

NORTH GAUTENG DIVISION, PRETORIA

10/8/2012

In the matter between;

DATE FILED AND RECEIVED BY THE CLERK OF COURT

FILED FOR PROBATE AND

OF INTEREST TO OTHER JUDGES: W

Appellant

RECEIVED

8/8/2012

K. B. Ralston

COURT REPORTER

and

Respondent

1. The appellant appeals against the judgment of the court *a quo*, with the latter's leave, upholding a special plea that no appropriate claim for compensation in terms of section 17(1)(b) of the Road Accident Fund Act 56 of 1996 ("the Act") was filed on her behalf prior to summons being issued.
2. The principal facts relevant to the issues arising in this matter are common cause. The parties prepared a statement of facts in terms of Rule 33(1) for the trial court and did not lead any evidence other than the facts agreed upon in that document

3. The plaintiff/appellant was involved in a motor vehicle collision on the 24th November 2004. She alleged that she was the driver of motor vehicle HRK 237 GP which collided with motor vehicle LFG 030 GP (a truck). This truck's driver was, however, not to blame for causing the collision, which had to be attributed to the negligence of the driver of a minibus of which plaintiff did not know the identity of either the driver or of the owner.
 4. Appellant's claim therefore fell under section 17(1)(b) of the Act.¹
 5. Regulation 2 of the Regulations promulgated in terms of section 26 of the Act therefore applies.ⁱ The principal feature of Regulation 2 is that it limits the period of prescription for the institution of claims arising from a collision in respect of which neither the owner nor the driver of the vehicle the driving of which gave rise to the claim, has been identified, to two years from the date upon which the cause of action arose.
 6. Claims arising from the driving of a motor vehicle where the owner's or driver's identity has been established, prescribe within three years, as dictated by section 23 of the Act.
 7. Any claim instituted in terms of section 17(1)(b) of the Act would therefore prescribe in this instance on the 23rd November 2006.
 8. On the 17th October 2005, the plaintiff's attorneys lodged a bundle of documents purporting to be the institution of her claim. This bundle consisted of the following items:
 - a) The statutory Form I claim form for compensation and medical report;
 - b) The statutory medical report;
 - c) A copy of appellant's identity document;
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- d) A copy of appellant's driver's licence;
 - e) The statutory affidavit in terms of 19(f)(i) of the Act;
 - f) A copy of the official accident report;
 - g) A copy of clinical notes by appellant's physician;
 - h) A copy of a radiologist's report;
 - i) A copy of a certificate issued by appellant's employer;
 - j) A copy of appellant's statement to the investigating officer;
 - k) A copy of appellant's statement to comply with section 19(f)(i) of the Act;
 - l) A copy of receipts evidencing appellant's medical expenses;
 - m) A copy of a statement by a passenger in appellant's vehicle, Mr Jacobs, made to the investigating officer; and
 - n) One made by him to comply with the Act; together with
 - o) The power of attorney granted to appellant's legal representatives.
9. The appellant's and Mr Jacobs' first statements were made in April 2005 to the investigating officer, the subsequent statements in October 2005.
10. Appellant's earlier statement taken down by the police officer reads in part:
- 'The robot went for caution when I was approaching the robot and there was a Taxi which was from Eastern direction and it turned towards North without stopping at the robots. I then applied the brakes and it was slippery then the car served toward the left lane and I then knocked the truck from the back and that day it was rainy.'* (sic).
11. In her second statement she adds some more detail to describe the manner in which in which the accident was caused, stating in the last paragraph: *'The accident was caused by the sole negligence of the driver of the blue taxi in that he turned right at the crossing when he was not allowed to do so.'*

12. Mr Jacobs in his second statement, however, opines that: '*Both the truck and the taxi were negligent and caused the accident.*' He, too, made no express statement in his police affidavit that ascribed negligence to either the taxi or the truck or both.

13. The Form 1 was signed by the appellant on the 17th February 2005. In paragraph 2 thereof, which requires particulars to be supplied of the motor vehicle the driving of which caused the claim to arise, the claimant completing the form is presented with two options. The first, addressed in sub-paragraphs (a), (b) and (c), invites the claimant to provide the registration letters and numbers, the make, the type of body and the name of the owner of the vehicle at the time of the accident, as well as the name of the driver on that occasion. The second option is aimed at the situation in which neither the identity of the owner or the driver of the vehicle could be established and is provided for in sub-paragraph (d). The claimant is requested to record any additional information concerning the vehicle that may be available and to explain what steps were taken to establish the identity of the owner of the motor vehicle.

