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

CASE NO: 34299/2009

In the matter between:

VAN ZYL: M.M. **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

Neutral citation: *Van Zyl v Road Accident Fund* 2012 SA (GSJ)

Coram: SATCHWELL J

Heard: **27 February 2012**

Delivered: 11 June 2012

Summary: Form RAF 4 'serious injury assessment report' required for RAF liability to compensate for non-patrimonial loss – many distinctions between section 24 'claim' and regulation 3 'report' – the serious injury assessment report RAF 4 is substantiation of the claim and may be submitted during both time periods provided for in section 23(1) and (3) .

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
14/6/12
DATE
SIGNATURE

JUDGMENT

SATCHWELL J

INTRODUCTION

[1] Although the plaintiff's claim for pecuniary loss arising out of a motor vehicle accident was lodged within the prescribed period of three years, the RAF 4 from containing the medical motivation for assessment for 'serious injury' was furnished three years after the accident, with the result that defendant has now raised a special plea of prescription.

[2] A motor vehicle accident in which the plaintiff was injured occurred on 2nd August 2008. The period of three years specified for lodgement of a claim in terms of the Road Accident Fund Act 56 of 1996 ('the RAF Act') therefore expired on 1st August 2011. The plaintiff's claim was lodged on 8th January 2009. However the RAF 4 form containing the 'serious injury assessment' was only served on 6th February 2012. The defendant has filed a first special plea which states: '[t]he RAF 4 form may be submitted after the submission of the claim but before the expiry of the periods for lodgement of the claim as prescribed in the RAF Act' and that the plaintiff's claim for general damages 'prescribed on 1 August due to the fact that the RAF 4 was not submitted within 3 years from date of accident'.

[3] By agreement between the parties, I am asked only to determine this issue – whether or not the claim lodged on 8th January 2009 constitutes a claim in respect of general damages or does such claim only arise once the 'serious injury assessment report' has been lodged.

WHAT IS A CLAIM?

[4] There is no definition of a 'claim' in the RAF Act although the core of the statute is that 'the Fund shall in the case of a claim for compensation arising from the driving of a motor vehicle be obliged to compensate any person for any loss of damage which the third party has suffered.'[1] (my underlining) and the Statute is replete with references to the manner in which such 'claim' is to be prepared and presented.

[1] See section 17 of the RAF Act.

[5] A good starting point in interpretation of a statute is always to construe the legislation on its ordinary language[2] which language should be given its ordinary grammatical meaning.[3]

[6] The Oxford English Dictionary of Law[4] defines a claim as 'a demand for a remedy or assertion of a right, especially the right to take a particular case to court' and defines a claim form as a 'formal written statement setting out the details of the claimant, defendant and the remedy being sought'.

[7] *In Guardian National Insurance v Van der Westhuizen* [1990] All SA 357 (C), a full bench dealt on appeal with the degree of particularity which was required of a claimant in order to comply with the requirements of the predecessor to the RAF Act. The purpose of the directory requirements in regard to the completion of the claim form 'is to ensure that before being sued for compensation, an authorised insurer will be informed of sufficient particulars about the claim and be given sufficient time to be able to consider and decide whether to resist the claim or to settle or compromise it before any costs of litigation are incurred' and thus the claim form is 'designed to invite, guide and facilitate investigation of the claim by the authorised insurer'.

[8] The court held that the test in assessing whether a claim form complies substantially with the prescribed requirements is an objective one. The prescribed form must be examined to see 'whether or not, on all the information it contains, a reasonable insurer would have been prevented by any omission or inaccuracy therein from properly investigating the claim and determining its attitude towards it'. The 'minimum amount' of information to be supplied includes 'the identity of the claimant, the accident, the identification of the insured motor vehicle, the injuries and the loss caused thereby and the computation of the compensation claimed'. Insofar as injuries are concerned, the court stressed the need for more information where 'the injuries were alleged to be severe and the amount claimed was large'.[5]

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[2] *African Christian Democratic Party v Electoral Commission* 2006 (3) SA 305; *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA); *Manyasha v Minister of Law and Order* 1999 (2) SA 179 (SCA at 185.

[3] *Public Carriers Association and Others v Toll Road Concessionaries (Pty) Ltd and Others* 1990 (1) SA 925 (A).

[4] 5th Edition, 2002.

