officer acting in the course of the execution of his duty in circumstances circumscribed in the sub-section. The Administration will thus be able to investigate the circumstances and be placed in a position to determine whether it should settle the claim or prepare its case to resist it.

The approach to the interpretation of the sub-section

ought, consequently, not to be technical and a notice should be held not to be a compliance with the sub-section only if it fails to set out a cause of action or if it is so wanting in particularity that it is deficient in essentials and as a consequence hampers the Administration in a proper investigation of the complaint. While it may be desirable to have a more or less full statement of the facts relied upon, a bald statement of the essentials, in my opinion, suffices provided, however, that there has been substantial compliance with the requirements of the sub-section.

The letter of the 22nd of October can hardly be described as a model of precision but in spite thereof I am of opinion that the appellant has no substantial grounds for raising objection thereto. The incident complained of has unquestionably been clearly identified. The letter sets out the date and place of the collision and states the registration number of the appellant's vehicle involved therein. The cause of action is based upon the negligence of the driver of the lorry and it is stated that the respondent was a passenger in the motor car with which the driver of the lorry collided. The amount claimed by her is exceptionally large ~~and excessive~~

from which it may ~~be~~ reasonably be inferred that the claim was intended to be primarily in respect of personal bodily injury. This view becomes increasingly clear if regard is had to the circumstances in which the damages are alleged to have been sustained.

The question whether Section 99(a) of the Ordinance is repugnant to the provisions of Act 29 of 1942 is left open.

ADS
C. M. de B.

HP

ACZ
CH