14. Claimant (or her representative) completed sub-paragraphs (a) and (c) of paragraph 2, identifying the truck by its registration letters and numbers, by its body and by the identity of the driver at the time of the accident. In respect of any information relating to an unidentified vehicle that might have caused the accident, sub-paragraph (d) was completed with the words '*not applicable*'.

15. Form 1 therefore clearly conveys that the accident was caused by the truck identified in paragraph 2 thereof and that claimant alleges that either the driver or the owner of the truck, or both, are guilty of negligence that caused the accident to occur.

16. The respondent acknowledged receipt of the claim on the 24th October 2005.
17. On the 19th May 2006 respondent repudiated liability in writing on the grounds that the appellant was the sole cause of the collision.
18. On the 17th August 2006, the respondent addressed a letter to appellant's attorneys of record, reiterating the repudiation of liability in the following terms:
'On (sic) her S19(f) affidavit, claimant stated that she was trying to avoid a collision with a certain taxi by trying to make a dead stop but her motor vehicle slipped and ended up colliding with our insured driver on the rear. Unfortunately, this does not prove any negligence on the part of the insured driver and instead, he is the one that was rear ended by your client.'
19. No further communication of note was exchanged between the parties until summons was issued in 2007. In her particulars of claim appellant alleged that the unidentified blue taxi was the sole cause of the collision and relied upon section 17(1) (b) to establish her entitlement to compensation by the respondent..
20. Respondent raised a special plea that the appellant had failed to file a claim in these terms prior to issuing summons and that she had to be non-suited as a result thereof.
21. The trial court agreed and dismissed appellant's claim with costs.
22. In her notice of appeal the unsuccessful plaintiff suggests that in spite of the way in which her Form 1 was completed, the information conveyed therein to the respondent constituted substantial compliance with the statutory requirements of such notice. Respondent was thus supplied with sufficient particulars in the Form and the affidavits that accompanied it to enable it to properly investigate the circumstances and cause of the accident.

Respondent should therefore have been held, so the argument ran, to have been supplied with sufficient information to enable it to meet plaintiff's case.

23. Respondent supported the court *a quo*'s decision and argued that it had never been appraised in the statutorily prescribed fashion of plaintiff's intention to claim compensation for damages caused by an unidentified vehicle.

24. When considering the respective arguments the court must bear in mind that the Act represents '*... social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle....*' (per Froneman J (as he then was) quoted in *Road Accident Fund v M obo M* [2005] 3 All SA 340 (SCA) at para [12]). The court must therefore not be astute to find grounds to deny a *bona fide* claimant for compensation the remedy provided for in the Act.

25. On the other hand the respondent is funded by and administers public funds obtained from the taxpayers' pockets. It must therefore take care that it is not duped by dishonest plaintiffs or greedy legal representatives prepared to fraudulently enrich themselves from the funds intended to compensate road accident victims, the majority of whom are poor. It must also guard against honest but mistaken claims advanced by persons who may not be entitled to any award because they cannot bring their claim within the ambit of the Act and the Regulations promulgated thereunder.

26. The Act protects accident victims who suffer damage as a result of a motor vehicle accident by interposing the Fund in the place of a negligent driver or owner whose actions caused the victim's claim to arise. Section 21 of the Act prevents a third party from claiming any compensation from an identified driver or owner whose vehicle could be identified and decrees that the Fund

only may be held liable in such instance. Where such vehicle could not be identified the victim would at common law be without a remedy, but the Act creates a source of compensation by allowing a claim against the Fund. Cameron JA (as he then was) defined the remedies that are available under the two scenarios as follows in *Geldenhuys & Joubert v Van Wyk and Another; Van Wyk v Geldenhuys & Joubert and Another* 2005 (2) SA 512 (SCA) at paras [10] to [12]: ‘

[10] *The provisions of s 21 are important to understanding the impugned regulation. This provides that when a third party is entitled to claim compensation, he or she may not claim from the owner or driver or the driver's employer, unless the Fund is unable to pay. This has significant implications. In a case where the claimant can trace the vehicle or the driver, the provision means that the claimant loses a valid claim against an identifiable wrongdoer. In effect, the Act substitutes the Fund as surrogate for a known wrongdoer, and replaces an enforceable common law claim with a statutory claim against itself.*

[11] *In the case of an unidentified vehicle, this by definition is not so. There is no identifiable wrongdoer to sue, and the injured party is remediless. The legislation instead creates a claim for compensation where otherwise there would have been none. The Fund is not substituted for a wrongdoer in hand, but intervenes to offer recourse where none existed before.*

