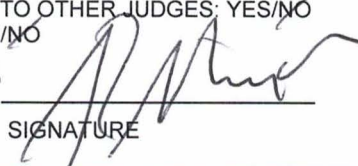




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 00667/2017

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
15/11/2023	
DATE	SIGNATURE

In the matter between:

KHOMO MALESHOANA EVELENA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Summary: Section 24(2)(a) of Road Accident Fund Act 56 of 1996 – Meaning of substantial compliance – Purpose and objectives of section 24(2)(a) requirements.

The plaintiff lodged a claim for compensation with the Road Accident Fund (the Fund) after being injured as a pedestrian in a motor vehicle accident. The medical report section of the RAF1 form was completed by a private doctor instead of the treating doctor or hospital superintendent or his or her representative as required by section 24(2)(a) of the Road Accident Fund Act. The Fund objected to the validity of the claim on this basis. The plaintiff argued that there had been substantial compliance with section 24(2)(a) as the private doctor had the hospital records and was in an adequate position to complete the report. Moreover, these hospital and other records accompanied the RAF1 form when the claim was lodged.

Held: Considering the purpose and objectives of section 24(2)(a), there has been substantial compliance with this section. The completed RAF1 form together with the submitted hospital records provided sufficient information for the Fund to investigate the claim.

Held further: The steps required by section 24(2)(a) before another doctor can complete the form are directory in nature. The Fund's objection in terms of section 24(5) did not preclude a finding of substantial compliance.

The special plea was dismissed and the claim found not to have prescribed.

JUDGMENT

STRYDOM, J

Introduction

[1] On 25 January 2017, the plaintiff issued a summons against the Road Accident Fund (the Fund) claiming compensation for injuries allegedly sustained on 2 June 2016, when she as a pedestrian, was hit by a motor vehicle driven by the insured driver.

[2] On 23 August 2016, with the assistance of her attorney, the plaintiff lodged a claim with the Fund by submitting the prescribed RAF1 form. On 6 September 2016, the Fund objected to the validity of the claim by writing to the plaintiff's attorney stating the reason for the objection to be as follows:

“1. The Medical section of the RAF 1 form has not been completed by the treating doctor in terms of Section 24(2)(a) of the Act. Prescription is not looming.”

[3] and further—

“This claim will remain invalid until such time as the defect has been rectified and your claim substantially complies with the Act.”

[4] After the summons was served, the Fund entered an appearance to defend and filed a special plea. It was pleaded that upon lodging of the plaintiff's claim on 23

August 2016, the plaintiff failed to comply with the requirements of section 24(2)(a) of the Road Accident Fund Act¹ (the Act) in that the medical practitioner and/or superintendent failed to complete the medical report on the prescribed form in terms of section 24(2)(a) of the Act. It was further pleaded that prescription was not imminent as envisaged by section 24(2)(a) of the Act in that the collision occurred on 02 June 2016, and to date of the plea, the plaintiff has failed, refused, and/or neglected to remedy the above non-compliance. It was prayed that the plaintiff's claim be dismissed with costs.

[5] The plaintiff replicated. She denied that she failed to meet section 24(2)(a) and pleaded that she complied therewith and further that the said provision is directive rather than peremptory. She pleaded further as follows:

2. The said section 24(2)(a) only requires of another medical practitioner to “...*fully satisfy himself or herself.... or the nature and treatment of the bodily injuries in respect of which the claim relates.*”

3. The Act does not require of the said medical doctor to physically examine the Plaintiff.

4. The Plaintiff does not have to wait until his or her claim is facing prescription before he or she can utilize the services of a different or other doctor as per section 24(2)(a) is unconstitutional as it undermines the Plaintiff's right in terms of the bill of rights in the Constitution of the Republic of South Africa 108 Of 1996, section 33 (just administrative action) and it further unfairly delays the Plaintiff's rights to have this matter finalized timeously which also delays his rights of access to the courts as per section 34 of the constitution.”

