



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

Case No: 530/04  
REPORTABLE

In the matter between:

**SAMUEL FELI THUGWANA**

**APPELLANT**

**v**

**ROAD ACCIDENT FUND**

**RESPONDENT**

Before: Harms, Brand, Nugent, Mlambo JJA et Cachalia AJA

Heard: 7 November 2005

Delivered: 30 November 2005

Summary: Motor vehicle accidents – compensation – claim for in terms of s 17(1)(b) of the Road Accident Fund Act 56 of 1996 – provisions of s 24(5) read with regulation 2(1)(c) – does failure of the Fund to object to validity of claim within 60 days render claim valid in law in all respects – provisions of s 24(5) relating to procedural aspects – and therefore not relating to substantive law – regulation 2(1)(c) contains a substantive requirement to be complied with by claimant.

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## **JUDGMENT**

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**MLAMBO JA**

[1] The appellant instituted an action for compensation against the respondent (the Fund) arising from injuries he sustained in a motor vehicle collision as contemplated in s 17(1)(b)<sup>1</sup> of the Road Accident Fund Act 56 of 1996.

[2] The Fund filed a special plea alleging non-compliance with the provisions of s 17(1)(b) read with regulation 2(1)(c).<sup>2</sup> The appellant replicated alleging that he had complied with the provisions of the regulation; alternatively that he had substantially complied with the provisions thereof and further alternatively that the regulation was *ultra vires* the Act.

[3] The matter come before De Vos J, in the Pretoria High Court, who dismissed the special plea.<sup>3</sup> She however granted the Fund leave to appeal to this court, which upheld the appeal and set aside the order she had granted.<sup>4</sup>

[4] This court, in upholding the appeal, observed, with regard to

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<sup>1</sup> Section 17(1): 'The Fund or an agent shall –

(a) . . .

(b) subject to any regulation made under s 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury . . .'

<sup>2</sup> '(1) In the case of any claim for compensation referred to in s 17(1)(b) of the Act, the Fund, shall not be liable to compensate any third party unless –

(c) the third party submitted, if reasonably possible, within 14 days after being in a position to do so an affidavit to the police in which particulars of the occurrence concerned were fully set out; and . . .'

<sup>3</sup> Reported as *Thugwana v Padongelukfonds* 2003 (1) SA 310 (T).

<sup>4</sup> Reported as *Road Accident Fund v Thugwana* 2004 (3) SA 169 (SCA).

s 24(5), as follows:

‘It may be that this section could provide an answer to the special plea. Counsel were unable to make considered submissions on the law and the facts are not before the Court. The defendant’s counsel had no objection to leave being granted to the plaintiff to amend his replication, if so advised, to place reliance on s 24(5). That course commends itself for otherwise the plaintiff may be done an injustice.’

[5] Based on this observation the appellant was granted leave to amend his replication to raise the provisions of s 24(5)<sup>5</sup> in answer to the special plea. The appellant duly amended his replication and the special plea was again enrolled for hearing in the court *a quo*. The matter became before Els J who upheld the special plea.<sup>6</sup> This appeal is with the leave of that court.

[6] In upholding the special plea, the court *a quo* found that the purpose of s 24(5) was to regulate the procedural matters set out in that section and nothing further. The court found support for this view in *Krischke v Road Accident Fund*.<sup>7</sup> In that case the court (Jajbhay J) found that the structure of s 24 entailed procedures for the completion and lodging of a claim form with the Fund. The

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<sup>5</sup> Section 24(5): ‘If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in ss (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.’

<sup>6</sup> Reported as *Thugwana v Padongelukfonds* 2005 (2) SA 217 (T).

<sup>7</sup> 2004 (4) SA 358 (W).

purpose of the section was to afford the Fund sufficient time to consider the claim and to decide whether to contest or settle it. The learned judge then concluded that s 24(5) had no bearing on substantive law, and (in that case) could not be relied upon to revive a claim that had become prescribed.

[7] Before us the argument advanced on behalf of the appellant was essentially that, despite the latter's non-compliance with the requirement in Regulation 2(1)(c), the failure by the Fund to object to his claim in terms of s 24(5), based on that omission, as it should have, rendered the claim valid in law in all respects.

[8] This construction of s 24(5) read with regulation 2(1)(c) is in my view incorrect. Regulation 2(1)(c) prescribes a substantive requirement to found liability (the submission of an affidavit to the police) and non-compliance therewith is fatal. On the other hand the purpose of s 24 is to ensure that, before the onset of litigation, sufficient particulars about the claim are placed before the Fund to enable it, timeously, to make a decision whether it resisted or settled the claim.<sup>8</sup> The section has nothing to do with issues not specified therein. Simply put it is incapable of breathing life into a claim that failed to arise because of non-compliance with the substantive

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<sup>8</sup> *Nkisimane and others v Santam Insurance Company Ltd* 1978 (2) SA 430 (A) at 434F-G; *AA Mutual Insurance Association Ltd v Gcanga* 1980 (1) SA 858 (A) at 861B-C.

requirement found in regulation 2(1)(c).

[9] Appellant's counsel was unable, correctly in my view, to advance any basis on which the reasoning in *Krischke v Road Accident Fund* (supra), which I embrace, could be faulted. In the result the appeal is dismissed with costs.

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**D MLAMBO**  
**JUDGE OF APPEAL**

**CONCUR:**

**HARMS JA**

**BRAND JA**

**NUGENT JA**

**CACHALIA AJA**