REPUBLIC OF SOUTH AFRICA

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

CASE NO: 37961/2012

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

9 SEPTEMBER 2016 **FHD VAN OOSTEN**

In the matter between

CHESLIN HAYWOOD **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Prescription - Personal injury - Claim for compensation against the RAF in terms of s 17(1)(b) of the Road Accident Fund Act 56 of 1996 lodged more than 2 years after date of collision - requirements of reg 2(2) of the regulations promulgated under s 26 of the Act peremptory - RAF repudiated liability – certain details concerning identity of driver subsequently established and pleaded in summons – summons issued and served on the RAF more than 5 years after date of collision - plaintiff thereafter filed amended RAF claim form containing particulars of the identity of the driver of the insured vehicle - RAF deprived of all the advantages provided for in the Act and regulations - special pleas of prescription upheld - claim dismissed with costs.

J U D G M E N T

VAN OOSTEN J:

Introduction

[1] In the main action between the parties the plaintiff claims compensation damages from the defendant (RAF) arising from a collision between the plaintiff who was a pedestrian and a motor vehicle on 25 August 2007. At the time of lodging the claim with the RAF the plaintiff was not in possession of any particulars as to the identity of either the motor vehicle involved in the collision or the driver thereof. The plaintiff instituted the main action and served the summons on the defendant on 8 October 2012. The RAF defends the action and delivered two special pleas of prescription. The action was enrolled for hearing but the parties agreed that the special plea be adjudicated first, in terms of a stated case which now serves before me.

[2] The special plea raises the issue whether the plaintiff's claim has become prescribed.

The lodging of the claim and issue and service of summons

[3] The plaintiff's claim was lodged with the RAF on 24 August 2010. The statutory claim form (Form 1), in regard to 'particulars of motor vehicle from the driving of which the claim arises' reflects the words 'TO FOLLOW' having been inserted in manuscript, between two cross lines. The RAF considered the claim as a 'hit and run claim' (thus a claim for compensation in terms of s 17(1)(b) of the Road Accident Fund Act 56 of 1996 (the Act)) and on 21 January 2005 repudiated liability asserting that the claim was lodged more than 2 years after the date of the collision, as required in terms of reg 2(2) of the regulations promulgated under s 26 of the Act.

[4] On 4 February 2014 the plaintiff's attorneys in a letter to the RAF gave notice of an amendment to the Form 1 in furnishing the names, identity number and address of the driver of the motor vehicle involved in the collision in respect of which an amended Form 1 was attached.

[5] On 8 October 2012 summons was issued and served on the RAF. In regard to the collision it is stated in paragraph 2 of the particulars of claim, that the collision had occurred between 'a vehicle of unknown registration… there and then being driven by a Mr Xavier of Eldorado Park…and the plaintiff'.' On 20 November 2013 the plaintiff gave notice of intention to amend the particulars of claim in *inter alia* the adding of the identity number and address of the insured driver in paragraph 2 thereof. Merely for the sake of completeness I need to add that the RAF filed a

notice of objection to the proposed amendment but having heard argument on this aspect, I allowed the amendment.

[6] On 4 February 2014 the plaintiff's attorneys gave notice of and filed an amended Form 1 in which the particulars in respect of the insured driver I have referred to were furnished. In regard to the identity of the vehicle involved in the collision the form still reflects the word in manuscript 'TO FOLLOW'.

The opposing contentions of the parties

[7] The plaintiff, with reliance on the judgment of the Supreme Court of Appeal in *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA), and in particular what Petse JA, writing for the court, remarked concerning the primary purpose and objectives of the Act, as follows (para [18]:

> 'It has long been recognised in judgments of this and other courts that the Act and its predecessors represent social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle'. Accordingly, in interpreting the provisions of the Act, courts are enjoined to bear this factor uppermost in their minds and to give effect to the laudable objectives of the Act. But, as the Full Court correctly pointed out, the Fund which relies entirely on the fiscus for its funding should be protected against illegitimate and fraudulent claims.'

contended for a favourable interpretation of the Act and its regulations, with special allowance for the fact that the plaintiff was a minor at the time the collision.

[8] The defendant on the other hand submitted that the plaintiff's claim, on any interpretation of the Act, has clearly prescribed.

Discussion

[9] The first lodgement of the claim was outside the two year period. It was considered as a s 17(1)(b) claim for compensation in respect of which the two year period for lodgement applied, notwithstanding the fact that the plaintiff was a minor. The requirements of reg 2(3) are peremptory (*Geldenhuys & Joubert v Van Wyk and Another; Van Wyk v Geldenhuys & Joubert and Another* 2005 (2) SA 512 (SCA)). Neither counsel challenged the facts underscoring, or, the validity of the RAF's

repudiation of the claim. I however, gave some consideration as to whether the indication in Form 1 that details concerning the identity of the driver of the vehicle would follow, did not perhaps disclose a claim for compensation under s 17(1)(a). In the plaintiff's statutory affidavit deposed to on 17 March 2008, he referred to a collision having occurred 'when a Ford Bakkie of an (sic) unknown registration letters and numbers driven by an unknown driver collided with me from behind'. This aspect was not addressed by counsel. A finding that it was indeed a claim in terms of s 17(1)(a) would in any event not assist the plaintiff, as I will presently deal with. I accordingly do not consider it necessary to consider this aspect any further.

[10] On a conspectus of the procedures followed by the plaintiff, the following important considerations come to the fore:

[11] The first inkling concerning any particularity of the identity of the driver the RAF could have had was upon service of the summons. The particularity there stated, in any event, was clearly insufficient to enable the RAF to enquire into the claim: merely the name and residential suburb of the driver were furnished (*Constantia Insurance Co Ltd v Nohamba* 1986 (3) SA 27 (A) 39G-H). It was only in the plaintiff's notice of intention to amend, served almost six-and-a-half years after the collision, that sufficient particularity concerning the driver was furnished.

[12] The summons was issued and served more than 5 years after the collision. The RAF accordingly was unable in any manner, to investigate and assess its liability for more than 5 years after the collision, an advantage provided for in the Act and regulations that cannot be ignored (*Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (A) 152E-I).

[13] The plaintiff's minority at the time of the collision (s 23(2)(a) of the Act) is of negligible consequence in considering the delays that had occurred: he attained the age of majority less than 2 months after the collision.

[14] The RAF, in this instance, was deprived of all the advantages provided for in the Act and regulations and, as was stated in *Radebe,*

> 'It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the

> claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation[1]…These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced.'

I am accordingly driven to conclude that the plaintiff's claim has prescribed.

Order

[15] In the result I make the following order:

1. The defendant's special pleas of prescription are upheld.
2. The plaintiff's claim is dismissed.
3. The plaintiff is to pay the costs of the action.

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FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR PLAINTIFF	***ADV DJ COMBRINCK***
PLAINTIFF'S ATTORNEYS	***AF VAN WYK ATTORNEYS***
COUNSEL FOR DEFENDANT	***ADV B JOSEPH***
DEFENDANT'S ATTORNEYS	***MAYAT NURICK LANGA INC***
DATE OF HEARING	***26 AUGUST 2016***
DATE OF JUDGMENT	***9 SEPTEMBER 2016***

[1] In 2015 the RAF spent more than R5.6bn on legal fees – *Legalbrief Today,* 8 September 2016.