[5] See also *Krischke v Road Accident Fund* 2004 (4) SA 358 at paragraph [17].

[9] The 1996 RAF Act sets out the requirements for a claim for compensation and the accompanying medical report:[6] the claim shall be set out in the prescribed form which shall be completed in all its particulars: the medical report shall be completed on the prescribed form by the medical practitioner who treated the injured person or by the superintendent or his representative of the hospital where the injured person was treated or by another medical practitioner where there is the danger of prescription; clear replies are to be given to each question and the form shall be completed in all its particulars without 'ticks, dashes, deletions, alterations' unconfirmed by signature; precise details shall be given in respect of each item under the heading 'compensation claimed' and shall be accompanied by supporting vouchers.

THE CLAIM SUBMITTED

[10] Certain amendments to the RAF Act came into operation on 1st August 2008 which included certain new forms for presentation of claims and, relevant to this case, new provisions and forms pertaining to payment of compensation in respect of 'non-pecuniary loss' or general damages.

[11] Some six months after the motor vehicle accident on 2nd August 2008, the RAF 1 form was lodged on behalf of the road accident victim on 8th January 2009. There is no dispute that the claimant failed to furnish the required information as to identity, the accident, the identification of the insured motor vehicle, the injuries and the loss and the computation of the compensation claimed.

[12] Section 13 of the RAF 1 from indicates that compensation is claimed under the headings provided on the form for 'non emergency medical treatment (R 10 000), future medical expenses (R 10 000), past loss of income (R 10 000), future loss of income (R 10 000), non pecuniary loss (general damages) (R 80 000)'. These are the categories of compensation specified on the form and a line is allowed for insertion of the quantum of the claim which amount has been inserted.

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[6] In section 24 thereof.

[13] Section 15 of the RAF 1 form has not been completed. Instead are written the words 'completed on attached old MMF'. That MMF document is completed by Dr Danie Erasmus and, in handwriting, indicates that the injuries suffered by the road accident victim/claimant are 'abrasion left forearm, scalp', 'commuted fracture dislocation right ankle' and 'fracture right acertabulum with ulna (?)'.

[14] The claim was lodged. No objection has been taken to any portion thereof other than the claim for general damages of which notification was given in the defendant's first special plea served on 15th April 2011.

FORM RAF 4 SUBMITTED

[15] Since 1st August 2008, the RAF Act contains a proviso to the obligation of the Fund to pay compensation to any person for 'any loss or damage' suffered as a result of bodily injury. No longer is there an obligation in terms of section 17 of the Act to compensate for 'any loss'. There is a limitation in respect of 'non-pecuniary loss', also known as 'general damages' in 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.'[7]

[16] Section 17 (1A) provides for assessment of 'serious injury' to be based on a prescribed method which is to be found in the RAF regulations. Regulation 3 prescribes the method for assessment of 'serious injury' in terms of section 17(1)(A). Notably, there shall be submission to assessment by a medical practitioner who shall assess whether or not an injury is 'serious' in accordance with a list of non-serious injuries which the Minister is to publish, the AMA guides determination of 30% or more of Impairment of the Whole Person and certain permanent or long term results.[8]

[17] The plaintiff was assessed for the purpose of compiling the RAF 4 form on 23rd January 2012. The orthopaedic surgeon who performed the assessment noted that medical treatment was in respect of a 'fracture of the posterior wall of the right acertabulum' and 'fracture of the talus'.

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[7] Section 17(1)(a).
[8] See the provisions of Regulation 3(1)(b).

[18] The assessment then continued to record on the RAF 4 form that '[t]his patient has been assessed and does not qualify for a claim amounting to 30% or more Whole Person Impairment (WPI). The assessment has therefore been conducted along the lines of previous assessment performed under the regulations pertaining to the previous Act'. In section 5 of the form headed 'narrative test' it is recorded 'not on list of non-serious injuries and did not result in 30% WPI as provided in the AMA guides'. The words 'serious long term impairment or loss of a body function' on the form were circled by the surgeon.

[19] This form was then submitted to the RAF on 12th February 2012. Summons had already been served on 19th August 2009.

THE ACT PROVIDES CONTEXT TO FORM RAF 4

[20] The defendant's complaint is that the 'RAF 4 form was not submitted within three years from date of the accident'.

