Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 20964/2011

Before: The Hon Mr Justice Binns-Ward

In the matter between:

MICHELLE GEEL Plaintiff

and

THE ROAD ACCIDENT FUND Defendant

JUDGMENT DELIVERED: 6 AUGUST 2012

BINNS-WARD J:

[1] The matter in issue between the parties is the meaning of the term '*medical practitioner*' in s 24(2)(a) of the Road Accident Fund Act 56 of 1996 ('the Act'). Section 24 of the Act regulates the procedure in respect of the lodging of claims against the Fund for compensation in damages for the consequences of death or bodily injury wrongfully caused

by the driving of motor vehicles.[1] The provision requires the claim to be submitted on a prescribed form. The prescribed form incorporates provision for a medical report.

[2] Section 24(2)(a) of the Act provides:

> The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.

In terms of s 24(4)(a), any claim form which is not completed in all its particulars shall not be acceptable as a claim under the Act.

[3] The medical report section of the prescribed claim form submitted by the plaintiff was completed by a chiropractor. The chiropractor set out his qualifications in the place provided in the form as '*Doctor of Chiropractic*'. There is no allegation on the pleadings that the chiropractor in question is not duly registered and entitled to practise as such in terms of the applicable legislation. The completed medical report recorded that the plaintiff had sustained '*fairly severe*'[2] injuries to her neck and back. The details of the injuries sustained were described in the report as follows: '*Cervical whiplash associated with cervical vertebral subluxation complex. Thoracic subluxation complex associated w/rib subluxation as well as intercostal sprain/strain and costo-chondral inflammation. Lumbalgia with paraspinal sprain/strain and SI joint sprain*'. The report described the treatment given to the plaintiff to date as '*Chiropractic manipulative therapy involving manual and instrument adjusting*

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[1] See s 3 of the Act for the object of the statute.
[2] The prescribed form calls upon the medical practitioner completing it to grade the injuries sustained by the claimant as '*minor*', '*fairly severe*' or '*severe*', as the case might be.

preceded by an exam and consultation. Rehabilitative exercises and stretches. Electronic muscle stimulation'. It stated the treating chiropractor's opinion that permanent disability in the form of chronic neck and low back pain was to be expected, and predicted that the plaintiff would require to undergo one to two chiropractic manipulative therapy treatments per month indefinitely, at a currently estimated cost of R400 per treatment.

[4] The Fund has taken the point that a chiropractor is not a '*medical practitioner*' within the meaning of s 24(2)(a) of the Act and that, in consequence, the plaintiff's claim is not acceptable in terms of the Act. It is common ground between the parties that if the point has been well taken the claim would since have been extinguished by prescription, and the defect would thus not be amenable to rectification. The effect of this is that if the Fund's construction of the statutory provision were to be upheld, so too should its special plea of prescription; *aliter* if the point is bad.

[5] Mr *Liddell*, who appeared for the Fund, placed emphasis on the definition of '*medical practitioner*' in the Concise Oxford Dictionary. It is to the effect that medical practitioner means '*physician or surgeon*'. It is well established, however, that while dictionary definitions often afford useful guidance, lexical research is by no means all-determining when it comes to the construction of statutes. The meaning to be given to words is always dependant on the context of their employment.[3] Of greater moment in deciding the meaning

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[3] See e.g. *City of Johannesburg v Engen Petroleum Ltd and Another* 2009 (4) SA 412 (SCA) at para. 10, *Seven Eleven Corporation of SA (Pty) Ltd v Cancun Trading No 150 CC* 2005 (5) SA 186 (SCA) at para. *24Monsanto Co v MDB Animal Health (Pty) Ltd (formerly MD Biologics CC)* 2001 (2) SA 887 (SCA) at para. 9; and *Fundstrust (Pty) Ltd (in Liquidation) v Van Deventer* 1997 (1) SA 710 (A) at 726H - 727B. In *Fundstrust*, at the passage cited, Hefer JA observed '*Recourse to authoritative dictionaries is, of course, a permissible and often helpful method available to the Courts to ascertain the ordinary meaning of words (Association of Amusement and Novelty Machine Operators and Another v Minister of Justice and Another 1980 (2) SA 636 (A) at 660F-G). But judicial interpretation cannot be undertaken, as Schreiner JA observed in Jaga v Dönges NO and Another; Bhana v Dönges NO and Another 1950 (4) SA 653 (A) at 664H, by 'excessive peering at the language to be interpreted without sufficient attention to the contextual scene'. The task of the interpreter is, after all, to ascertain the meaning of a word or expression in the particular context of the statute in which it appears (Lorvan (Pty) Ltd v Solarsh Tea and Coffee (Pty) Ltd 1984 (3) SA 834 (W) at 846G ad fin). As a rule every word or expression must be given its ordinary meaning and in this regard lexical research is useful and at times indispensable. Occasionally, however, it is not.*'

and ambit of the term therefore is the assessment of the its use in the context of the provision in question, as well as the role of that provision within the apparent scope and object of the Act itself – matters to which I shall turn presently.

