

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

DATE

SIGNATURE

CASE NUMBER: 27822/2013

In the matter between:

TSHABALALA, SIBONGILE JOHANNA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

SUMMARY

Action for damages for personal injuries in terms of section 18(1)(b) of the Road Accident Fund Act 56 of 1996, read with sections 2(1)(a) and 2(1)(e) of the Road Accident Fund (Transitional Provisions) Act 15 of 2012.

Action initially instituted in a magistrates court for a limited quantum in terms of section 18(1)(b) of act 56 of 1996. The latter section having been declared unconstitutional, plaintiff instituted this action in the High Court for a substantially increased quantum in terms of sections 2(1)(a) and 2(1)(e) of Act 15 of 2012 without having first withdrawn the magistrates court action.

Defendant pleaded prescription in the High Court action, it being common cause that the magistrates court action had been launched within the applicable prescriptive period. The court had to interpret the meaning and application of the provisions of sections 2(1)(a) and 2(1)(e) of Act 15 of 2012.

Plaintiff argued, firstly, that in terms of section 2(1)(a), the date upon which her cause of action had arisen, namely 20 October 2006, relocated to 01 August 2008, for the purposes of prescription, and as the High Court action was instituted on 30 July 2013, the action has not prescribed. Secondly, that it was not necessary for her to have first withdrawn her action in the magistrates court due to the permissive use of the word “may” in section 2(1)(e) of Act 15 of 2012.

The court disagreed.

The court found that section 2(1)(a) merely created an artificial date for the arising of a cause of action for the limited purposes stated in section 2(1)(a) in order to enable a claimant in the plaintiff's position to claim the relief that was not previously available to the plaintiff. The

commencement date of prescription in relation to the plaintiff's claim, therefore, did not relocate from 20 October 2006 to 01 August 2008.

The court found that in terms of section 2(1)(e), the following three pre-requisites needed to be complied with before the plaintiff could institute a new action in the High Court for an increased quantum: First, the action in the magistrates court had to be withdrawn; second, the plaintiff had to institute her action in the High Court within sixty days of the withdrawal of the magistrates court action; and third, the magistrates court action must not have been susceptible to a plea of prescription before the institution of the High Court action.

The plaintiff's failure to comply with these requirements resulted in her High Court action having been instituted well beyond the prescriptive period. As such, the plaintiff's claim had prescribed.

Her action was, accordingly, dismissed with costs.

A CHAITRAM
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION

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