

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No:

In the matter between:

PAUL NEL

Applicant

and

ROAD ACCIDENT FUND

Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT on Friday 7 May 2021 at 10h00 or as soon thereafter as counsel may be heard, the Applicant intends making application to the above Honourable Court for an order in the following terms:

1. THAT this matter be dealt with as a matter of urgency and that the usual rules pertaining to notice, time limits and service be dispensed with.
2. THAT the Respondent be and is hereby ordered to accept delivery forthwith on 7 May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same.

3. THAT the Respondent be ordered to pay the costs of this application on the scale as between attorney and own client.
4. THAT further and/or alternative relief be granted to the Applicant.

FURTHER TAKE NOTICE THAT the affidavit of MATTHEUS JOHANNES BOTHA that is attached hereto will be used in support of this application.

FURTHER TAKE NOTICE THAT the Applicant hereby appoints the address of his attorneys of record set out below as the address in terms of Rule 6(5)(b) at which the Applicant will accept service of notices and process herein.

FURTHER TAKE NOTICE THAT in the event of the Respondent intending to oppose this application, the Respondent must:

- (a) Serve written notice of intention to oppose on the Applicant by no later than 13h00 on Thursday 6 May 2021; and
- (b) Appoint and address in terms of Rule 6(5)(d)(i) at which the Respondent will accept service of notices and process herein; and
- (c) Deliver the answering affidavit, if any, by no later than 16h00 on Thursday 6 May 2021.

KINDLY ENROLL THE MATTER ACCORDINGLY IN THE URGENT COURT.

VAN NIEKERK ATTORNEYS INC

Plaintiff's Attorneys

Tel: (012) 819 1285 / (012) 819 1288

Fax: 086 512 7448

e-mail: Juan Botha <juan@vnattorneys.net>

Ref: MJB

c/o NEL ATTORNEYS

37A Golf Street

WATERKLOOF, Pretoria.

TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA.

AND TO: THE ROAD ACCIDENT FUND
Respondent
38 Ida Street
MENLO PARK, Pretoria.

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FOUNDING AFFIDAVIT

I, the undersigned

MATTHEUS JOHANNES BOTHA

do hereby make oath and state as follows:

1.

I am a male Attorney of this Honourable Court practising as such at VAN NIEKERK ATTORREYS INCORPORATED, at Plot 87, Fisant Street, Kameeldrift, Pretoria, being the Attorney of Record of the Applicant herein. The facts herein contained fall within my personal knowledge unless otherwise appears and are to the best of my belief both true and correct. I am duly authorised to bring this application on behalf of the Applicant and to depose to this affidavit in support thereof.

2.

The Applicant is PAUL NEL, a major male with the Identity Number 820930 5092 081 born on 30 September 1982, residing at 240 Swaltjie, Zwavelpoort. A copy of the first page of the Applicant's Identity Document is attached hereto as Annexure 'A'.

3.

The Respondent is THE ROAD ACCIDENT FUND, a juristic person established in terms of section 2 of the Road Accident Fund Act, No 56 of 1996, as amended, with its business address and principal place of business at 38 Ida Street, Menlo Park, Pretoria.

4.

On Tuesday 8 May 2018 at 12:35, the Applicant was involved in a motor vehicle accident at or near Boschkop, district Pretoria, when a silver Opel Corsa motor vehicle bearing the registration N 518 B collided with the motorcycle the Applicant was riding. A copy of the Police Accident Report relating to this collision is attached hereto as Annexure 'B'. As recorded in such Police Accident Report the collision occurred when the said Opel Corsa motor vehicle turned to the right in the face of the oncoming Applicant on his motorcycle. The driver of the said Opel Corsa is identified in this Police Accident Report as MANFRIED JOHANN FRIEDRICH KOSTER.

5.

The Applicant, whose motorcycle was not insured against accident damage, claimed such damages, as well as for his crash helmet, jacket and cell-phone, from the insurer of the said Opel Corsa. In response the insurer offered to pay 70% of such damage.

An e-mail embodying such settlement offer is attached hereto as Annexure 'C'.

6.

In the light of the aforesaid, it is contended that the driver of the said Opel Corsa was at least to some degree causally negligent with regard to the relevant collision.

7.

The Applicant suffered bodily injuries in the said collision as set out in the statutory medical report completed in respect of the Applicant by DR VORSTER, a copy of which is attached hereto as Annexure 'D'. At our consultation, Applicant complained of current extreme back and neck pain, headaches, scars and bruises that formed some pigmentation on his body.

8.

The Applicant is desirous of instituting a claim against the Respondent for compensation under and in terms of the aforesaid Act. *Prima facie* the Applicant does have a valid claim in this regard for some if not all of his loss and damages arising from the bodily injuries he sustained arising out of or caused at least partially by the negligent driving of the said Opel Corsa motor vehicle by its aforesaid driver.

9.

In terms of section 24 of the said Act, a claimant such as the Applicant intending to claim compensation under and in terms of the Act in circumstances such as these, must lodge with the Respondent a prescribed claim form, known as a RAF1 form. The Respondent is required to acknowledge receipt thereof in writing. Thereafter the Respondent has 60 days in which to object to the validity of any such claim lodged.

10.

