



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 21747/2022

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED:

16/10/2023
DATE

SIGNATURE

In the matter between:

ITUMELENG SOLOMON MONTSHO

Plaintiff

V

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

TOLMAY J

1. In this matter the defendant raised a special plea of prescription which must be determined. This is an action for damages arising from injuries sustained by the plaintiff following a motor vehicle accident that occurred on the 28th of December 2009. At the time of the accident the plaintiff was a pedestrian and he was eleven years old, he sustained various injuries and was contacted by the Road Accident Fund itself to lodge a claim.
2. The driver of the insured vehicle was unknown. The plaintiff lodged his claim on 23 January 2013 through the office of the Road Accident Fund and liability was conceded by the defendant. The defendant settled general damages by payment of R 246240.00 on the 18th day of January 2018. Pursuant to a settlement of the plaintiff's general damages, the defendant proceeded to refer the plaintiff to experts for quantification of special damages. He was, inter alia, referred to an occupational therapist by the Road Accident Fund the instruction letter is dated 12 February 2019 and the report is dated 24 June 2019, an industrial psychologist who filed a report dated 21 January 2020, an education psychologist prepared a report dated 13 May 2018.
3. As counsel for the plaintiff correctly argued, the Road Accident Fund by assisting the plaintiff in this regard and by its conduct expressly or tacitly undertook all responsibility for knowledge, skill and diligence upon examination of the medical legal reports for proper assessment and professional quantification of plaintiff's claim for loss of earnings and or earning capacity, and the undertaking for future medical expenses.

4. On 15 March 2021, the plaintiff appointed an attorney and terminated the Road Accident Fund's mandate and requested the file content, in accordance with the Promotion of Access to Information Act¹ (PAIA). On 17 March 2021, the plaintiff further dispatched a letter to the Road Accident Fund requesting the content of the file. However, the defendant did not respond to the letter, further correspondence followed, to no avail.
5. The plaintiffs' attorney served an application in terms of PAIA on the defendant on 14 February 2022. Upon receipt of the file content, on 16th March 2022, the plaintiff's attorney assessed the plaintiffs' medical legal reports and established from the educational psychologist's report specifically, that there was a possible claim for loss of earnings and earning capacity. Summons was issued on 19 April 2022 and served on the Road Accident Fund on 21 April 2022.
6. Surprisingly, the defendant not only defended the matter, but raised a special plea of prescription alleging that the plaintiff's cause of action arose on 28 December 2009, when he was a minor, and seeing that the plaintiff turned eighteen on 18 July 2016 and the summons was served on 21 April 2022, that his claim has prescribed. The defendant's plea does not state when it is alleged that the claim had prescribed.
7. The issue that needs to be determined is whether the plaintiff's claim had prescribed under the circumstances set out above.

¹ Act 2 of 2000 (PAIA).

8. It is common cause that at no stage prior to the payment of general damages by the defendant did the defendant repudiate the plaintiff's claim, to the contrary it was acknowledged. It is common cause further, that the plaintiff only became aware of the full particulars of his claim against the defendant on or about 16 March 2021 and issued a summons on 19 April 2022 for the rest of his damages. It is undisputed that the plaintiff had lodged a valid claim with the defendant, in that the plaintiff's claim was lodged within the prescription period on behalf of the plaintiff on 23 January 2013.
9. In *Madzunya and Another v Road Accident Fund*², it was reiterated that the Road Accident Fund had a responsibility to administer its funds in the interest of road accident victims with integrity and efficiency and also to adopt reasonable and timely steps in advancing its defence.
10. In *Pithey v Road Accident Fund*³ the court held: "It is true that there is, in terms of the Act and regulation 2(3), a fundamental distinction between a claim under s 17(1)(a) and one under s 17(1)(b). This cannot, however, be taken to mean that even when the Fund, within the prescribed two year period is in possession of information which a claimant is statutorily obliged to supply and which, when read in tandem with the claim form, which in the circumstances of this case the claimant clearly intended, reveals that the claim really relates to an unidentified vehicle, the Fund is entitled to repudiate the claim on the basis that no valid claim had been

² 2007(1) SA 165 (SCA).

