

***THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA***

Case No: 466/96

In the matter between

G P MALOKOANE

Appellant

and

**MULTILATERAL MOTOR VEHICLE
ACCIDENTS FUND**

Respondent

CORAM:

VAN HEERDEN DCJ, NIENABER, HARMS,
SCOTT JJA et MELUNSKY AJA

DATE HEARD:

4 September 1998

DATE DELIVERED:

21 September 1998

JUDGMENT

MELUNSKY AJA

MELUNSKY AJA

The only question that arises in this appeal is whether the appellant's claim against the respondent has become prescribed.

According to the particulars of claim the appellant was a passenger in a motor vehicle which overturned on 30 April 1992. She sued the respondent, the Multilateral Motor Vehicle Accidents Fund ("the MMF"), in the Transvaal Provincial Division for damages arising out of injuries which she allegedly sustained in the incident. She averred that the overturning of the vehicle was due to the driver's negligence and that the MMF was obliged to compensate her in terms of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 ("the Act"). Apart from denying liability on the merits, the MMF raised a special plea of prescription which was upheld by Woudstra AJ in the Court *a quo*. The Act has been repealed and replaced by the Road Accident Fund Act 56 of 1996 but the parties are in agreement that this appeal is to be

determined according to the provisions of the Act and the Agreement establishing the MMF ("the Agreement") which, in terms of Section 2(1) of the Act, had the force of law at the time.

The facts relating to the question in issue, which were put before the court by means of a stated case, can be summarised as follows:

1. Mutual and Federal Insurance Company Limited ("Mutual and Federal") was an appointed agent in terms of Article 13 of the Agreement. At the relevant time (i.e. during the period July 1994 to September 1995) it was designated to handle claims arising out of motor vehicle accidents which occurred on 1 May of any year where the identity of the driver or owner of the motor vehicle was known. (The word "handle" in relation to claims is used in article 62(a) and apparently encompasses all of the powers and duties of an appointed agent which are detailed in article 13(b). Both articles will be set out later.)
2. During the same period the MMF was responsible for handling claims arising out of motor vehicle accidents which occurred on 30 April of any year where the identity of the driver or owner of the motor vehicle was known.
3. During July 1994 a claim for compensation on the prescribed MMF 1 form in respect of the appellant's claim for damages was sent by registered post to Mutual and Federal which received it on 2 August 1994. At the time the appellant and her legal representatives were under the *bona fide* belief that the accident had occurred on 1 May 1992. (In fact it appears from submissions made by counsel in the Court *a quo* and

from the judgment of the learned judge that the form was originally sent to a company known as Sentrasure Limited which forwarded it to Mutual and Federal.)

4. Mutual and Federal repudiated liability on 27 July 1995 when it became clear that the accident had taken place on 30 April and not on 1 May 1992.
5. On 26 September 1995 the appellant delivered a fresh MMF 1 form to the respondent.

It will be seen that the crucial question for decision is whether the receipt of the MMF 1 form by Mutual and Federal had the effect of extending the prescriptive period from three years to five years. The form was not annexed to the pleadings and is not before this Court but a copy was handed to the judge *a quo* by the appellant's counsel without objection from counsel for the MMF. According to the judgment, the form recorded that the accident had occurred on 1 May 1992 but it is not clear whether the party alleged to be liable for the appellant's claim was reflected on the form as Mutual and Federal or Sentrasure Limited. Nothing further needs to be said about this aspect as, according to the terms of the stated case, the form complied with the provisions

of Article 62.

On the facts which I have outlined the Court *a quo* accepted the submissions made on behalf of the MMF. In essence these were that the MMF was the only entity that was legally responsible to deal with the appellant's claim; that in terms of Article 55 the form had to be sent by registered post or delivered by hand to the MMF within three years of 30 April 1992 to prevent the prescription of the claim, and that the form was lodged with the MMF on 26 September 1995 after the claim had become prescribed.

On the appellant's behalf it was argued both in this Court and in the Court *a quo* that receipt of the MMF 1 form by Mutual and Federal on 2 August 1994 had the effect of extending the period of prescription to five years in terms of Article 57 and that the summons was served on the respondent within that period.

It is apparent from the terms of the stated case and the arguments addressed to this Court and the Court *a quo* that the parties were in agreement

that this matter should be decided on the basis of the relevant statutory provisions that were in force during the period July 1994 to September 1995.

This is an appropriate stage to refer to some of these provisions.

Article 13 dealt with the appointment of agents to the MMF and their powers and provided as follows in sub-paragraphs (b), (c) and (d):

- “(b) An appointed agent shall be competent -
- (i) to investigate or to settle on behalf of the MMF the prescribed claims, contemplated in Article 40 of the Agreement, arising from the driving of a motor vehicle in the case where the identity of either the owner or driver thereof has been established; or
 - (ii) to commence, conduct, defend or abandon legal proceedings in connection with such claims.
- (c) The Board shall issue directives in respect of the claims to be administered by appointed agents under paragraph (a).
- (d) The MMF shall guarantee or insure the obligations of the appointed agents arising from the application of this Agreement.”

