

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,

(GAUTENG DIVISION, PRETORIA)

Case No: 25655/2020

Reportable: Yes  
Of interest to other Judges: Yes  
Revised: No  
Date: 12 April 2024

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SIGNATURE

In the matter between:

THABO JOHN MABUZA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

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MOOKI J

1 The plaintiff was a pedestrian when he was knocked-down and injured by an unknown person driving a car. He seeks relief against the defendant pursuant to the Road Accident Fund, Act 56 of 1996. The RAF did not defend the claim.

2 The plaintiff suffered several injuries and presents with severe symptoms of PTSD. He suffered an open compound fracture of the left femur. The fracture was complicated by a septic malunion. The plaintiff also presents, following the accident, with a shortening of the left leg of at least 5 cm.

3 The defendant conceded the merits and undertook to pay 100% of the plaintiff's proven or agreed damages.

4 The plaintiff also claimed general damages. The court enquired whether the RAF had accepted that the plaintiff suffered a serious injury. It was submitted on behalf of the plaintiff that the RAF, in a pre-trial minute, agreed to use reports prepared on behalf of the plaintiff.

5 Dr P R Engelbrecht submitted a serious injury assessment report on the plaintiff. Dr Engelbrecht indicated in the RAF 4 form that the plaintiff's injury resulted in "serious long-term impairment or loss of a body function."

6 It was submitted on behalf of the plaintiff that the RAF's agreement to use the reports meant that the RAF admits that the plaintiff suffered a serious injury, which entitled the plaintiff to seek general damages.

7 The submission on behalf of the plaintiff requires the determination of the following question: whether a legal representative of the RAF, when agreeing that the RAF will use a report prepared by a witness for a plaintiff, and where that witness states that a plaintiff suffered a serious injury, constitutes the RAF being satisfied, within the meaning of regulation [3(3)(c), that a plaintiff suffered a serious injury.

8 The plaintiff referred to the decision in *Topper v Road Accident Fund*<sup>1</sup> as support that the RAF's acceptance of reports by experts on behalf of a plaintiff was an admission that a plaintiff suffered a serious injury.

9 The Court in *Topper* did not decide the question. The passages in the judgement<sup>2</sup> show that the subject was raised in Chambers before the start of the trial. The issue was not raised in court during proceedings. It cannot, therefore, be said that the court in *Topper* "decided" the issue.

10 The pre-trial minute does not support the plaintiff's contention that the RAF accepted that the plaintiff suffered a serious injury. The parties signed a pre-trial minute on 20 May 2022 ("the minute").

11 The RAF indicated in the minute that the "Defendant will use the reports of the Plaintiff, [...]."<sup>3</sup>

12 The RAF admitted the "expertise" of persons to be called on behalf of the plaintiff. The RAF did not admit the "findings" of those experts.<sup>4</sup> This is more so because the RAF were asked whether the RAF admitted both the expertise and findings by experts called for the plaintiff.

13 Paragraph 5 of the minute deals with "facts in dispute between the parties." "Injuries sustained by the plaintiff" is listed as one of the facts in dispute. The parties did not agree on "injuries sustained by the plaintiff." It is not possible to determine that an injury is serious where there is no agreement of what injuries had been sustained.

14 The legislative scheme on the determination of general damages requires that the RAF, as a body, decide on the seriousness of an injury in claims for general damages.

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<sup>1</sup> (52212/2016) [2018] ZAGPPHC 422 (17 May 2018)

<sup>2</sup> See para 6, 7, and 8.

<sup>3</sup> RAF's response to paragraph 14 of the minute.

<sup>4</sup> See paragraph 28(a) of the minute.

