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Case no. 627/90

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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SANTAM INSURANCE COMPANY LIMITED

Appellant

and

WALTER ERNEST WILLIAMS

Respondent

Coram: CORBETT CJ, HEFER et F H GROSSKOPF JJA

Heard: 25 November 1991

Delivered: 16 January 1992

J U D G M E N T

GROSSKOPF JA:

On 15 September 1987 and at Port Shepstone a motor vehicle collided with the respondent, a pedestrian. The respondent sustained serious bodily injuries as a result of the collision. The appellant, an appointed agent of the Motor Vehicle Accident Fund in terms of the Motor Vehicle Accidents Act 84 of 1986 ("the Act"), had issued a token of identification in respect of the said vehicle. The respondent was an elderly pensioner. He experienced continued sepsis in respect of some of his wounds. His claim for damages against the appellant was accordingly held back in order to allow his condition to stabilise. The prescribed MV3 claim form was eventually submitted to the appellant on 8 September 1989, shortly before the expiration of the two year prescriptive period provided for in section 14(1)(a) of the Act. On 6 November 1989 the appellant made the respondent an offer of settlement which was subsequently increased. The

offer was not acceptable to the respondent and summons was issued. It was served on the appellant on 19 April 1990. The appellant maintained that the respondent's claim had become prescribed before summons was served; it filed a special plea to that effect. This caused the respondent to apply on notice of motion for an order declaring, **inter alia**, that his claim had indeed not become prescribed. The Court **a quo** (**Hugo J** sitting in the Durban and Coast Local Division) held that prescription had been suspended pursuant to the provisions of section 14(2) of the Act and that the respondent's summons had been served in time. The Court **a quo**, however, granted the appellant leave to appeal to this Court.

This appeal concerns the proper interpretation of section 14(2) of the Act, which provides for the suspension of prescription for a period of 90 days after due delivery of a notice either repudiating liability or conveying an offer of settlement. The pertinent question raised in the Court **a quo** was whether delivery of a second offer of settlement had the

effect of suspending prescription for a fresh period of 90 days. Section 14 of the Act deals with prescription of claims. Subsection (2) thereof provides:

> "(2) If an appointed agent does not within 60 days after receipt of a claim as set out in section 15(1) object to the validity thereof, prescription shall, notwithstanding the provisions of subsection (1), be interrupted until after the expiration of a period of 90 days from the date on which the appointed agent deilvers to the claimant or his representative per registered post or by hand a notice to -
>
> (a) repudiate liability; or
> (b) convey an offer of settlement of the claim to the claimant or his representative."

The Act has been described as "an extremely poor piece of legislation" (Newdigate and Honey **MVA Handbook** par 11.02). Sections 14 and 15 in particular have been criticised. (See: **Ngantweni v National Employers' General Insurance Company Ltd** 1991(2) SA 645(C) at 648F-649I; Honey **MVA Practice under Act 84 of 1986** at 108-109, 115-116; **MVA Handbook**, **supra**, par 11.69 - 11.71) **De Kock J** remarked as follows in **Ngantweni's** case at 648F-G:

> "It is obvious that the new ss 14 and 15 of the Act differ in material respects from their counterparts in the now repealed Compulsory Motor Vehicle Insurance Act 56 of 1972, viz ss 24 and 25. Sweeping changes have been made to the provisions regulating the question of when and how the right to claim compensation under the Act becomes prescribed. Unfortunately, the Legislature has introduced these far-reaching innovations in language that is anything but clear and which is calculated to cause confusion and uncertainty."

It is unnecessary for present purposes to deal with all the problems created by section 14(2). I should, however, point out that the Legislature obviously used the word "interrupted" per incuriam in that sub-section. The clear intention was to provide for a suspension, and not an interruption of prescription. The proviso to section 14(1)(a) actually refers to prescription being "suspended" during the periods referred to in sections 14(2) and 15(2), yet section 14(2) provides that prescription shall "be interrupted until after the expiration of a period of 90 days.... ". Prescription cannot, strictly speaking, be interrupted for "a period"; once interruption takes place

prescription begins to run **de novo**. That could hardly have been the intention of the Legislature. (Cf **Ngantweni's** case, **supra**, at 649C-G).

The appellant did not, within 60 days after receipt of the MV3 claim, object to its validity in terms of section 14(2). On the contrary, the appellant made an offer of settlement on 6 November 1989 ("the first offer") and duly delivered notice thereof to the respondent. I shall assume in favour of the appellant that the first offer was a proper offer of settlement as envisaged by section 14(2). As such, it would have suspended prescription for a period of 90 days. The respondent, however, informed the appellant that the first offer was totally inadequate, whereupon further correspondence passed between the parties. During the 90 day period of suspension the respondent received notice of an increased offer of settlement dated 22 January 1990 ("the second offer"). The second offer was not dispatched by registered post, but **Mr Marnewick**, for the appellant,

conceded that it was delivered "by hand", pursuant to the requirements of section 14(2). It was also not in dispute that the second offer was indeed an offer of settlement.