[6] Mr *Liddell* also stressed that the Health Professions Act 56 of 1974 defines '*medical practitioner*' as a person registered under that Act. He pointed out, correctly, that chiropractors do not qualify for registration under Act 56 of 1974, falling instead to be registered in terms of the Allied Health Professions Act 63 of 1982. As to these considerations it has to be said firstly, that there is no principle in respect of the interpretation of statutes that enjoins the application of the meaning of an expression in one statute to its import in the quite different context of another statute with unrelated subject matter. As I shall demonstrate, it is evident in any event that when the legislature intended a narrow or especially defined meaning to be given to the term '*medical practitioner*' in the Act it did so expressly. Secondly, a comparative consideration of the relevant provisions of Act 56 of 1974 with those of Act 63 of 1982 does not support the distinction that counsel sought to draw; certainly not for the purposes of construing s 24(2)(a) of the Road Accident Fund Act.

[7] Act 56 of 1974 provides for the registration of practitioners in a number of health professions. A person may practise in any of those professions only if he or she is duly registered by one of the applicable professional boards established in terms of that Act. The Health Professions Act does not, however, purport to be the sole repository of the regulation of persons entitled to diagnose and treat 'physical or mental defects, illnesses or deficiencies in humankind'. That much follows expressly from the qualificatory reference in

s 17(1)(b) of the statute to other legislation regulating '*health care providers*'.[4] The qualification allows that categories of health care practitioners not covered by the Health Professions Act may be authorised by other legislation to diagnose and treat such conditions. A chiropractor may be registered as a '*practitioner*'[5] in terms of the Allied Health Professions Act 63 of 1982. Chiropractic falls within the meaning of the term '*allied health profession*' within that Act.[6] In terms of s 1(2)(a) of Act 63 of 1982 (a provision inserted in terms of s1(r) of the Chiropractors, Homeopaths and Allied Health Service Professions Act 50 of 2000) –

> 'a practitioner may-
> (i) diagnose, and treat or prevent, physical and mental disease, illness or deficiencies in humans;
> (ii) prescribe or dispense medicine; or
> (iii) provide or prescribe treatment for such disease, illness or deficiencies in humans'.

It is no coincidence, in my view, that the wording of s 1(2)(a) of Act 63 of 1982 follows almost exactly that used in s 17(1)(b)(ii) and (iv) of Act 56 of 1974.[7] The result is that there is no difference in principle between the authority of a practitioner registered under either statute to diagnose and treat physical illness or 'deficiencies'. The suitability of a practitioner to diagnose and treat a particular illness or condition will, of course, depend on the

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[4] Section 17(1)(b) of Act 56 of 1974 provides:

> *(1) No person shall be entitled to practise within the Republic-*
> *(a)...*
> *(b) except in so far as it is authorised by legislation regulating health care providers and sections 33, 34 and 39 of this Act, any health profession the practice of which mainly consists of-*
> *(i) the physical or mental examination of persons;*
> *(ii) the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in humankind;*
> *(iii) the giving of advice in regard to such defects, illnesses or deficiencies; or*
> *(iv) the prescribing or providing of medicine in connection with such defects, illnesses or deficiencies,*
> *unless he or she is registered in terms of this Act.*

[5] In terms of s 1(1) of Act 63 of 1982, as amended, '*practitioner*' is defined as meaning '*a person registered as an acupuncturist, ayurveda practitioner, chiropractor, homeopath, naturopath, osteopath or phytotherapist, in terms of this Act*'.

[6] See s 1(1) of Act 63 of 1982, as amended.

[7] See note 4, above for the text of s 17(1)(b) of Act 56 of 1974.

practitioner's particular discipline or speciality, and the pertinence thereof to the given condition.