[21] Since the road accident took place on 2nd August 2008, it is common cause that, in terms of the provisions of section 23(1) of the Act the claim would prescribe on 1st August 2011, unless the running of prescription was postponed by reason of the extension of two years once a valid claim had been lodged within the three year period.[9] This would extend the period during which the claim could not prescribe to 1st August 2013.

One claim

[22] It would seem that the obligation imposed upon the RAF in terms of section 17 of the Act results in 'a' claim for compensation. (my underlining) The Act does not refer to many claims or rights or several claims or rights or a multiplicity of claims or rights. There is only 'a claim for compensation' (section 17(1)(a) and section 24) and 'the right to claim compensation' (section 23). Further, the claim is in respect of 'any loss or damage' suffered. The Act does not spell out rights or claims in respect of different causes of loss or damage.

[9] As provided for in section 23(3).

[23] Reference to 'non-pecuniary' loss in section 17 of the Act does not create a new or distinct right to compensation from that already identified in section 17. There is not an obligation to compensate for loss or damage suffered as a result of bodily injury or death and then an obligation to compensate for non-pecuniary loss. The proviso to section 17 does not purport to create separately identifiable obligations to compensate but clearly introduces a 'limitation' to entry to one particular type of compensation. Equally so, there are not separately identifiable rights or claims to such compensation.

[24] In *Evins v Shield Insurance Company* 1980 (2) SA 814 (A) Corbett JA, in discussion as to that which would constitute a single cause of action, gave as an example where:

> "[a] plaintiff who suffers bodily injury will at common law and under legislation have a single cause of action in respect of the damages claimable by him whether such damages relate to patrimonial loss or constitute a *solatium* for pain and suffering, disfigurement, disability, etc."[10]

[25] In *Duduzile v Road Accident Fund* [2007] 4 All SA 1241 (W), Jajbhay J referred to *Evins supra* and held that:

> 'The single wrongful act of the insured driver vested in the plaintiff one single right or claim to compensation, to sue for all loss or damage caused to her by such wrongful act, whether such loss or damage resulted from her claim that related to past medical expenses, future medical expenses, general damages or past loss of earnings and future loss of earnings. There is no justification for distinguishing between the right to recover for compensation in respect of the claims set out in the initial summons, and the claim as set out in the amended summons. ...This section [section 17], embodies in a single cause of action all the third party's rights to recover compensation. Therefore, when the plaintiff had one single right to claim compensation for all loss or damage that she suffered as a result of the collision, the first summons interrupted prescription for the entire claim of the plaintiff.[11]

[26] Accordingly, it is my view that reference in the Act to 'a claim' or 'the claim' refers to a unitary claim which is to be treated as a whole and not subdivided into different categories in accordance with common law experience which is not dealt with in the Act. This approach holds implications for issues of procedure, lodgement of claims and prescription.

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[10] 1247.
[11] 1246.

[27] I therefore find that the plaintiff's claim for compensation is one claim for loss or damage arising out of the bodily injuries sustained by her in the motor vehicle accident and not separate and subdivisible claims to which different procedures for presentation and lodgement apply or are regulated by different prescription regimes.

One procedure for lodgement of the claim

[28] It seems clear that the Act contemplates one procedure for giving notice of and therefore lodgement of the claim. The procedure set out in section 24(1)(a) of the Act requires 'a claim for compensation and accompanying medical report under section 17(1)'. Regulation 7 specifies that the claim for compensation and accompanying medical report referred to in section 24(1)(a) 'shall be in the form RAF 1'.

[29] There is no reference in section 24 of the Act to any other documentation or report. Regulation 7 makes it clear, in peremptory fashion, that the only documentation which shall comply with section 24 'shall be in the form RAF1'.

[30] There could be no reference to a 'serious injury assessment report' because section 17(1A) of the Act does no more than refer to a prescribed method of assessment to be adopted.

[31] Accordingly, I find that the claimant was required to follow the only procedure laid down in section 24 of the Act and complete the documentation which is provided for compliance with the procedures laid down in the Act. There is only one claim form and one procedure. There is not a multiplicity of claims or forms or procedures. Only one procedure is laid down in the Act for valid lodgement of a claim.

[32] I find that the claimant cannot be criticized or faulted in terms of the Act for complying with the provisions of section 24 of the Act which are peremptory as to the documentation to be utilised and the manner in which it is to be completed and in where the Act is silent on any other documentation or procedure to be utilised.

