



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 3217/2023

In the matter between:

ABEL KABI XABA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

CORAM: NAIDOO J

HEARD ON: 14 MAY 2024

DELIVERED ON: 14 MAY 2024

JUDGMENT

- [1] This matter was scheduled for hearing of a trial on the merits of the matter. The matter was placed before my colleague, Van Rhyn J this morning, when the Road Accident (RAF) was represented by Ms K Mkhwanazi. She advised Van Rhyn J that she had no instructions from RAF whether to proceed with the special plea of prescription or not. She would consequently be unable to deal with this matter, hence her non-appearance in this matter, which was sent to me at 11h15 this morning to deal with. Mr De La Rey has placed on record a detailed exposition of what occurred this morning and I do not intend to repeat it. The trial, therefore, proceeded on an unopposed basis. Adv H De La Rey represented the plaintiff and there was no appearance on behalf of RAF.
- [2] Mr De La Rey dealt, firstly with the special plea of prescription, and correctly pointed out that the onus to prove prescription in this matter rests on the plaintiff. It has failed to place any evidence before this court in this regard and consequently have failed to discharge the onus on it. Mr de La Rey proceeded to place on record the history and chronology of this matter, from which it was evident that the plaintiff did in fact submit the documents required by RAF. After two rejections of the claim, despite being alerted to the fact that the documents were already submitted by the plaintiff, the plaintiff waited for the requisite 180 days after lodgement of the claim and issued summons against RAF. The special plea arises from RAF's contention that there was non-compliance by the plaintiff with section 24(5) of the Road Accident Fund Act. The same point was raised again in the main plea. However, the defendant did not appear in this court to properly place its defence before court. I had no reason not to accept Mr De La Rey's

submissions in this regard, that there was in fact total compliance with section 24(5). In the circumstances, I dismissed the special plea with costs.

- [3] Mr De La Rey then led the evidence of the plaintiff in respect of the merits. His evidence was that he worked as a tow-truck driver at the time of this incident. He was called to an accident scene in the Tshame area of Harrismith. On arrival he found that a taxi and a Ford motor vehicle were involved in a collision and the Ford motor vehicle needed to be towed from the scene. He placed 4 orange cones in front of the Ford vehicle, which was facing in the direction of oncoming traffic. The cones were placed in a vertical line in front of the vehicle, starting 15 metres away from the vehicle. He placed 2 orange cones behind the vehicle. He also switched on the headlights of his tow-truck as well as the emergency flashing roof lights of his vehicle. In order for the Ford vehicle to be towed, he had to attach two J-hooks to the underneath of the vehicle to be able to attach it to the tow-truck . To do this, he had to lie on the road to get to the front of the vehicle. He got under the vehicle, with his legs still visible on the road.
- [4] While he was in the process of attaching the hooks to the Ford vehicle, he heard another vehicle approaching at high speed, but did not know from which direction. As a precaution, he moved further under the Ford vehicle but could not get his left leg under the vehicle in time. The approaching vehicle drove over his leg, causing serious injuries to his left lower leg. He crawled to the tow-truck, and

summoned the ambulance & police. The ambulance and police arrived about 40-60 minutes later and he was taken to hospital.

- [5] Mr Xaba's evidence was that he could not have done more to avoid the collision, as the cones and lights would have been visible to all motor vehicles approaching the scene. The court asked the plaintiff a few questions to clarify the issue of the information in the accident report, which indicated that there were two other pedestrians injured in this collision. He said that the police asked him at the scene for his driver's licence, which he furnished to them, and asked him no further questions. He arrived at the scene alone and was not assisted by anyone. He does not know where the police got the information from that there were three people injured in the accident.
- [6] Mr De La Rey argued that there is no countermanding evidence as to how the accident occurred, and the plaintiff's evidence should be accepted. It is trite that a vehicle approaching a dangerous scene must do so with caution, which the driver of the vehicle that collided with the plaintiff did not do. He drove in a manner which showed total disregard for the safety of others. He also submitted that the plaintiff took all the precautions to warn oncoming vehicles of the danger and could not have done more to avoid the collision. Mr De La Rey submitted that the special plea raised by RAF as well as the allegation of non-compliance with section 24(5) of the RAF Act caused a great deal of extra work for him and his instructing attorney who had to prepare to testify with regard to the special plea. For this reason, costs should be awarded on Scale B and not scale A. as is normally done in matters involving RAF.

[7] It is so that the trial proceeded on an unopposed basis and that the plaintiff's version as to the manner in which the collision occurred is uncontested. I was unable to find any improbabilities in his version, and his evidence with regard to the precautions he took to warn oncoming vehicles of the dangerous situation ahead of them. I can only conclude that the driver of the vehicle who collided with the plaintiff was solely negligent in causing the accident. With regard to costs, I take note of Mr De La Rey's submissions regarding the extra work occasioned by the special plea. I am constrained however, in the absence of input from RAF regarding the circumstances relevant to the non-appearance in this matter to order costs on scale B. The plaintiff will certainly be able to claim these costs, and the Taxing Master does have the discretion to allow it.

[8] In the circumstances, I make the following orders:

8.1 The defendant's special plea is dismissed with costs;

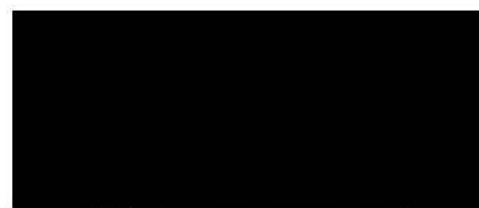
8.2 The defendant is held liable for 100% of the plaintiff's proven or agreed damages arising out of the motor vehicle collision which occurred on 27 February 2021;

8.3 The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs to date of this order, on Scale A of the Uniform Rules of Court;

8.4 In the event that costs are not agreed:

8.4.1 the plaintiff shall serve a notice of taxation on the defendant's attorney of record, and

8.4.2 the plaintiff shall allow the defendant fourteen (14) court days to make payment of the taxed costs.



S NAIDOO, J

On behalf of Plaintiff : Adv H De La Rey
Instructed by : Honey Attorneys
Honey Chambers
Kenneth Kaunda Street
Bloemfontein
(Ref: Y Vosloo/AM/J04219)

On behalf of Defendant : No appearance
Defendant: : The Road Accident Fund
62 St Andrews Street
Bloemfontein
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