[6] After the matter was allocated to me for hearing, the parties agreed, pursuant to Rule 33(4) of the Uniform Rules of Court, that the special plea be adjudicated prior to and separately from the remaining issues and I made an order to that effect. The court was asked to decide the special plea on the pleaded allegations and common cause facts. The parties agreed that the validity of the plaintiff's claim turns on whether the claim lodged with the Fund on 23 August 2023 was

¹ 56 of 1996.

valid. Therefore, if the court finds that the claim lodged was invalid, it follows that the claim has prescribed under section 23(1) of the Act.²

- [7] The court was informed that the 3-year period ended on 1 June 2019. It was further agreed that if the special plea was not upheld then the matter should be postponed *sine die*, providing the Fund and the plaintiff with an opportunity to explore the possibility of settlement of the claim.
- [8] After argument on the special plea, the court reserved judgment and started to prepare same. It was then only that I realised that portions of the RAF1 form, completed by Dr Hovis in the manuscript, were illegible. Further, Mr Malema, during argument referred to hospital records, and other documents, which were allegedly handed in together with the RAF1 when the claim was lodged. I enquired from the parties whether they could provide me with a document that contained an agreed version of what Dr Hovis noted and indicate to the court whether it is disputed that the hospital records and other documents accompanied the RAF1 claim. If these issues remained contentious then the court would require oral evidence. Only thereafter a judgment can be handed down on the special plea.
- [9] The parties uploaded onto CaseLines a joint submission dealing with these issues. At the resumed hearing of the matter, it was placed on record, in line with the joint submission, that Dr Hovis could not be traced and that the parties could not assist the court with the reading of certain manuscript portions contained on the RAF1 form. It was, however, agreed that the RAF1 form was lodged accompanied by the hospital records and other documents. Further documents were by consent between the parties uploaded onto CaseLines and it was agreed that this court could accept these documents as part of the evidence in this matter to decide the special plea.

- [10] These documents are:

² Section 23(1) of the Act states that a claim, "shall prescribe upon the expiry of a period of three years from the date upon which the cause of action arose."

1. A letter from the plaintiff's attorney, MB Mabunda Incorporated, dated 5 July 2016, addressed to Dr A J Hovis, in which he was requested to complete the RAF1 claim form. In the letter, it was stated that attached to the letter were copies of hospital records from Tembisa Hospital, as well as a consent form.
2. A letter from the plaintiff's attorney, MB Mabunda Incorporated, dated 4 October 2016, addressed to Tembisa Hospital, requesting completion of the attached RAF1 form.
3. The lodgement letter dated 11 August 2016, from the plaintiff's attorney, addressed to the Chief Executive Officer of the Fund. In this letter it was stated that the following documents were enclosed: A duly completed RAF 1 claim form; a copy of the claimant's Identity Document; copies of hospital records; special power of attorney; hospital consent form and termination of mandate. This letter bears the stamp of the Fund, dated 23 August 2016.

[11] The decision here revolves around the question if the plaintiff substantially complied with the prescribes of section 24(2)(a). As no evidence was led to decide this, the evidential matrix must be established. For this purpose, further common cause facts need to be stated:

1. The medical report (section 22) of the RAF1 form was not completed by the treating medical practitioner or the superintendent at the Tembisa Hospital where the plaintiff was treated for about 5 days from the date of the accident.
2. Section 22 of the RAF1 form was completed by Dr A.J. Hovis, a private practitioner, on 8 July 2016. He had at his disposal the hospital records of the plaintiff.
3. The RAF1 form, the hospital records, and other documentation were received by the Fund on 23 August 2016.
4. On 6 September 2016, the fund objected to the validity of the form, more particularly as section 22, was not completed by the treating medical

practitioner or superintendent or a representative at the Tembisa Hospital but by another doctor.

5. After the objection the plaintiff's attorney addressed a letter to the Fund, dated 4 October 2016, requesting the completion of the RAF1 claim form.
6. The RAF 1 form was never amended or substituted until summons was issued or even thereafter.

Applicable legal prescripts

[12] It is trite law that a claim for compensation and the accompanying medical report must be set out in the prescribed form being the RAF 1 form in compliance with section 24(1) of the Act.

[13] Section 24 of the Act provides as follows in the relevant parts:

“24. Procedure — (1) A claim for compensation and accompanying medical report under section 17 (1) shall —

(a) be set out in the prescribed form, which shall be completed in all its particulars;

...