Form RAF 1 comprises claim for compensation for 'non-pecuniary loss'

[33] The RAF 1 form provided for by the regulations requires answers or responses to certain identified issues. These cover those very same matters identified in *van der Westhuizen supra.* Once filled in, completed in full and all information is provided – then one could say that the claimant has indeed furnished information which does 'at least allow the insurer to ascertain whether it can be held liable and the potential ambit of its liability'.[12]

[34] Amongst the information required of the claimant in form RAF 1 is an indication of the categories of compensation which comprise the claim as a whole. There is room for indication of each category of compensation which is or is not claimed, the amount claimed under each category and the total of the claim itself. One such category provided for is 'non-pecuniary loss (general damages)' and then a line for an amount to be inserted.

[35] The medical report which must be completed for there to be compliance with section 24 of the Act also requires information to be supplied. Paragraph 15 of the form RAF 1 is headed 'Medical Report' and requires details of patient, injuries sustained, emergency and non-emergency medical treatment, pre-existing medical conditions, future medical treatment, treatment to date and the details of the medical practitioner completing the form.

[36] Clearly, the RAF 1 form requires the claimant to inform the RAF 'of sufficient particulars about the claim'. The Act imposes an obligation upon the claimant to complete the prescribed form 'in all its particulars'. The Act does not permit the claimant to omit completion of a portion of the form on the grounds that the obligation of the RAF to compensate for 'non pecuniary loss' is a separate claim to which notification will be given at another time and in another document. RAF 1 requires notification of whether or not compensation is sought under the category of non-patrimonial loss and, if so, in what amount.

[37] Accordingly, I find that if such a form, duly and properly completed in all its particularity, had been lodged with the RAF, then, on the face of it, the claimant would be compliant with the provisions of section 24 of the Act.

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[12] At page 364 of *Van der Westhuizen supra.*

Prescription

[38] Section 23 of the Act deals with 'prescription of claim'. In brief it provides that 'the right to claim compensation under section 17 from the Fund ... shall become prescribed upon the expiry of three years from the date upon which the cause of action arose.' Where a claim has been lodged in terms of section 24, ie all proper procedures required in terms of section 24 have been followed, then that claim shall not prescribe before the expiry of a period of five years from the date on which the cause of action arose. In other words, there is a three year period for lodgement of the claim and, where the claim has been properly lodged within that three year period, prescription of that claim is postponed for a further two year period.

[39] There are no other provisions in the Act dealing with prescription.

[40] Regulation 2 essentially repeats the provisions of section 23 of the Act. A claim for compensation shall be delivered to the Fund in accordance with the provisions of section 24 of the Act within three years from the date on which the cause of action arose and, where such claim has been lodged, the claim shall not prescribe before the expiry of a period of five years from the date on which the cause of action arose.

[41] Accordingly, I find that the claimant had a period of three years, from 2nd August 2008 to 1st August 2011 to lodge her claim. If the claim was properly lodged and valid, then her claim could not prescribe prior to 1st August 2013.

Objection to validity in terms of Section 24(5)

[42] Once the prescribed claim for compensation and accompanying medical report has been delivered to the RAF in terms of section 24(1)(b), the ball, as they say, is in the court of the RAF. In terms of section 24(5) of the Act, if the RAF does not within 60 days of receipt of a claim 'object to the validity thereof, the claim shall be deemed to be valid in law in all respects'. I recently had occasion in *Mzwakhe Mthetwa v Road Accident Fund*, Case No 2011/34424[13] to comment on the import of these provisions.

[13] Unreported judgment handed down on 19th April 2012

[43] I am in agreement with the learned author, Prof HB Klopper, who has prepared both '*The law of third party compensation*' and the '*RAF's Practitioner's Guide*' who has expressed the view that:

> '[s]ection 24(5) only applies to formal defects' and 'that the failure of the RAF to object is not intended to affect substantial omissions not related to the claim form and medical report... or other substantive material deficiencies in the claim'[14] and that '[t]he section has application only in respect of the formal requirements of section 24 and does not have the effect of legally validating non-compliance with the Act and its regulations should the RAF not object to validity.'[15]

[44] In *Thugwana v Padongeoukfonds* 2005 (2) SA 217 (T), the court accepted the argument of the RAF that section 24(5) applied only to procedural issues and not to the substantive case. The court found that the insertion of the word 'thereof' in the subsection indicated that this referred only to the completion and posting of the claim form and medical report and meant no more than that the RAF would be 'barred from relying on defects' if the RAF failed to object within 60 days to such defects.