In terms of section 23 of the said Act, a claimant such as the Applicant herein is obliged to lodge any such claim within 3 years after the date upon which the claim arose which in the present case is the date of the collision itself, namely 8 May 2018. No provision is made for condonation. That period of 3 years is set to expire at midnight on 7 May 2021.

11.

The Respondent has nominated its business address referred to above as a place for the lodging of such claim forms locally.

12.

As instructed by the Applicant to do, I caused the RAF1 claim form to be completed in order to lodge his claim under and in terms of the Act with the Respondent Attached hereto as Annexure 'E' are the claim documents prepared on behalf of the Applicant for lodging with Respondent together with the customary covering letter dated 4 May.

13.

On 5 May 2021 the aforesaid claim documents of the Applicant were presented for lodgement at the above business address of the Respondent. However, Respondent refused to accept same. The claim documents have been returned to me. Accordingly no claim has been lodged and prescription, which will expire on Friday 7 May 2021, has not been interrupted. The Applicant has been prevented and precluded from lodging his claim under and in terms of the Act by this conduct of the Respondent. The Respondent must accept lodgement by close of business on Friday 7 May 2021.

14.

The Respondent has created a Management Directive, a copy of which is attached hereto as Annexure 'F', in which it seeks to prescribe numerous requirements over and above those stipulated in the said Act and its Regulations, which according to the Respondent are compulsory when claims are submitted or lodged, directing that henceforth such documents must be attached to all claims submitted to the Respondent effective 1 April 2021. The Respondent's refusal to accept the lodgement of the Applicant's claim and claim form as set out above is evidently predicated upon this management directive.

15.

When refusing to accept the Applicant's claim documents, the Respondent furnished the Applicant with a letter dated 5 May 2021, a copy of which is attached hereto as Annexure 'G', indicating the following (as this letter is printed in blue and is difficult to read, I attach hereto a similar letter received in a different case as Annexure 'H'):

15.1 "Please refer to the attached completed checklist for the outstanding compulsory documents" (paragraph 4.1 of the letter);

15.2 "Claims Lodgement Status" (paragraph 5 of the checklist):

(a) "All standard documents submitted as per Directive": "NO"

(b) "All Claims Administration Required Documents submitted per Product":
"NO"

(c) "Lodgement valid for Registration": "NO"

16.

This letter Annexure 'G' misleadingly appears to indicate that the claim was received but this is not the case at all. The claim was not received or accepted by the Respondent. The claim form and supporting documents together with the covering letter were refused by the Respondent and have been returned. There has been no lodgement of the Applicant's claim. As a result, it is now set to prescribe. The fact that the claim has not been lodged appears unequivocally from the following appearing at the very end of the checklist:

"If the answer is 'No' to any of the above, then advise claimant that claim cannot be lodged due to outstanding information as per Directive"

That is precisely what occurred in the case of the Applicant. His claim was refused and has not been lodged. The Respondent simply refused to accept the claim form and its accompanying documents.

17.

The Respondent has introduced requirements over and above those stipulated in the said Act and its Regulations. Moreover, the Respondent insists on strict compliance whereas substantial compliance has always been regarded as sufficient. It is not within the power of the Respondent to legislate by way of Directive as it has done. Moreover, the Respondent cannot adamantly refuse to accept a claim presented for lodgement. The correct procedure is (and has always been) for Respondent to accept lodgement and raise any objections thereafter. Even if Respondent chooses to raise objections at the outset, it must still receive the claim form and accept lodgement of the claim.

18.

In view of the impending prescription of his claim under and in terms of the said Act, this application is urgent.

19.

The relief that Applicant seeks is simply an order directing the Respondent to accept delivery forthwith on 7 May 2021 before close of business (that is to say prior to the intervention of extinctive prescription) of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same in terms of section 24 of the Act. This is what the Respondent used to do as a matter of course and is in accordance with its statutory obligations in terms of the said Act.

20.

The refusal by the Respondent to accept lodgement of the Applicant's claim and claim form is unconscionable. It is no part of the function of the Respondent to frustrate the rights of road accident victims to claim under the said Act in this fashion. The conduct of the Respondent has obliged the Applicant to approach this Honourable Court for relief on an urgent basis. A punitive cost order will ensure that the Applicant is not unduly out of pocket. In addition, this Honourable Court has been inconvenienced.

In the premises, may it please this Honourable Court to grant the relief sought herein.

M J BOTHA

Thus signed and sworn to in the manner prescribed before me (Commissioner of Oaths) on this the day of May 2021 at Pretoria, the deponent having acknowledged that he knows and understands the contents of this declaration.

COMMISSIONER OF OATHS

Full names:

Appointment/Capacity:

Physical address:

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CERTIFICATE OF URGENCY

I, the undersigned

BRENTON PATRICK GEACH (counsel for the Applicant)

hereby certify that:

1. this matter is of such urgency that it must be heard during the period of Lockdown, or during a period during which restrictions are in place relating to free movement of persons owing to measures to combat the Covid-19 infection pandemic; and
2. I have perused the papers in this matter and I believe that the relief which the Applicant seeks should be considered on an urgent basis and justifies a departure from the ordinary time limits and provisions relating to service as set out in the Rules and Directives of this Honourable Court.

B P GEACH, SC

Counsel for the Applicant

5TH DAY OF MAY, 2021.