(2)(a) The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or 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 cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.” (Own emphasis)

[14] The plaintiff has a right to lodge a claim with the defendant and is required to do so within the prescriptive period. In the present case, the plaintiff's completed

RAF1 claim form and accompanying documents were lodged with the Fund, which objected, within 60 days of the lodgement of the documents, according to its letter dated 6 September 2016 to the validity of the claim because the medical section of the RAF 1 form had not been completed by the treating doctor in terms of Section 24(2)(a) of the Act.

- [15] Section 24(2)(a) is clear in its terms that the mentioned persons at the hospital should complete section 22 in the RAF1 form. Only if such people fail to complete such medical report upon request, within a reasonable time and, as a result of the passage of time, the claim may become prescribed then the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the nature and treatment of the bodily injuries of which the claim is made.
- [16] As far as this claim is concerned the prescripts of section 24(2)(a) were not followed. The treating medical practitioner, or someone else at the hospital as prescribed, has not completed the medical section. A request made to Tembisa Hospital for these people to complete the RAF1 form was only made after the objection from the Fund. Further, other jurisdictional facts before another medical practitioner could complete the RAF1 form were not present. As no request was made before the objection, the reasonable period could not be determined. Prescription of the claim could not have been an issue as the prescription period was far in the future. The other medical practitioner, Dr Hovis, was requested on 5 July 2016 and completed the medical section on the RAF1 form on 8 July 2016 already. That was just over a month after the accident. Approximately 2 years and 9 months remained before the claim would prescribe.
- [17] The plaintiff, for a reason unknown to this court, must have decided or was advised, to approach a private medical practitioner rather than to approach the hospital where she was treated, for assistance in filling in the medical report. Only after the objection by the Fund, Tembisa Hospital was requested to complete the form. There is no evidence before this court as to whether this was done or not.

[18] Counsel for the plaintiff based his argument, not on the interpretation of section 24(2)(a) of the Act as such, but rather on a submission that the plaintiff substantially complied with the prescripts of the Act. He argued that Dr Hovis had at his disposal the hospital records of the plaintiff and was in as good a position as the hospital personnel to have completed the form. It was submitted that the court should overlook the fact that the medical report was not completed by the treating doctor or other personnel at Tembisa Hospital. Fact is, the medical report was filled in by a doctor who had at his disposal all available hospital records. This doctor would have been entitled to complete the RAF1 form, albeit, only if the jurisdictional facts stipulated in section 24(2)(a) were met.

[19] For the submission that there was substantial compliance with section 24(2)(a), counsel relied on the decision of *Pretorius v Road Accident Fund* where the RAF1 form lodged was incomplete. Despite this shortcoming the court found that the claim made in terms of the form was not necessarily invalid so long as there was substantial compliance with legislative requirements³. It was found that the incomplete form should be read together with accompanying hospital records and it should be considered whether these documents provided sufficient information to the Fund to investigate the claim.

[20] The court was also referred to the SCA decision of *Road Accident Fund v Busuku*⁴ where Eksteen AJA, stated the following:

“[I]n respect of the submission of a claim this Court, in Pithey, [*Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA) para 19] held: ‘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.’ 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”.

³ *Pretorius v Road Accident Fund* [2019] ZAGPJHC 293.

⁴ *Road Accident Fund v Busuku* [2020] ZASCA 158 at para 14 (“*Busuku*”).

[21] In *Busuku* the issue was the incompleteness of the form and not who filled in the medical report, section 22, of the form. From paragraph 3 of this judgment, it appears that the portion of the form which provides for the medical report was not completed at all. It was submitted that a copy of the original records of the Mthatha Hospital, which reflected particulars of the claimant's hospitalization, the medical assessment of the claimant's condition from time to time, medical treatment received, and surgical procedures carried out, together with the identity of the doctors involved therein, were sufficient for the Fund to consider and investigate the claim. The court followed the *ratio* in *Pithey v Road Accident Fund*⁵ where it was found that the submission of the claim form was peremptory but the prescribed requirements for the completeness of the form was directory, meaning substantial compliance will suffice. The court found as follows:

“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.”⁶

[22] As found in *Busuku*, it comes down to the purpose of the legislative requirement. In this sense, the court analysed the object for the requirements of completeness of the RAF1 form, and found as follows:

“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

⁵ *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 SCA.

