

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 30 November 2005

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

**SAMUEL FELI THUGWANA**

**v**

**ROAD ACCIDENT FUND**

In a judgment delivered today, the Supreme Court of Appeal has ruled that s 24(5) of the Road Accident Fund Act no 56 of 1996 deals with procedural issues and is incapable of validating a claim that does not comply with the substantive requirement in Regulation 2 (1)(c) promulgated in terms of the Act.

The appellant had instituted action against the Road Accident Fund arising from injuries he sustained in a motor vehicle collision contemplated in s 17(1)(b) of the Act. The Fund raised a special plea alleging that the appellant had not complied with regulation 2 (1)(c). This regulation provides that the Fund shall not be liable to compensate any third party for any loss or damage suffered unless the third party submitted an affidavit to the police setting out particulars of the collision.

The special plea was dismissed in the Pretoria High Court but that decision was reversed by this court on appeal. However this court granted the appellant leave to amend his replication in order to rely on the provisions of s 24(5) as an answer to the special plea. This section provides that if the Fund does not object to the validity of a claim delivered to it within 60 days thereof the claim shall be deemed to be valid in all respects.

The special plea was re-enrolled in the Pretoria High Court after the appellant had amended his replication. The high court upheld the special plea holding that s 24(5) regulated procedural issues and as such could not be relied upon to validate a claim that did not comply with regulation 2(1)(c).

On appeal, the SCA confirmed the high court's decision. The SCA held that regulation 2(1)(c) prescribes a substantive requirement to found liability and that non-compliance therewith is fatal to a claim.