15/9/17.

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

Case Number: 54184/2016

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: 15.9.2017

SIGNATURE: .....

In the matter between:

NGIYANE SHADRACK MONJANE	Applicant
and	
HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	First Respondent
THE REGISTRAR OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	Second Respondent
THE ROAD ACCIDENT FUND APPEAL TRIBUNAL	Third Respondent
THE ROAD ACCIDENT FUND	Fourth Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The applicant seeks an order reviewing and setting aside a decision by the third respondent that the injuries he suffered as a result of a motor vehicle collision are non-serious as in defined section 17(1A) of the Road Accident Fund Act, 56 of 1996 ("the Act") and the regulations thereto.

[2] The main contention advanced on behalf of the applicant in support of the relief claimed, is the failure of the third respondent to provide adequate reasons for its decision.

FACTS

[3] The applicant, a 44 year old male, sustained injuries to his cervical spine, lumbar spine and left thumb as a result of a motor vehicle collision that occurred on 11 June 2009.

[4] Section 17(1)(a) of the Act provides that the obligation of the Road Accident Fund to compensate a person, such as the applicant, for non- pecuniary loss only arises if the person sustained a serious injury as contemplated in subsection (1A). It is the applicant's contention that he did suffer a serious injury as a result of the collision.

[5] Section 17(1A) read with the regulations to the Act provides for the procedure applicable to the assessment of a serious injury.

[6] In compliance with the prescribed procedure the applicant submitted a RAF4 Form to the fourth respondent. In a letter dated 8 September 2015 the fourth respondent's attorneys informed the attorneys acting for the applicant that the RAF4 Form was rejected.

[7] Pursuant to the aforesaid rejection and in terms of regulation 3 of the regulations promulgated in terms of the Act, the applicant referred the matter to the first respondent and requested that an appeal tribunal be convened to adjudicate on the matter.

[8] The applicant's attorneys lodged the medico-legal reports of Dr Oelofse, an orthopaedic surgeon, Rita van Biljon, an occupational therapist and Dr Strydom, an industrial psychologist, in support of the referral.

[9] The reports are detailed and include various tests, examinations, findings and opinions. The reports consist of 110 pages. The reports support a finding that the applicant had sustained a serious injury as envisaged in section 17(1)(a) of the Act.

[10] The third respondent did not refer the applicant for any further examinations and the evidence on which a decision had to be taken consisted of the reports referred to *supra*.

[11] Against the aforesaid background, the first respondent, in a letter consisting of nine sentences and dated 13 June 2016, informed the applicant's attorneys that the tribunal has decided that the applicant's injuries are non-serious.

[12] The following crisp reasons are provided:

> *"The claimant sustained soft tissue injury* (sic) *the cervical spine and lumbar spine.*
>
> *With no neurology deficit no true limitations and life injury as well. Claimant returned to work after the injury."*

[13] On a mere glance at the report of Dr Oelofse, the remark that the claimant returned to work is manifestly wrong. The relevant portion of Dr Oelofse's report reads as follows:

> "*The patient was employed as an Assistant Panel Beater at the time of the accident. He experienced severe pain in his neck, thumb and back while doing his work. He had great difficulty in standing for long periods, stooping and squatting as well as handling heavy objects.*
>
> ***The patient had had to quit and is currently doing Piece Jobs to earn a living.*** *The patient still experiences difficultly in doing his work due to pain and discomfort in his neck, thumb and back.*

Due to the neck, thumb and back injuries there is serious interference with his ability to perform his work, resulting in loss of earning capacity.

I am of the opinion that this patient will not be able to perform physical work again. He should rather be employed in a sedentary type of work but due to the low level of his education he will probably find it difficult to find a sedentary type of work.

I therefore defer to the opinion of an Occupational Therapist to help with determining what other future employment this patient could be trained for.

The patient's future productivity would depend on the suggested occupation according to the Occupational Therapist." (Own emphasis)

LEGAL POSITION

[14] The furnishing of adequate reasons for a decision forms the cornerstone of a person's constitutional right to fair administrative action. The principle is not novel and was articulated by Schutz JA in *Minister of Environmental Affairs & Tourism v Phambili Fisheries* 2003 (6) SA 407 SCA at para [40] as follows:

"*What constitutes adequate reasons has been aptly described by Woodward J, sitting in the Federal Court of Australia, in the case of Ansett Transport Industries (Operations) Pty Ltd and Another v Wraith and Others (1983) 48 ALR 500 at 507 (lines 23 - 41), as follows:*

'The passages from judgments which are conveniently brought together in Re Palmer and Minister for the Capital Territory (1978) 23 ALR 196 at 206 - 7; 1 ALD 183 at 193 - 4, serve to confirm my view that s 13(1) of the Judicial Review Act requires the decision-maker to explain his decision in a way which will enable a person aggrieved to say, in effect: "Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging.'

This requires that the decision-maker should set out his understanding of the relevant law, any findings of fact on which his conclusions depend (especially if those facts have been in dispute), and the reasoning processes which led him to those conclusions. He should do so in clear and unambiguous language, not in vague generalities or the formal language of legislation. The appropriate length of the statement covering such matters will depend upon considerations such as the nature and importance of the decision, its complexity and the time available to formulate the statement. Often those factors may suggest a brief statement of one or two pages only.'

To the same effect, but more brief, in Hoexter The New Constitutional and Administrative Law vol 2 at 244:

'(I)t is apparent that reasons are not really reasons unless they are properly informative. They must explain <u>why</u> action was taken or not taken; otherwise they are better described as findings or other information."

See also Nkondo and Others v Minister of Law and Order and Another; Gumede and Others v Minister of Law and Order and Another; Minister of Law and Order v Gumede and Others 1986 (2) SA 756 (A) at 772I - 773A."

[15] Once it is established that the reasons provided are inadequate, an aggrieved person may in terms of the provisions of section 8(1)(a)(i) of the Promotion of Administrative Justice Act, 3 of 2000 apply for an order directing the administrator to give reasons or apply for judicial review of the administrative action. [See: *Administrative Law in South Africa, Cora Hoexter, 2nd edition, 482.*]

DISCUSSION

[16] The third respondent failed the test applicable to the provision of adequate reasons dismally.

[17] In the premises, the applicant is entitled to the relief claimed in the notice of motion.

ORDER

[18] In the premises, I grant the following order:

1. The decision of the Third Respondent dated 13 June 2016 to the effect that the injuries suffered by the Applicant are non-serious in terms of section 17(1A) of the Road Accident Fund Act, 56 of 1996 and its regulations is reviewed and set aside.

2. The Second Respondent in his/her capacity as Registrar of the First Respondent is directed to re-appoint a new Appeal Tribunal to determine the dispute reviewed and set aside in paragraph 1 and to further reconsider all medico-legal reports that served before the Tribunal in respect of the Applicant's injuries.

3. The First Respondent is ordered to pay the costs of this application.

N JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

APPEARANCES

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