[12] *It is for this reason that the distinction the legislation makes between identified vehicle and unidentified vehicle cases is fundamental. This Court's decisions have repeatedly underscored its implications, most recently in Bezuidenhout v Road Accident Fund. The legislation specifies that loss or damage involving identified vehicles must be compensated on terms expressly set out in the statute itself ('subject to this Act'). By contrast, with unidentified vehicle claims, the Minister is given power to subject payment of compensation to a regulatory scheme, and thus to determine the conditions subject to which compensation may be granted ('subject to any regulation made under s 26').’ (Footnotes omitted).*

27. Different prescriptive periods apply in respect of the two instances. If a vehicle the driving of which is alleged to have caused damage and loss is identified the prescriptive period is three years for the lodging of a claim as

provided in section 23 (1) of the Act. Once section 17(1)(b) applies, the prescriptive period is two years:

'In unidentified vehicle cases, by contrast, the Minister has determined that, to be valid, claims of adults and minors alike must be sent or delivered to the Fund within two years. Once so lodged, claimants have a five-year period from the incident within which to issue summons (regs 2(3) and 2(4)). The regulatory scheme thus differs in two ways from the periods the statute determines for the prescription of identified vehicle claims. First, the two-year period for lodging a claim is one year shorter than the prescription period the statute specifies for identified vehicle claims; and, second, the regulatory scheme makes no special allowance for minors. In both cases, however, once a claim is lodged in terms of s 24, there is a five-year period from the date of the accident within which summons must be issued (s 23(3) in the case of identified vehicles; reg 2(4) in the case of unidentified vehicles'. (Geldenhuys, supra, para [15].

28. The provision of a shorter prescriptive period for claims arising from the driving of an unidentified motor vehicle is rational and warranted, as Harms J A (as he then was) stated in *Mbatha v Multilateral Motor Vehicle Accidents Fund* 1997 (3) SA 713 (SCA) at 718 H-J:

'... there are good reasons for having stricter requirements for unidentified vehicle cases 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 (Terblanche v Minister van Vervoer en 'n ander 1977 (3) SA 462 (T) 470B-C). But the argument also fails on the facts -- the two-year time-limit for the lodging of claims applied when the regulation was promulgated in 1989 to both cases.'

29. It is therefore clear that care must be taken to inform the Fund of the correct nature of the claim it is proposed to advance against it. The Act prescribes in section 24 read with section 19(f) thereof the nature of the information that

must be provided to the Fund and the way in which such information must be presented to constitute a valid notification:

24. Procedure.—(1) A claim for compensation and accompanying medical report under section 17 (1) shall—

- (a) be set out in the prescribed form, which shall be completed in all its particulars;
- (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

(2) (a) The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.

(b) Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in subsection (1) (a) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of expenses in terms of section 17 (5) shall be in the prescribed form, and the provisions of this section shall apply mutatis mutandis in respect of the completion of such form.

(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent—

- (a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and
- (b) before all requirements contemplated in section 19 (1) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.

30. Section 19(f) excludes liability on the part of the Fund

“ if the third party refuses or fails—

(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof.

31. Section 17 in turn decrees that

(i) **17. Liability of Fund and agents.**—(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)

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

(ii) **2. Further provision for liability of Fund in terms of section 17 (1) (b)**

(1) (a) 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.

(b) A right to claim compensation from the Fund under section 17 (1) (b) of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a).

(c) In the event of a claim having been lodged in terms of paragraph (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.

(2) Notwithstanding anything to the contrary contained 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 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.

32. The law is clear that the submission of a claim form, Form 1 under the present statute, is peremptory, while the requirement regarding its completion is directory in

the sense that substantial compliance with the requirements is sufficient to enable the victim of a motor vehicle accident to claim compensation:

'Notwithstanding the wording of art 62(d)(i) and the corresponding wording of its predecessors, in a long line of decisions in this and other Courts pre- and post-1978 it has been held that (1) the submission of a claim form is a peremptory requirement; (2) the prescribed requirements in regard to completion of the form are directory; and (3) what is required is substantial compliance with such requirements. (See Rondalia Versekeringskorporasie van Suid-Afrika Bpk v Lemmer 1966 (2) SA 245 (A); Nkissimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 (A), particularly at 435F--436E; AA Mutual Insurance Association Ltd v Gcanga 1980 (1) SA 858 (A) at 865B--F; Evins v (2) SA 204 (C), where the relevant principles are conveniently and concisely set out at 210B--211F, and Moskovitz v Commercial Union Assurance Co of SA Ltd 1992 (4) SA 192 (W).) In Nkissimane's case supra at 436E--F, Trollip JA doubted that it was ever the intention that a defectively completed form could be relied upon as an additional defence to a claim for compensation.