⁶ *Id* at para 18.

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.

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 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."⁷

[23] Relying on this decision the plaintiff's counsel contended that there has been substantial compliance with section 24(4)(2)(a) of the Act, as the medical practitioner who completed the medical report was fully informed about the injuries and treatment of the plaintiff. He had access to the hospital records and accompanying documentation same which the treating doctor would have considered. Although the jurisdictional facts were not met, to wit, a request was not made to the hospital to complete the medical report, a reasonable period could thus not have lapsed and with prescription looming, were not met this should be overlooked. Moreover, when the RAF1 form was lodged the hospital records and other documentation were attached to the RAF1 form when the claim was lodged.

[24] On behalf of the plaintiff, it was argued that because the defendant failed to cure the defect in the medical section after objection, the RAF 1 form could not be deemed to be valid in all respects, and the claim had consequently prescribed.

[25] The plaintiff, in this matter, caused the RAF1 form to be completed and submitted the form with the hospital records. The plaintiff is thus in a better position than the claimant in *Busuku* where the medical report in the RAF1 form was left blank.

⁷ *Busuku* at paras 15 and 16.

In both cases, the hospital reports were furnished. The difference in the matter before this court is that in terms of section 24(5) an objection was raised by the Fund to the validity of the RAF1 form, objecting to the person who filled in the medical report on the form and indicating that the jurisdictional requirements was not met before a private practitioner could complete the form.

[26] The question arises whether the fact that the form was not completed by the treating doctor or personnel at Tembisa Hospital, even after objection, means that there was nevertheless substantial compliance with section 24(2)(a) of the Act. In my view, the objection itself does mean that there was not substantial compliance with the prescripts of the Act. The Fund might have been wrong to have objected as compliance might have been substantial.

[27] If an RAF1 form where the medical report section was left blank, but which was accompanied by hospital reports, was found to be in substantial compliance with section 24(2)(a), as was found in *Busuku*, it can hardly be found that a completed form lodged, completed by a private medical practitioner and accompanied by hospital records does not constitute substantial compliance with the section. This despite the fact that the steps to be taken to get in the position to make use of the services of another medical practitioner, as set out in section 24(2)(a) were not met. Consequently, I am of the view that the jurisdictional requirements that should be present before another medical practitioner can complete the RAF1 form is not peremptory but directory.

[28] Even though certain manuscript writing of the RAF1 form by Dr Hovis was illegible this does not render the form invalid. The common cause facts indicate that Dr Hovis was provided with the hospital records, and he must have used these records to complete the medical section. But apart from this, even if the medical report section was left blank, as in *Busuku*, the deciding factor is what was handed to the Fund with the RAF1 form. In this case, it was a full set of hospital records, and that in itself should suffice to establish substantial compliance with section 24(2)(a).

[29] In my view, considering the purpose of section 24(2)(a) as referred to in *Busuku*, there was substantial compliance with this section. If the RAF1 form lodged was

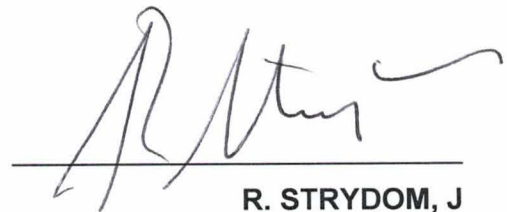
considered, together with the hospital records, there was sufficient information available to the Fund to investigate and consider the claim. The finding of this court is that the plaintiff in lodging her claim substantially complied with section 24(2)(a) of the Act.

[30] This being the case the special plea stands to be dismissed, with costs. Consequently, the claim of the plaintiff has not prescribed.

[31] The following order is made:

Order

1. The special plea is dismissed with costs.
2. The matter is postponed *sine die*.

A handwritten signature in black ink, appearing to read 'R. Strydom', is written above a horizontal line. The signature is fluid and cursive.

R. STRYDOM, J
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the Plaintiff:

Mr. J.V.M. Malema

Instructed by:

MB Mabunda Inc

For the Defendant:

Ms. J. Mhlanga

Instructed by:

The State Attorney

Date of Hearing:

10 November 2023

Date of Judgment:

15 November 2023