[45] In *Krischke v Road Accident Fund* 2004 (4) SA 358 (WLD), the RAF raised the special plea that the plaintiff had failed to comply timeously with the provisions of the Act – there had been late delivery of the claim form and medical report and accordingly the claim had prescribed. His Lordship Mr. Justice Jajbhay took the view that the provisions of section 24(5) were enacted 'to allow the parties to inform each other about sufficient details regarding the claim, and, thereafter, it affords the Fund sufficient time to consider the claim and to decide whether it will oppose, settle or acquire additional information before costs of litigation are incurred'.[16] The learned Judge then went on to state that subsection 24(5) deals with the procedural aspect of a claim covered in section 24 and that this subsection 'has nothing to do with substantive law'.

[46] I am, with respect, in agreement with both the learned judges. To afford a different interpretation would give the subsection a meaning which would 'lead to an absurdity which the Legislature did not contemplate'. In *Krischke* supra, the learned Judge gave the example that a claim if the Fund failed to object to the validity of a claim lodged ten years after the cause of action commenced, then this claim would be resuscitated.

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[14] Paragraph 3.3.6 at page 314 of '*The law of third party compensation*'.
[15] Para 7.20.7 at page A-123 of the '*RAF's Practitioner's Guide*'.
[16] At page 365 A-B.

[47] To my mind, the provisions of subsection 24(5) must be limited to validation only of the procedural requirements of the claim which has been lodged. It can never have been the intention of the Legislature that failure by the RAF, for whatever reason, to object to the claim within 60 days would have the effect of giving substance to a claim which is based upon a mirage or an untruth or inaccuracy. Administrative dereliction or negligence which results in no objection to a claim within two months cannot possibly build a road upon the land, construct a motor vehicle from nonexistent materials, create fault where there has been road user compliance and render whole and healthy bodies into wounded and painwracked wrecks.

[48] In short, the failure of the RAF to 'object to the validity' of the claim and both medical reports (RAF 1 and RAF 4) on 29th July 2010 within 60 days (or any other period) cannot result in the injuries referred to in such documentation being deemed to be 'serious injuries' (either as to whole body impairment measured in accordance with the guidelines set out by the American Medical Association or by application of the narrative test within the meaning ascribed to it in the RAF Act). It is my view that the RAF cannot be debarred from challenging either the existence of any injuries or the assessment thereof and from contending that a further assessment should be conducted by its own medical practitioner.

[49] It is also difficult to see how the provisions of section 24(5) could result in the RAF being debarred from challenging the validity of the claim on the grounds that the form RAF 4 has not been attached. As I discuss below, the injury assessment report RAF 4 may be submitted separately from the claim form RAF1. A period well in excess of 60 days may elapse where a claim has been submitted but no serious injury assessment report has been presented. The RAF would be incapable of either challenging the validity of the claim by reason that no RAF 4 is attached thereto (since Regulation 3(3)(i) permits such absence) or doing so within 60 days (since RAF 4 may properly be submitted more than 60 days after the claim).

[50] In the present case there has been no such objection but I do not think the absence of such takes the matter any further.

The regulations in the context of the Act

[51] It is trite that regulations are subordinate to the statute under which such subordinate legislation has been made and we therefore approach the interpretation of regulations by reference to the interpretation of the relevant statute.[17] The Act and regulations do not form and should not be treated as a single piece of legislation and accordingly we cannot and do not use the RAF regulations to interpret the RAF Act.[18]

[52] Section 26 (1) of the Act generally empowers the Minister to make regulations regarding any matter prescribed in the Act. Without derogating from the generality of subsection (1) the Minister is specifically empowered to make regulations 'regarding the method of assessment to determine whether, for purposes of section 17, a serious injury has been incurred'; 'injuries which are, for the purposes of section 17, not regarded as serious injuries'; and 'the resolution of disputes arising from any matter provided for in this Act'.