It also appears from the authorities to which I have referred that the test for substantial compliance is an objective one (AA Mutual Insurance Association Ltd v Gcanga (supra at 865H)). Broadly speaking, the question must be posed whether sufficient particularity has been furnished to enable a reasonable insurer to consider its position in relation to the claim before it becomes involved in litigation, and to enable it to investigate the claim, if necessary. Differently put, would a reasonable insurer have been prevented by any omission or inaccuracy in the claim form from properly investigating the claim and determining its attitude towards it?' per Smalberger JA in SA Eagle Insurance Co Ltd v Pretorius 1998 (2) SA 656 (SACA) at 663 A-F.

33. Seen in its correct light the question of whether there was substantial compliance with the requirements of sections 24 and 17 of the Act does not arise in the present matter at all. Rather, as Mr Snyckers SC for the respondent has pointed out, the question is whether Form 1 correctly indicated that the claim to be instituted by the appellant was one in terms of section 17(1)(b) rather than 17(1)(a). As has been said above, there is a fundamental difference in the nature of the respective claims. The respondent faces significantly different scenarios depending on the nature of the claim. The investigation of those claims and the steps that need to be taken to enable the Fund to deal with potential litigation or the consideration of an offer of settlement assume different proportions, depending on whether the insured driver can be consulted or is unknown and therefore never able to enlighten the respondent in respect of any facts that might assist in the decision to oppose or to compromise any claim.

34. For these reasons it is essential that the respondent be correctly informed whether the insured driver's identity is known or not, whether the prescriptive period is two or three years and whether the owner of the insured vehicle – and the vehicle itself – can be traced or not. The requirement to indicate that the claim falls either under section 17(1)(a) or 17(1)(b) is therefore clearly non-negotiable and an essential requirement of the correct application of the claim process. If the incorrect information is supplied in this regard the result must be fatal to the claim.

35. Counsel for the appellant submitted that the affidavits provided by appellant and Mr Jacobs to the respondent contained sufficient information to enable the respondent to conclude that the claim that would be instituted related to an accident caused by an unidentified vehicle, in spite of the express indication in Form 1 filed on behalf of the appellant to the contrary.. Reference was made in this regard to the fact that section 19 of the Act requires a claimant in sub-section (f) thereof to file an affidavit setting out the particulars of the way in which the accident occurred. A failure to do so is fatal to the claim for compensation .

36. At this stage of the argument, the Court raised a number of specific issues and requested the parties to deal therewith. The hearing was postponed for a month to enable the parties to address these questions. Five points were identified:

36.1 Is there any authority which deals specifically with the question of substantial compliance concerning the claim form and the statutory affidavit after the enactment which made the furnishing of an affidavit a requirement?

36.2 What is the effect of the statutory affidavit which a claimant is obliged to present to the Fund, setting out all relevant facts in respect of the accident concerned? More particularly, would a claimant be non-suited if he/she failed to

complete a claim form at all, but provided full information covering all aspects that are sought in the claim form in an affidavit?

36.3 If all the relevant information is provided in the statutory affidavit rather than in Form 1, are the authorities that regard the filing of a duly completed form as peremptory still applicable to a case like the present?

36.4 In which respect can the respondent in the present case claim to have been prejudiced by the incorrect information relating to the accident being supplied in the claim form, when the correct information was supplied in full in the accompanying affidavit?

36.5 The requirement to file a statutory came into force after the judgments in *SA Eagle Insurance, supra* and *Multilateral Motor Vehicle Accident Fund v Radebe* 1996 (2) SA 245 (A). Has the introduction of a statutory requirement to supply the respondent with an affidavit changed the law as laid down in these decisions?

37. Mr Snyckers SC elegantly formulated the essence of these five issues in the respondent's heads of argument: *'... the pertinent question to ask is whether material contained in the documents attached to Appellant's claim form can (and did) convert the claim from one that was unambiguously a claim under section 17(1)(a) in the claim form to a claim under section 17(1)(b).'*'

38. In a helpful summary, Mr Snyckers SC traced the legislative history leading to the introduction of subsection 19(f) of the present Act:

38.1 The Compulsory Motor Vehicle Insurance Act 56 of 1972 introduced the principle of allowing the MVA Fund to compensate victims of motor vehicle accidents caused by uninsured or unidentified vehicles. Section 23(c)(ii) of this Act provided

that the insurers would not be liable if claimants failed to provide copies of all medical reports relating to claims arising from the accident. The regulations published in terms of this Act in turn allowed the MVA Fund to require a sworn statement or other proof of the facts establishing the Fund's liability. A failure to comply would be fatal to the claim.