[8] The Fund is a statutory body with juristic personality established in terms of s 2(1) of the Act. The object of the Fund is '*the payment of compensation in accordance with th*[e] *Act for loss or damage wrongfully caused by the driving of motor vehicles*'.[8] It is thus an '*organ of state*' within the meaning of paragraph (b)(ii) of the definition of the term in s 239 of the Constitution.[9] The proper functioning of the Fund has significance within the context of the state's duty, in terms of s 7(2) of the Constitution,[10] to protect, promote and fulfil the rights in the Bill of Rights, especially the rights to human dignity, security of the person, access to health care services and social security. This much has been confirmed in the recent jurisprudence of the Constitutional Court, and indeed also of this court, see *Law Society of South Africa and Others v Minister of Transport and Another* 2011 (1) SA 400 (CC); 2011 (2) BCLR 150 at para.s 56-101, *Mvumvu and Others v Minister of Transport and Another* 2011 (2) SA 473 (CC), 2011 (8) BCLR 792 at para. 20, *Road Accident Fund and Another v Mdeyide* 2011 (2) SA 26 (CC); 2011 (1) BCLR 1 at para.s 4 and 125-126, and *Daniels and Others v Road Accident Fund and Others* [2011] ZAWCHC 332 (28 April 2011) at para.s 14-16.

[9] In *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A), at 285E-F, it was stated about the Act's original predecessor on the statute book that its very reason for existence was *'to give the greatest possible protection . . . to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle'*. The pertinence of that observation to the various manifestations of the statutory bodies responsible under the successive statutory instruments for the compensation of road accident

[8] See s 3.
[9] The Constitution of the Republic of South Africa, 1996.
[10] See also s 28(2) of the Constitution in respect of the rights to access to health care services and social security.

victims and their dependants has been acknowledged by the highest courts on repeated occasions over the intervening years.[11] (The relevant legislative history since 1942 is related in *Law Society of South Africa and Others v Minister of Transport and Another* supra, at para. 17-21.) In *Engelbrecht v Road Accident Fund and Another* 2007 (6) SA 96 (CC); 2007 (5) BCLR 457 (CC), at para. 23, the Constitutional Court confirmed that the legislature's primary concern in enacting the Act remained the same as it had been in respect of all the preceding statutes, beginning with the Motor Vehicle Insurance Act 29 of 1942.

[10] These considerations bring forcefully to the fore for the purpose of the current matter the enjoinder in s 39(2) of the Constitution that legislation must be interpreted to promote the spirit, purport and objects of the Bill of Rights.

[11] Having set the backdrop it is time to examine the purpose of s 24(2)(a) of the Act. The purpose is clear, and it is matter on which there is no excuse for uncertainty or doubt by the defendant, for it has been the subject of judicial exposition in previous litigation to which the Fund has been party. See, for example, *Road Accident Fund v Klisiewicz* [2002] ZASCA 57 (29 May 2002), in which Howie JA emphasised the that it was function of the Fund in terms of the statutory scheme to investigate and settle compensation claims under the statute and to defend matters only 'when litigation is responsibly contestable'. Howie JA's remarks in this regard were cited and endorsed (per Maya JA) in *Madzunye and Another v Road Accident Fund* 2007 (1) SA 165 (SCA) at para.s 17-18. Thus the information to be provided by a claimant on the prescribed claim form, including the medical report, is plainly to furnish the Fund with the basic material upon which to investigate the merits of the matter and assess the amount of compensation to be paid; and the requirements of s 24 - including the 120 day

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[11] See e.g. *Law Society of South Africa and Others v Minister of Transport and Another* supra, at para 40; *Mvumvu and Others v Minister of Transport and Another* supra, at para 20 and *SA Eagle Insurance Co Ltd v Van der Merwe NO* 1998 (2) SA 1091 (SCA) at 1095J – 1096A.

moratorium afforded in terms of s 24(6)[12] - are directed to those ends. The health care professional best qualified to give firsthand information in respect of the nature of the injuries sustained by a claimant and the treatment therefor already given, or to be anticipated, is the practitioner who has been involved in treating the claimant as a patient. That is the evident rationale for the Act's requirement that the medical report accompanying the submission of the claim has to be completed by the treating practitioner if that person is available.