[53] Regulation 3(1) provides that a person 'who wishes to claim compensation for non-pecuniary loss shall submit himself or herself to an assessment by a medical practitioner in accordance with these Regulations'. From such medical practitioner the claimant is to obtain a 'serious injury assessment report' defined as 'a duly completed form RAF 4'. Although the wording of sub regulation (1) uses two future tenses 'who wishes to claim' and 'shall submit', one cannot read into the sub regulation that the assessment must precede the claim because it is the 'wish' and not the 'claim' which must precede the assessment.

[54] Regulation 3(b) provides that 'a claim for compensation for non-pecuniary loss in terms of section 17 of the Act shall be submitted in accordance with the Act and these Regulations' which is uncontroversial and a statement of law.

[55] The difficulty arises that the defendant has chosen to rely upon an interpretation of the regulations which appears not to be compatible with the Act. Such apparent incompatibility I shall discuss below.

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[17] South African courts have followed the English rule of interpretation: see *Blashill v Chambers* (1884) 14 QB 479 485; *Macfisheries Ltd v Coventry Corp* 1957 3 All ER 299.

[18] See the discussion in EA Kellaway *Principles of Legal Interpretation of statutes, contracts and wills* 1995 at 374.

WHAT IS FORM RAF 4 – 'SERIOUS INJURY ASSESSMENT REPORT' AND WHEN MUST IT BE SUBMITTED

[56] This is the crux of this case. What import does the submission or the non-submission of the RAF 4 have upon the claim documents already submitted?

[57] The defendant argues that, without submission of 'a serious injury assessment report', no claim in respect of non-patrimonial loss can or does exist. Non patrimonial loss has been singled out in section 17(1)(a) for special attention and a special procedure applies thereto which requires submission of the serious assessment report. The report and the claim may be submitted at different times but, relying upon the provisions of regulation 3(3)(b)(ii), it is argued that the report must be submitted 'at any time before the expiry of the periods for the lodgement of the claim'. Since no claim exists without the report, it follows that both the claim forms and the report must be lodged prior to expiry of the prescribed three year period. Failing such timeous lodgement, the claim in respect of non patrimonial loss prescribes.

The provisions of the Act

[58] I have already pointed out that the defendant's argument cannot be sustained by reason of the wording of the Act itself.

[59] Firstly, in a number of sections, the Act refers to only one claim for compensation not multiple diverse and separate claims each subject to their own statute. Secondly, only one procedure is required by section 24 of the Act for the presentation and lodgement of such claim. Thirdly, the Act refers to the one claim form and medical report which is the form RAF 1. Fourth, the contents of form RAF1, if completed with full particularity, meet the requirements of a 'claim'. Fifth, section 23 of the Act which deals with prescription is replicated in the regulations which introduce no new provisions. Sixth, the RAF made no objection to the validity of the claim for compensation, in respect of any portion thereof (general damages) or otherwise, within 60 day of lodgement of the claim.

[60] In short, the clear wording of the RAF Act does not appear to sustain the argument of the defendant.

[61] One needs to turn to the regulations to disentangle the defendant's argument.

Distinction between the claim and the report - Regulation 3(3)(b)(i)

[62] The first portion of Regulation 3(3)(b)(i) provides that 'the serious injury assessment report may be submitted separately after the submission of the claim'. (my underlining). This portion is compatible with the reading of the RAF Act which I have set out above. The 'claim' is independent of the 'report'. The claim, as provided for in section 24 may be formulated, prepared and submitted separately from the 'serious injury assessment report' and still be called 'the claim'. The claim and the report are capable of separation – the absence of one does not negate the existence of the other. The claim, completed in full particularity, is a claim for the purposes of section 24 and 23 even without accessory reports. The report, completed in full by the medical practitioner, contains no claim at all and is merely a statement of physical injury.

[63] In other words, the serious injury assessment report, RAF 4, is substantiation of the claim. Form RAF 4 supports what has already been claimed – compensation under a number of categories including compensation for non-pecuniary loss. Form RAF 4 is substantiation of some of the averments in the claim – viz bodily injury deserving of compensation.

[64] Compensation for non-patrimonial loss has been singled out in section 17(1) by reference to the threshold which must be crossed before the RAF can or will be liable to pay compensation. The threshold is that of 'serious injury'. Where the prescribed entry level of injury is not met, the RAF is not obliged to compensate the road accident victim.