38.2 The regulations promulgated under the successor of the 1972 Act, the Motor Vehicles Accident Act 84 of 1986 required, for the first time, an affidavit to be delivered to the insurer to be delivered with the claim form, or within 14 days of being able to do so. Such affidavit had to set out fully all particulars giving rise to the claim. A failure to comply led to the exclusion of the insurer's liability.

38.3 The next act was the Multilateral Motor Vehicle Accident Fund Act 93 of 1989, which placed the MMF Agreement in a schedule to the Act. The agreement contained a similar condition as in the previous dispensation in Article 48(f)(ii) thereof. Failure to comply therewith visited the claimant with unenforceability of the claim. The 1989 Act furthermore introduced Regulation 3(1)(a)(iii), requiring an affidavit to be filed with the police within 14 days after an the occurrence of an accident that was allegedly caused by an unidentified vehicle. The successor of this regulation became regulation 2(1)(c) promulgated in terms of the present Act and was ruled unconstitutional in *Engelbrecht v Road Accident Fund* 2007 (6) SA 96 (CC).

38.4 The present Road Accident Fund Act 56 of 1996 retains the condition that an affidavit must be provided to the Fund in substantially the same terms as its predecessor in section 19(1)(f).

39. While the delivery and content of an affidavit was held to be directory in *Moskovitz v Commercial Union Assurance Co of SA Ltd* 1992 (4) SA 192 (W), (but held that the delivery of an unsworn statement amounted to a complete failure to comply with the condition, which could therefore not be regarded as substantial compliance), Kroon J held in *Nonxago v Multilateral Motor Vehicle Accidents Fund* [2005] 4 All SA 567 (SE) that the delivery of the affidavit was a peremptory requirement.

40. Bearing in mind that the affidavit need not be supplied if the claimant is not able to supply one it might be argued that the *Moskovitz* decision *supra* should be preferred to the finding in *Nonxago*, but as that issue does not arise directly in this matter, no final judgment need be pronounced upon this aspect.

41. The true question in this appeal is whether the claim as such was correctly identified in Form 1. The delivery of the form, duly completed, has always been a peremptory requirement. The distinction between claims submitted in terms of section 17(1)(a) on the one hand, and section 17(1)(b) on the other has always been regarded as fundamental and therefore the correct identification of the claim to be instituted either as one in which the insured vehicle is identified, or as one in which the opposite is the case, must be regarded as peremptory.

42. It follows that the unambiguous identification of a claim as one that arose as a result of the driving of an identified vehicle cannot be substituted by the filing of a contradictory affidavit as one caused by an unidentified vehicle.

43. Even if this finding were incorrect, and the issues before us were to be approached upon the basis that the affidavit could supplement any insufficient information contained in the claim form, or could in fact correct any error in the

claim, the facts of this matter would preclude a finding in appellant's favour. As has been recorded above, four affidavits were filed in all by appellant and Mr Jacobs. Their contents are not harmonious and contain contradictory averments regarding the accident.

44. The affidavits submitted to the respondent were in fact considered by the respondent's claim handler, as is evident from the letter rejecting the appellant's claim, quoted above. The critical feature of this letter is the reference to the truck identified in the claim form as the vehicle the driving of which caused the accident. The claims handler refers to the fact that this truck was '*rear-ended*'. This letter must have set the alarm bells ringing in the office of appellant's attorney – it clearly informed the addressee that the respondent accepted, on the basis of the information supplied to it, that it was dealing with a claim in terms of section 17(1)(a).

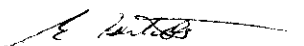
45. The appellant failed to appreciate that her claim form conveyed the incorrect information to the respondent. Even if the most lenient approach were to be adopted to the manner in which her claim was submitted the respondent's special plea was and remains unanswerable.

46. The result is that the appeal must fail

47. The following order is made:

The appeal is dismissed with costs, including the costs of two counsel.

• • •



E BERTELSMANN

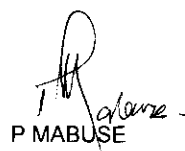
Judge of the High Court

I agree


F. G. Preller

Judge of the High Court

I agree


P MABUSE

Judge of the High Court.