The Court **a quo** concluded that the second offer was "an offer of settlement" as envisaged by section 14(2), having the effect of suspending prescription for a further period of 90 days. It is common cause that the summons was served on the appellant within 90 days of delivery of the second offer.

Counsel for the appellant submitted that section 14(2) does not provide for more than one period of suspension. He contended that the first offer put the statutory period of 90 days into operation and that any subsequent increase in the offer could not suspend prescription for a further period. For this contention counsel relied upon the judgment of **Moatshe v Commercial Union Assurance Co Ltd of SA** 1991(4) SA 372(W), where **Kirk-Cohen J** held as follows at 377H-378C:

"The subsection [14(2)] does not provide for, nor contemplate, one period of 90 days consequent upon a repudiation and, in the alternative, for a possible series of extensions by differing offers of settlement. It contemplates a single extension of 90 days for the purpose of enabling the claimant to consider:

(1) whether, in the light of the evidence available, he should proceed with his action; or

(2) the adequacy of the offer, having regard, inter alia, to the medical evidence available and the possibility of an apportionment.

This interpretation is borne out by the words used. The subsection uses the words 'a period' of 90 days, indicating one and only one period of 90 days determined by one of the two events to which I have referred. It also refers to 'the date' of delivery of the letter of repudiation or offer. In context these words, denoting the singular, read:

> '....(U)ntil after the expiration of a period of 90 days from the date on which the appointed agent delivers ... a notice...'

If the Legislature intended to include a series of offers and to prescribe that the 90 days commenced to run from the last offer it would have said so in so many words by spelling out that in such event the 90 days would run from the last offer. Further, it would in such event not have linked such a provision to the single act and single period of 90 days following upon a

> repudiation of liability. In my view the 90 days runs from the first letter in which an offer of settlement is conveyed to a claimant."

With respect I do not agree with the above conclusion of the learned Judge. Although section 14(2) does not specifically provide for a further suspension of 90 days in the event of a second or subsequent offer of settlement, there is nothing in the wording of the subsection to exclude it. Phrases such as "a period", "the date", "a notice", "an offer" do not preclude the interpretation contended for by the respondent and preferred by the Court a quo. A second or subsequent offer is as much "a notice" to convey "an offer" of settlement as the first. A second or subsequent offer in my judgment would equally suspend prescription for "a period" of 90 days from "the date" of delivery thereof.

As has been pointed out in **Aetna Insurance Company v Minister of Justice** 1960(3) SA 273(A) at 286 E-F the intention of the Legislature, as revealed in the legislation relating to motor vehicle insurance, was to give the greatest

possible protection to third parties. (See also **Hladhla v President Insurance Co Ltd** 1965(1) SA 614(A) at 624A-C; **Rondalia Versekeringskorporasie van SA Bpk v Lemmer** 1966(2) SA 245(A) at 255G-H; **Ngubetole v Administrator, Cape and Another** 1975(3) SA 1(A) at 8 A-E). In **Coetzer and Another v Santam Versekeringsmaatskappy Bpk** 1976(2) SA 806(T) **Franklin J** held at 811H:

> "Since the prescriptive provisions of the Compulsory Motor Vehicle Insurance Act clearly curtail the rights of individuals who are injured as a result of the negligence of a third party, in my view they should also be construed liberally in favour of such injured persons."

The changes introduced in the Act by section 14, and in particular section 14(2), were clearly designed to give the parties additional time to consider their respective positions and to afford them greater opportunity to negotiate a settlement once the MV3 claim form has been delivered to the appointed agent. Provided the appointed agent does not object to the validity of the claim within 60

days, prescription is effectively suspended by section 14(2) for an indefinite period, giving the appointed agent time to consider the claim and an opportunity to decide whether to repudiate liability or make an offer of settlement. Once the appointed agent has given the claimant notice, either repudiating liability or conveying an offer of settlement, the claimant is afforded a suspensive period of 90 days to consider his position and take appropriate steps. If the appointed agent has made an offer of settlement the claimant is given time to consider the offer in all its implications, and to engage in further negotiations if necessary. In my judgment the subsection should be so construed as to afford the parties every reasonable opportunity of reaching a settlement. It is for the appointed agent to decide whether he wishes to make a second or subsequent offer of settlement; he can therefore not complain of any inequity if a further 90 day period of suspension is allowed for a second or later offer, provided of course that it is a proper offer with new

terms. To disallow such further period of suspension could, on the other hand, lead to inequity from the claimant's point of view. This is illustrated by the extreme example used by the learned Judge in the Court a quo. On the appellant's construction of section 14(2) a claimant would have only one day in which to consider his position if a second offer of settlement is made 89 days after the first. It would indeed be unfair in such circumstances to expect a claimant to decide in so short a period whether to accept the new offer or to issue summons.

In my judgment the second offer suspended prescription for a further period of 90 days. The respondent's claim for damages against the appellant had therefore not become prescribed prior to the service of summons on 19 April 1990.

The appeal is accordingly dismissed with costs.

F H GROSSKOPF JA

CORBETT CJ

HEFER JA Concur