[65] There is nothing particularly unusual or complex about this concept of threshold or entry level. It applies to the other categories of compensation for which the RAF is liable. Where compensation for past medical expenses is sought then the claimant must, at some point, substantiate the entitlement to and quantum of compensation by reference to witnesses or documentation which evidence an injury, provision of healthcare or the cost thereof. Similarly, where compensation for past or future loss of earnings is sought then the claimant must, at some point, substantiate the entitlement to and quantum of compensation by reference to witnesses or documentation which evidence her employment prior to the accident, remuneration received from such employment in the past and in the future, the days

or months which have not been or will not be worked and so on. In each instance, there is an entry level for qualification for compensation: in all cases an injury and in one case costs of healthcare and in the other case employment and loss of remuneration. These are the thresholds which must be crossed before the RAF 'shall be obliged to compensate any person for any loss or damage which the third party may have suffered...'(section 17).

[66] Such evidence or proof as to healthcare costs or employment and remuneration is not required to be furnished at the time of or contemporaneous or as part of the claim submitted in terms of section 24. This evidence is not a requirement or precondition for lodgement of a claim. It will probably be a requirement for finding that the RAF is obligated to pay compensation – either by way of negotiations and settlement or by way of trial and court order.

[67] This reading of this first portion of regulation 3(3)(i) is confirmed when one has regard to sub regulation 3(3)(c) which provides that 'the Fund shall only be obliged to compensate a third party for non-pecuniary loss as provided in the Act if a claim is supported by a serious injury assessment report submitted in terms of the Act and these Regulations' (my underlining) and the Fund is satisfied that the injury has been correctly assessed as serious. Again, one finds the distinction drawn between the 'claim' and the 'report'. They are not one and the same. The claim and the report are distinguishable – the report is stated to 'support' the claim.

Time periods for submission of report – Regulation 3(3)(b)(i)

[68] The second portion, of regulation 3(3)(b)(i) provides that the serious injury assessment report may be submitted separately after the submission of the claim 'at any time before the expiry of the periods for the lodgement of the claim prescribed in the Act and these Regulations'.

[69] The wording of the sub regulation is significant: 'the serious injury assessment report may be submitted separately after the submission of the claim before the expiry of the periods for the lodgement of the claim....'. (my underlining). This is permissive wording. There is nothing peremptory about the language.

[70] Professor Klopper has suggested that the provisions of sub regulation 3(3)(b)(i) indicates that the report can be lodged at any time before a claim has prescribed – 'indicating the extended periods that follow on the lodging of a claim' ie three years extended by two years (on lodgement of a claim). I can see no reason why this should not be the case. Once a claim which complies with the provisions of section 24 has been lodged within the time period stipulated in section 23(1) ie three years after this accident, then a further period of two years elapses before the claim prescribes. During the initial three year and the extended two year periods, there is no reason why substantiating documentation such as the 'serious injury assessment report' may not be submitted.

[71] Certainly, there is nothing in the regulations which supports the defendant's argument that the claim for general damages prescribes if the report is not submitted within three years. There is nothing in the regulations dealing with prescription. Indeed one would not expect there to be any reference to prescription. The Act has already dealt with prescription – the claim (ie RAF 1 and medical report) must be submitted within three years and, once this is done, the claim shall not prescribe until a further two year period has elapsed. The regulations cannot override the Act.

[72] Not only do the regulations make no reference to any innovative method of determining claims, procedures for lodgement or prescription but the regulations focus (just as does the Act in section 17) upon the obligation on the RAF to pay compensation. Regulation 3(3)(c) states that '[t]he Fund shall only be obliged to compensate a third party for non-pecuniary loss as provided in the Act if a claim is supported by a serious injury assessment report'. Again there is the distinction between the claim and the report and the reference to the report as support for the claim. More importantly is the focus or stress on the 'obligation to compensate'. This suggests, that the report is essential for the obligation or liability on the part of the RAF to arise. Again, one returns to the issue of substantiation and evidence and proof of that which is averred in the claim.

