

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

DELETED WHICH MEANS IS NOT APPLICABLE	
(1) REASONABLE: YES/NO.	☒ YES
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ YES
(3) REVISED.	
26. 02. 10	
In the matter between:	SIGNATURE

05/03/2010
Case No: 24988/2002

MALESHOANE AGENS MATSEPE N.O.

Plaintiff

vs

ROAD ACCIDENT FUND

Respondent

JUDGEMENT

SAPIRE, A J:

This was an argument on a special plea filed by the Defendant to a claim made by the Plaintiff under the provisions of the Road Accident Fund, Act No 56 of 1996. The Plaintiff is represented by a Curator ad Litem, one K M Rontgen an attorney with right of appearance, who is duly appointed thereto.

In the Particulars of Claim it is alleged that the Plaintiff was a pedestrian on his way home from work when he was struck by an unidentified motor vehicle driven by a driver whose identity cannot be ascertained. It is further alleged that the accident was due to the negligence of the driver of the vehicle.

As a result of the collision the Plaintiff was seriously injured, sustaining a fracture of the right mid shaft femur as well as damage to the spinal cord and gross brain damage. It is not necessary at this stage to refer either more particularly to the extent of the injuries and the effects thereof nor to the extent of the damages giving rise to the claim. What is important is that the Curator claims that because of the brain injury the Plaintiff is largely incapacitated and was not able to give proper attention to his affairs more particularly the timeously lodging of a claim under the Act. This contention was not placed in issue and no evidence was placed before the court to establish the causal connection between plaintiff's injury and the failure to lodge the claim timeously.

The Curator was appointed after the time prescribed for the filing of the claim in terms of the Act.

The Defendant has raised a Special Plea in which it is alleged that as the claim was lodged against the Defendant on the 27th of November 2001, well past the two year statutory period laid down in Regulation 2(3) of the Regulations promulgated in terms of the Act, for lodgement of a claim where the identity of the owner and/or driver is unknown.

The Special Plea recites the wording of Regulation 2(3) which provides that a claim for compensation referred to in Section 17(1)(b) of the Act shall be sent or delivered to the Fund within two years from the date upon which the claim arose irrespective of any legal disability to which the Third Party concerned may be subject and not withstanding anything to the contrary in any law.

The Special Plea concludes with the proposition that the Plaintiff's action against the Defendant became prescribed on the 30th of September 1999 and is accordingly unenforceable. The Defendant prays that the Plaintiff's action be dismissed with costs.

The Curator ad Litem himself appeared to argue that the Regulation was invalid having regard to the provisions of the Constitution, in that it deprived the Plaintiff of a right afforded him by the Act itself. Particular attention was given to the words referring to "*...irrespective of any legal disability to which the Third Party may be subject.*"

Counsel for the Defendant argued to the contrary and cited two decisions of the Supreme Court of Appeal which appear to decide the point raised by the Plaintiff adversely to him. The first of these cases is *Geldenhuis & Joubert v Van Wyk and Another*, 2005(2) SA 512. In this case it was held that the Regulation was valid and its terms were not unfair to those suffering an incapacity which could interfere with them lodging a claim timeously.

The second case referred to was *Mahambo v Road Accident Fund*, 2005(6) SA 574(T) in which the Court decided that the Regulation was not unfairly discriminatory against minors. The same reasoning must apply to those incapacitated as in the present case. It was pointed out that Section 17(1)(b) of the Act created a statutory right which did not exist in Common Law. Regulation 2(3) did not therefore introduce an invasion of any of the minor's constitutional rights. This reasoning must apply in the present case

to a person incapacitated by brain injury. I am bound to follow the decisions of the Court of Appeal with which I am in respectful agreement.

The Special Plea is upheld and Plaintiff's claim is dismissed with costs.


SAPIRE, A J

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CURATOR AD LITEM

(In Person) FOR PLAINTIFF: **Mr K Röntgen**

COUNSEL FOR DEFENDANT: **Adv P Kemp**