

REPUBLIC OF SOUTH AFRICA



HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION

CASE NO: 2013/41872

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
_____	_____
DATE	SIGNATURE

In the matter between:

KGOKARE JOSEPH MASHATOLA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MASHILE J:

[1] The court is required to determine whether this claim brought against the Defendant in terms of the Road Accident Fund Act No. 56 of 1996 (hereinafter “the Act”) was lodged as a claim that falls under Section 17(1)(a) or Section 17(1)(b) of

the aforesaid act. Depending on the court's pronouncement, the claim will either be prescribed or not.

[2] Section 17(1)(a) provides:

“(1) The Fund or an agent shall-

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) ...

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.”

[3] Section 17(1)(b) stipulates that:

“(1) The Fund or an agent shall-

(a) ...

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.”

[4] The Plaintiff lodged this claim with the Defendant on 8 November 2013 and furnished the name of the driver of the vehicle as Alex without supplying his surname. Having given his name, he described him as the operator of a white Toyota Venture taxi under the control of the Tembisa Taxi Local Association. Other than as aforesaid, the Plaintiff did not have any further detailed information of the driver or the owner or the vehicle itself.

[5] Responding to the particulars of claim of the Plaintiff, the Defendant pleaded as follows at Paragraph 5.2.2 of its plea:

“He alighted from the moving vehicle of the insured driver. He suddenly entered the path of travel of the insured vehicle when it was not safe to do so.”

[6] In view of the scanty particulars furnished by the Plaintiff in respect of the insured driver, the insured vehicle and the owner of the vehicle, the Defendant moved an application to add prescription as a special plea. Fundamentally, the Defendant's prescription defense is that because of the inadequacy of information supplied in the RAF1 Form concerning the insured vehicle, the insured driver or the owner of the vehicle, the claim of the Plaintiff should be regarded as one falling under Section 17(1)(b) of the Act notwithstanding the version that it has advanced in its main plea. The court considered the application and allowed the amendment as there was no prejudice to be suffered by the Plaintiff.

[7] If the court is with the Defendant on that argument, the Plaintiff's claim has prescribed as it was supposed to have been lodged with the Defendant within two years of its occurrence as contemplated in Regulation 2(2) of the Regulations promulgated under Section 26 of the Act, which provides:.

“(n)otwithstanding anything to the contrary in any law a claim for compensation referred to in section 17(1)(b) of the Act shall be sent or delivered to the Fund', 'in accordance with the provisions of section 24 of the Act, within two years from the date upon which the cause of action arose', 'irrespective of any legal disability to which the third party concerned may be subject’”.

- [8] The Plaintiff's failure to have lodged his claim within the two year period envisaged in the aforesaid regulation should have fatal consequences. The plaintiff, on the other hand, strongly contended that the particulars that he furnished constitute substantial compliance and was therefore sufficient to enable the Defendant to investigate the claim. Accordingly, the claim was lodged with the Defendant within the three year period required by the section.
- [9] Moreover, the Defendant failed to object to the validity of the claim as envisaged in Section 24(5) of the Act. As I understand the Plaintiff's argument, the Defendant's failure to object to the validity of the claim within sixty days from the date of its lodgment with the Defendant should estop it from hiding behind inadequacy of information or lack thereof as what led to its invocation of prescription as a defense.
- [10] The Plaintiff's further contention is that the Defendant must have consulted with the insured driver because it has pleaded a specific version on how the Plaintiff became involved in the collision. If the information supplied by the Plaintiff was as scanty as the Defendant claims, it would not have had the version that it advanced in its main plea. In the circumstances, the Defendant's suggestion that it could not investigate because the information was insufficient is preposterous because it was able to put forward a version that undoubtedly intimates that it consulted with the Plaintiff before serving and filing its plea.
- [11] In support of his argument of what constitutes the identity of a driver or owner of a motor vehicle, the Plaintiff referred this court to the unreported case of **Meso v Road Accident Fund** (11400/12) ZAGPPHC 31 of Gauteng Division: Pretoria where Khumalo J stated at paragraph 18 that the identity of the negligent driver or owner of the negligent vehicle is established if his name and residential, postal or work address, are furnished at the time of lodging the claim, even without the vehicle registration number, however, if known they should be furnished together with the identity number. The address can also be a telephone number, or a description of where the person may be found.

[12] Paragraph 5.2.2 of the Defendant's plea presupposes that the Defendant has had an opportunity to canvass the merits of its defense with the insured driver. It does not and it cannot make sense for the Defendant to subsequently raise a special plea of prescription and claim that the information provided was so insufficient that it could not investigate the claim. This must be so because it is obvious that with the little information that the Defendant had, it managed to track down the insured driver. The rationale of limiting the period within which claims lodged under Regulation 2(2) of the Act was explained in **Mbatha v Multilateral Motor Vehicle Accidents Fund** 1997 (3) SA 713 (SCA) in the following terms:

“...In these cases the possibility of fraud is greater; it is usually impossible for the Fund to find evidence to controvert the claimant's allegations; the later the claim the greater the Fund's problems; in addition, whilst in the identified vehicle case the claim against the agent comes in the stead of the claim against the wrongdoer, the claimant in the present case is given an enforceable right in a case where there otherwise would not have been any...”

[13] The possibility of fraud in this instance has been eliminated. The Defendant has found the insured driver and has apparently investigated the claim because it has its own version on the merits. Against that backdrop, it is hard to appreciate the Defendant's logic in raising the special plea. In any event it is my view that such an assertion is a little too late as it could have been raised and dealt with prior to the expiry of the sixty day period referred to in Section 24(5) of the Act.

[14] My comments relating to Section 24(5) must not be construed to mean that the Defendant would under any other circumstances be precluded from raising a defense after failing to raise objection in terms of Section 24(5). The difference between the instant case and that postulated above is that the Defendant has already put forward a version and such version contradicts its special plea insofar as the Defendant alleges not to have had sufficient particulars relating to the insured driver, insured vehicle and the owner of the vehicle.

[15] In the circumstances the special plea cannot succeed and I make the following order:

1. The special plea is dismissed with costs.

B. A. MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Counsel for the Plaintiff: AdvMetu

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Instructed by: DialeMogashoa Attorneys

Trial proceedings took place on 14 May 2015

Date of delivery of Judgment: 23 July 201`5