[73] In this sense, the defendant is correct. No general damages or compensation for non-pecuniary loss can or will be paid until such time as the Fund is obliged so to do and such

obligation shall only arise once the claim is supported by the serious injury assessment report and the Fund is satisfied that the injury has been correctly assessed as serious.[19]

[74] The RAF has an election upon receipt of the claim and the report. It may accept the obligation to compensate for general damages, it may refer the road accident victim for further assessment, or it may reject the report. There is nothing to preclude any of these events taking place after the expiry of the first three year period provided for in section 23(1).

CONCLUSION

[75] Accordingly, I find that the claim envisaged and peremptorily directed by the Act is neither correspondent with nor one and the same as the serious injury assessment report. They are two documents formulated and prepared for different purposes. The claim notifies the RAF of the identity of the claimant, the motor vehicle accident, the identification of the insured motor vehicle, the injuries and the loss caused thereby and the computation of the compensation claimed. The report provides support for that category of compensation, non-pecuniary loss, for which the RAF can only be liable if a specified threshold level of injury has been reached. That support is substantiation of the claim, it is evidence of the claim, it is not the claim itself.

[76] I further find, that the Act stipulates only one procedure for presentation of the claim for compensation for loss sustained as a result of bodily injury in a road accident. Such procedure is found in section 24 and in form RAF 1 provided for in the Act. Where form RAF 1 is completed with full particularity in compliance with the Act and then submitted, the 'claim' as intended and specified by the Act has been lodged. Should there be any challenge to the validity of the claim, then the RAF has a period of sixty days within which to notify the claimant of any challenge to thereto. If the claim was challenged by reason of absence of the supposed prerequisite of form RAF4, then one would expect the RAF to have notified the claimant.

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[19] See regulation 3(3)(c) 'The Fund shall only be obliged to compensate a third party for non-pecuniary loss as provided for in the Act if a claim is supported by a serious injury assessment report submitted in terms of the Act and these Regulations and the Fund is satisfied that the injury has been correctly assessed as serious in terms of the method provided in these Regulations.'

[77] I find that section 23 of the Act determines prescription and the regulations merely repeat, in regulation 2, the provisions of section 23. Regulation 3 does not even purport to deal with prescription. At most, in conformity with the Act, the regulations provide that the RAF shall not be under any obligation to pay compensation in respect of non-patrimonial loss until such time as the serious injury assessment report has been submitted (and the assessment is accepted). I am satisfied that the prescription periods provided for in the Act, namely the initial three years and the extension of two years, are both periods during which the form RAF 4 may be submitted to the RAF.

[78] I also find that the obligation of the RAF to compensate the claimant may only arise once the form RAF 4 (the serious injury assessment report) has been submitted. Notwithstanding, that no liability of the RAF may arise prior to submission of RAF 4 form, the claim may be valid in all respects.

[79] In the present case the accident took place on 2nd August 2008. The claim was submitted on 8th January 2009. The validity of that claim has not been challenged by the RAF. The document gives notification of a claim for general damages in the amount of R80 000 (eighty thousand rand). The medical report attached thereto identifies that the injuries suffered included 'abrasion left forearm, scalp', 'commuted fracture dislocation right ankle', 'fracture right acertabulum with ....'. The summons was issued on 19th August 2009. The serious injury assessment report, Form RAF 4, was submitted on 12th February 2012.

[80] I find that the claim for compensation in respect of non-patrimonial loss has not prescribed.

[81] There are two matters on which I wish to comment. Firstly, the form RAF 1 was completed in a most slovenly and careless fashion. This is an important document. Secondly, the summons was issued some six months after submission of the claim and some eighteen months prior to submission of the form RAF 4. It was therefore not possible for the RAF to give any consideration to the question of assessment of the injuries allegedly suffered by the plaintiff and respond thereto.[20] This must obviously have certain costs implications. The RAF has only been in a position to respond to the RAF 4 subsequent to 12th January

[20] See *Krischke supra.*

2012. It may well be that the plaintiff should not have incurred the costs of issue of summons and of medical and other experts prior to submission of the report. This is a matter for the parties to negotiate or a trial court to decide.

[82] An order is made as follows:

a. The First Special Plea of the Defendant is dismissed with costs.

DATED AT JOHANNESBURG ON THIS 11th DAY OF JUNE 2012

SATCHWELL J

APPEARANCES

PLAINTIFF:	FA Saint
	Instructed Wim Krynauw Attorneys, Johannesburg
DEFENDANT:	J M Killian
	Instructed by Mayat Nurick & Associates, Johannesburg