Articles 55 and 57, which contained provisions relating to prescription, and Articles 62(a) and (e), which dealt with procedures relating to the MMF 1 form, provided:

“55 Notwithstanding the provisions of any other law relating to prescription, but subject to the provisions of Articles 56 and 57, the right to claim

compensation under Chapter XII from the MMF or an appointed agent in respect of claims arising from the driving of a motor vehicle in the case where the identity of either the owner or driver thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the claim arose.

- 57 Notwithstanding the provisions of Article 55, no claim which has been lodged under Article 62 shall prescribe before the expiry of a period of five years from the date on which the claim arose.
- 62 (a) A claim for compensation and accompanying medical report under Article 40 shall -
- (i) be set out in a form to be prescribed by the Board, which shall be completed in all its particulars;
 - (ii) be sent by registered post or delivered by hand to the MMF, at its principal or branch or regional office, or to the appointed agent who in terms of Article 13 must handle the claim, at his registered office or local branch office, and the MMF or such agent, as the case may be, shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.
- (e) If the MMF or an appointed agent, as the case may be, does not, within 60 days from the date on which a claim, as set out in paragraph (a), was sent by registered post or delivered by hand to the MMF or the appointed agent, object to the validity thereof, the claim shall be deemed to be valid in law in all respects."

Article 56 provided that prescription did not run against certain persons. It has no application to this case.

Mutual and Federal's duty to handle claims in respect of accidents

which occurred on 1 May where the identity of the owner or driver had been established, was fixed by regulation 2 (1) and Schedules B and C thereto of the applicable regulations made in terms of the Act (Government Notice R 754 published in Government Gazette 15639 of 22 April 1994.). The MMF, in terms of regulation 2 (3), was obliged to deal with claims for which no appointed agent had been designated. No appointed agent had been designated to handle claims arising out of accidents that occurred on 30 April. Hence the need for the appellant to serve the MMF 1 form on the respondent

It was argued on the appellant's behalf that service of the MMF 1 form on Mutual and Federal amounted to substantial compliance with the provisions of the Agreement and the Regulations. It was submitted that as the aim of the legislation was to provide an injured person with the widest possible protection, it could not have been the intention of the legislature to non-suit a person who had made a *bona fide* error of one day.

The question of whether there has been substantial compliance in

relation to a claim for compensation has not infrequently arisen with regard to the contents of the claim form. AA Mutual Insurance Association Limited v Gcanga 1980 (1) SA 858 (A), which was relied upon by the appellant's counsel, was such a case. It was held that the form was not vitiated where, as a result of a *bona fide* error, the wrong date of the collision appeared on the form - 29 instead of 30 May 1994. In the present matter, however, the contents of the form are not in issue. The question is whether the submission of the form to an authorised agent which is not required to handle the claim has the effect of extending the period of prescription. In my view the appellant cannot rely on the principle of substantial compliance to excuse her failure to send the MMF 1 form to the entity which had to deal with it. It was a peremptory requirement of the Agreement that the claim for compensation had to be sent to the appropriate appointed insurer or the MMF, as the case may be, before the commencement of legal proceedings. This is clear from the provisions of Article 62(a) (see Nkisimane and Others v Santam Insurance Co Ltd 1978 (2)

SA 430 (A) at 433 E-G and 435 A-H; Evins v Shield Insurance Co Ltd 1980 (2)

SA 814 (A) at 831 E and SA Eagle Insurance Co Ltd v Pretorius 1998 (2) SA

656 (A) at 663 A-B). It is true that the object of the legislation was to provide

the widest possible protection to injured persons but this does not entitle a court

to overlook the failure to follow a procedure that required exact compliance.

In the result the submission of the claim form to Mutual and Federal had no

legal effect.

The appellant's counsel also argued that Mutual and Federal was the agent of MMF and that the submission of the claim form to the agent therefore sufficed. He referred to the provisions of Article 13 which, he submitted, made it clear that the MMF was the true defendant, that it was liable to pay the appellant's claim and that the appointed agent merely administered the claim on its behalf. It is unnecessary in this appeal to consider the precise relationship between the MMF and the appointed agents. It is clear that the powers and duties of appointed agents contained in Article 13(b)(i) and (ii) were

to be exercised only by the particular agent which was authorised to deal with the claim. Mutual and Federal had no authority to deal with a claim that arose out of an accident which occurred on 30 April. Nor did it have the authority to receive the MMF 1 form on behalf of the respondent. Consequently the submission of the claim form to Mutual and Federal did not have the effect of extending the period of prescription against the MMF.

It was also argued on behalf of the appellant that as Mutual and Federal did not object to the validity of the claim form within sixty days of its receipt, it was deemed to be valid in law in terms of Article 62(e). It is clear that Article 62(e) applied only to the appointed agent which was required to handle the claim. As Mutual and Federal was neither authorised nor obliged to deal with the appellant's claim, its failure to object to the validity of the claim form within sixty days cannot clothe the form with legal efficacy.

In the circumstances the MMF 1 form which was served on Mutual and Federal did not have the effect of extending the period of prescription of the

appellant's claim against the MMF to five years. The appellant's claim accordingly became prescribed upon the expiry of three years from the date of the accident. The appeal is therefore dismissed with costs.

E S MELUNSKY AJA

VAN HEERDEN DCJ)
NIENABER JA)
HARMS JA) CONCUR
SCOTT JA)