³ (319/13) [2014] ZASCA 55 (16 April 2014) at para 25.

made. Nor ought the Fund to benefit from its own failure to clarify with minimal time, effort and expense, whatever confusion the claim form and attached documentation revealed. This is not a case where no information was supplied to the Fund in relation to the claim in terms of s 17(1)(b)."

11. In his heads of argument counsel for the plaintiff referred the court to a an unreported judgment of the Gauteng Local Division, Johannesburg, the matter of *Johannesen Ralph v The Road Accident Fund*, case no 2014/03112, delivered on 5 May 2016, where a similar scenario to the one in casu arose. The plaintiff was also assisted by an employee of the Road Accident Fund's Direct Claims Department in lodging his claim after being injured in a motor vehicle accident. The claim was timeously lodged but thereafter the plaintiff received no response from the Fund regarding the progress of his claim despite several telephone calls and attendances at the Fund's offices. Some years later the plaintiff consulted with attorneys and was advised that his claim had lapsed. A new set of attorneys were however willing to assist. At that stage so much time had passed that his summons was served on the Road Accident Fund five years after the prescribed period envisaged in s 23 (3) of the Act. The Road Accident raised a special plea of prescription which was dismissed.
12. The court, correctly in my view, held in *Johannesen* that where the Road Accident Fund represents to a claimant that it will assist in settling a claim without external legal advice, a greater duty of care rests on the Fund to take all reasonable steps

to prevent claims prescribing in its hands – which steps would include responding to the claimant's enquiries, bringing the matter to finality, and informing the claimant about the rejection or prescription of the claim. In the absence of evidence by the Road Accident Fund of the reasonable steps taken to contact the plaintiff or to properly process the claim, it would be unjust for the Fund to benefit from inaction on its part. Section 24 (5) provides the Fund with 60 days in which to object to the validity of a claim, failing which it shall be deemed to be valid in law in all respects.

13. In this instance, importantly, we are dealing with a victim who was a minor at the date of the accident. The Road Accident Fund assisted him, conceded merits and paid general damages. The defendant even obtained expert reports and then failed to take any further step to conclude the matter. To raise a plea of prescription, at this point is not only unconscionable, but legally untenable. The Road Accident Fund at no stage since the lodgement of the claim raised any objection to the claim, as such it must be valid in all respects. To belatedly attempt to separate different heads of damages, as if it constitutes different claims, is not legally sound. There is one delictual claim in respect of which liability cannot be approbated and reprobated⁴.

14. As a result, under these circumstances the special plea must be dismissed with costs.

⁴ Custom Credit Corporation (Pty) Ltd v Shembe 1972(3) (A) at 462 A.

15. In his heads of argument, the plaintiff asked that the claims handled and the supervisor pay 30 percent of the costs. I requested counsel to request the claims handler and the supervisor to be present in court, as has become the norm, they were not available. Under the circumstances I am not going to grant a special order of costs personally against the claim's handler and the supervisor. The disrespect shown by claims handlers, supervisors and the Road Accident Fund in general is to put it lightly, concerning. To inform a Court that they are busy shows a disrespectful and unhelpful attitude towards the Court, unfortunately, this is the reality with which this division deals with on a daily basis.

16. The following order is made:

The special plea is dismissed with costs.

R G TOLMAY

Judge of the High Court of South Africa

Gauteng Divison, Pretoria

Appearances:

Counsel for Plaintiff: L Mfazi

Attorney for Plaintiff: T Matu Attorneys

Counsel for Defendant: T Mostaathebe

Attorney for Defendant: State Attorney

Date of hearing: 22 August 2023

Date of Judgment: 16 October 2023