[12] '*Chiropractic*' is '*a system of complementary medicine based on the diagnosis and manipulative treatment of misalignments of the joints, especially those of the spinal column*'.[13] A chiropractor is a person qualified and registered to practise in this system of medicine. It is apparent from the discussion earlier in this judgment that the statutory regulatory scheme in place in this country recognises the function of a chiropractor as a health professional permitted to diagnose and treat medical conditions. Practitioners, whether they be registered under Act 56 of 1974, or Act 63 of 1982, engage in the diagnosis and treatment of bodily ailment. Practitioners registered under either of the statutes include categories of professional persons who are appropriately qualified and legally authorised to diagnose and treat the plaintiff's particular malady, as it has been described in the claim form. The ordinary meaning of '*medicine*' in the relevant sense is '*the science or practice of the diagnosis, treatment, and prevention of disease*'.[14] Thus to speak of practitioners registered under either of the statutes as '*medical practitioners*' does no violence to the ordinary connotation of the etymological components of the term. It also shows that accepting that the

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[12] Section 24(6) provides:

No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent-

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1), and

(b) before all requirements contemplated in section 19 (f) have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.

[13] *The Concise Oxford English Dictionary*, 10th ed. revised.

[14] Ibid; sv '*medicine*'.

term '*medical practitioner*' in the context of s 24(2)(a) of the Act includes a chiropractor does not entail unduly stretching the meaning of the words.

[13] Can it be said then, in the face of the purpose and scope of the road accident compensation scheme provided in terms of the Act, that a person like the plaintiff, who sustains a spinal injury in a motor vehicle accident, must seek treatment from a practitioner registered in terms of Act 56 of 1974, rather than from a chiropractor registered as a practitioner in terms of Act 63 of 1982, in order to put him or herself in a position to be able to submit a claim in a form compliant with s 24(2)(a) of the Act? The Fund's argument enjoins an affirmative answer to the question. In my judgment the absurdity of such an answer is patent. Any interpretation predicated on a positive answer would do nothing to advance the achievement of the recognised objects of the legislation. It would also serve to thwart, rather than to advance, the promotion and fulfilment of the basic human rights at which the legislation is directed. These considerations by themselves justify the rejection of the construction of s 24(2)(a) contended for by the Fund.

[14] But there is yet a further reason to hold against the point taken by the defendant; for when it is required that the medical practitioner involved must be one registered in terms of Act 56 of 1974, the Act says so expressly. Thus, the serious injury assessment contemplated in terms of s 17(1A) of the Act has to be '*carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act 56 of 1974)*'.[15] (Having regard to the nature and purpose for such an assessment, the circumscription of the term in that context is

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[15] Compensation for general damages ('non-pecuniary loss') is provided in terms of the Act only to claimants who can prove that they have sustained '*serious injury as contemplated in subsection (1A)*'. Section 17(1A) of the Act provides:

> *a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.*
>
> *(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act 56 of 1974).*

(The current claim antedated amendments to the Act which introduced the limitation to the right to claim compensation for general damages to 'serious injury' cases.)

understandable. The definition of '*medical practitioner*' in the Road Accident Fund Regulations, 2008,[16] viz. '*'medical practitioner' means a person registered as such under the Health Professions Act, 1974 (Act 56 of 1974)*', is pertinent only in respect of regulation 3, which regulates the procedural aspects of serious injury assessment. In any event, as Mr *Engers* SC, counsel for the plaintiff, rightly pointed out in his heads of argument, a definition in subsidiary legislation cannot be used to ascribe a contextually inappropriate meaning to a word used in the principal legislation.[17])

[15] There is a well established presumption that the legislature is not given to internal inconsistency, or superfluity in the wording of statutes.[18] If it had been intended that the term '*medical practitioner*' should, without exception, bear the narrow meaning contended for by the Fund, the circumscription of the term in s 17(1A) of the Act would have been superfluous. In my view there is nothing to displace the presumption that it is not. On the contrary, the circumscription serves an evidently distinguishing purpose.

[16] In the result the following order will issue:

The defendant's special plea of prescription is dismissed with costs.

A.G. BINNS-WARD
Judge of the High Court

[16] Published in GN R770 in GG 31249 of 21 July 2008.
[17] Cf. e.g. *Amalgamated Engineering Union of SA v Minister of Labour* 1965 (4) SA 94 (W) at 96D and *Chief Registrar of Deeds v Hamilton-Brown* 1969 (2) SA 543 (A) at 547H.
[18] See e.g. *S v Weinberg* 1979 (3) SA 89 (A) at 98D – G and *NST Ferrochrome (Pty) Ltd v Commissioner for Inland Revenue and Others* 2000 (3) SA 1040 (SCA), at para. 12.

Hearing:	31 July 2012
Judgment	6 August 2012
Plaintiff's counsel:	Keith Engers S.C.
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