15 Reg 3(3)(c) stipulates that "... the Fund shall only be obliged to pay general damages if the Fund – and not the court - is satisfied that the injury has correctly being assessed in accordance with the RAF 4 Form as Serious."<sup>5</sup>

16 The court in *Makuapane v Road Accident Fund*<sup>6</sup> summarised the procedure contemplated in regulation 3 to be as follows:

[...] a plaintiff wishing to claim general damages must in terms of Reg 3(1)(a) submit himself or herself to an assessment by a medical practitioner in order to assess the seriousness of the injuries sustained. The medical practitioner then records the findings in a "serious injury assessment report", known as the RAF 4 report (with reference to the form prescribed in the Regulations). The RAF 4 report is then presented to the RAF who is obliged to make a decision as to whether, in terms of Reg 3(3)(c) it is satisfied that the injuries have correctly been assessed as being serious or, in terms of Reg 3(3)(d) to reject the findings contained in the report (and furnish reasons for such rejection). As a third alternative, the RAF may direct that the plaintiff undergo a further assessment by a medical practitioner designated by the RAF. In terms of Reg 3(4), should the plaintiff dispute the RAF's rejection or if either the plaintiff or the RAF wishes to challenge the further assessment by the medical practitioner designated by the RAF, the aggrieved party must formally declare a dispute by lodging a prescribed dispute resolution form (RAF 5) with the registrar of the Health Professions Council of South Africa (the HPCSA). Once such a dispute has been declared it is determined by an appeal tribunal consisting of three independent medical practitioners with expertise in the appropriate area of medicine, appointed by the HPCSA registrar. The procedure before such an appeal tribunal has been prescribed in some detail in Regs 3(5) – (12). In terms of Reg 3(13) the appeal tribunal's decision itself is final.

17 A determination whether there is a serious injury contemplates possession of expertise in the appropriate area of medicine.<sup>7</sup>

18 The scheme of the decision-making in relation to the seriousness or otherwise of an injury, for purposes of a determination of general damages, requires that the RAF decide the seriousness or otherwise of an injury. The decision must necessarily be by officials at the RAF with the requisite expertise in the area of medicine that informs a claim.

19 A legal practitioner representing the RAF, and in accepting that the RAF will use reports prepared on behalf of a plaintiff, is not in law deciding the seriousness or otherwise of an injury suffered by a plaintiff. Such a decision requires expertise in the appropriate area of medicine. The RAF, as an organ of State, has such expertise. This explains why the RAF's decision-making on the question constitutes administrative action.

20 Agreement by the RAF's legal representative that the RAF will use a report prepared on behalf of a plaintiff, where that report states that a plaintiff suffered a serious injury, does not constitute, in law, the RAF accepting the seriousness of an injury within the meaning of regulation 3(3)(c). That decision-making is conferred on the RAF and "...the third party must satisfy the Fund, not the court, that his or her injury was serious. [...]."<sup>8</sup>

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<sup>5</sup> *Road Accident Fund v Duma and three similar cases* 2013 (6) SA 9 (SCA) (*Duma*) at para 19

<sup>6</sup> (9077/2022) [2023] ZAGPPHC 15 (19 January 2023)

<sup>7</sup> See regulation 3(8), which provides for an appeal tribunal of three independent medical practitioners with expertise in an appropriate area of medicine in instances where the RAF rejected an injury as a serious injury.

<sup>8</sup> *Duma*, para 19

21 The court in *Topper* did not embark on an analysis of the legislative scheme regarding the decision-making pertaining to the seriousness or otherwise of an injury in a claim against the RAF. I therefore differ with the finding of that court, to the extent that the opinion expressed in paragraphs 6 to 8 of that decision were made in court, that acceptance by the RAF's legal representative of a report is a decision by the RAF on the seriousness of an injury.

22 The court cannot adjudicate the plaintiff's claim for general damages absent compliance with regulation 3.

23 The plaintiff made his case for relief in relation to other headings. I am satisfied that the plaintiff made-out a case in support of the claim for loss of earnings.

24 I make the following order:

24.1 The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund, Act 56 of 1996.

24.2 The defendant is ordered to pay the plaintiff the amount of R338, 214.00 in relation to past loss of earnings.

24.3 The defendant is ordered to pay the plaintiff the amount of R819, 061.00 in relation to future loss of earnings.

24.4 The defendant is ordered to pay costs.

Omphemetse Mooki

Judge of the High Court

Heard: 15 March 2024

Decided: 12 April 2024

For the plaintiff: S G Maritz

Instructed by: Spruyt Inc.

For the defendant: No appearance.