THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NUMBER: 457/96

In the matter between:

SOUTH AFRICAN EAGLE INSURANCE

COMPANY LIMITED APPELLANT

and

L J VAN DER MERWE NO.

RESPONDENT

CORAM: NIENABER, HOWIE, MARAIS,

PLEWMAN,JJA and MELUNSKY AJA

DATE OF HEARING: 20 FEBRUARY 1998

DATE OF JUDGMENT: 17 MARCH 1998

JUDGMENT

PLEWMAN JA

This appeal concerns the enforceability of a claim for compensation under the Multilateral Motor Accidents Fund Act 93 of 1989 ("the Act") - which has since been replaced by the Road Accidents Fund Act 56 of 1996. The matter was argued in the court a quo on a case stated in terms of Rule 33 (4). It was held that the claim was enforceable. Leave to appeal was granted in this Court on petition to the Chief Justice.

The material facts derived from the stated case and the documents forming part thereof are the following. On 29 January 1991 one Bheki Shabala (the deceased) was a passenger in a motor vehicle HKR 645 T when it was involved in a collision with a heavy duty vehicle KDL 264 T - the property of Koomfontein Colliery. It can be accepted for present purposes that the driver of vehicle KDL 264 T was negligent and that his negligence caused the collision. The deceased was killed outright.

As a result a claim was made on the appellant by the natural

guardian, the grandmother, of a minor Sipho Mxolisi Shabala - the lawful issue of Bheki Shabala. It should be added in parentheses that respondent was at a late stage in the proceedings appointed curator ad litem to the minor after his guardian died. The original claim form, which is annexed to the stated case, was completed by the guardian and this was forwarded to the appellant, together with the documents listed below, under cover of a letter from claimant's attorneys dated 18 March 1993. The form used appears to be an outdated version of the prescribed form but no point was made of this either in the court below or on appeal. I will refer to it as the MVA 13 form. The supporting documents consisted of a photostat of the identity document of the claimant - that is the guardian; a photostat of the birth certificate of the minor; a photostat of the death certificate of the deceased Bheki Shabala; a statement setting out the computation of the claim and a copy of a sworn affidavit by one T N Madonsela, who was the driver of the vehicle in which Bheki Shabala was a passenger

explaining how the collision occurred. The letter requested a formal acknowledgement of the receipt of the aforegoing documents. On 29 April 1993 the manager of appellant's claims department, on appellant's behalf, wrote to claimant's attorney. The letter sets out the genesis of the present dispute. It reads :

> "Your letter dated 18 March 1993 refers.
>
> Please forward a full copy of the inquest record.
>
> Please note that you have not complied with Article 62(b)(ii) and therefore your claim is not valid.
>
> Please also furnish us with a full unabridged birth certificate relating to the minor as proof of maternity.
>
> We advise that we are awaiting an assessor's report on the merits of this matter.
>
> We await your reply."

The response by claimant's attorneys need not be set out but it should be noted that they did seek enlightenment as to the respects in

which they had allegedly failed to comply with Article 62(b)(ii). This enquiry was left unanswered. After summons a special plea was filed in the action. That plea, dated 28 July 1991, takes the following form:

> "The plaintiff alleges that her deceased husband (sic) sustained injuries in a collision on 29 January 1991 which caused him to die on the same date.
>
> In terms of Article 62(b)(ii) the plaintiff was obliged to lodge simultaneously with her claim form a copy of the inquest report or charge sheet which has a bearing on the collision.
>
> The plaintiff failed to furnish simultaneously with the submission of her claim form an inquest report. In the premises the plaintiffs claim is premature and unenforceable."

There are further facts to be noted. In the MVA 13 form paragraph 7 calls, in circumstances where a person was fatally injured, for additional information. This was responded to in the form in the manner which I now set out. I quote the terms of the original document and the response, inserting the letter A before claimant's

response:

"(a) Plek waar dood plaasgevind het. A. Blinkpan

(2) Datum van afsterwe A. 29.1.1991.

(3) Is dit bekend of daar 'n geregtelike dood ondersoek gehou is. (Heg 'n afskrif aan van die verslag oor die nadoodse ondersoek, indien beskikbaar.) A. Nee - moontlik Ja.

(d) Indien bekend, meld in watter hof. A. Blinkpan, D-A.7 en Verwysingnommer A MR 01280191."

(The reference to MR 01280191 is a reference to the number of the police docket - as paragraph 4 of the form makes clear.)

The death certificate which accompanied the MVA 13 form did not, in its terms, give information as to how the injuries which caused the death were occasioned. The affidavit by the driver appears to be an affidavit relating to the driver's own claim. The complaint of the appellant is that, while fully describing the event and the fact that a passenger in his vehicle was killed, it does not in its terms give the name of the deceased. Appellant's observations in this regard are

correct. The question is whether or not these (separate) documents are to be read together and further whether they are to be read with the MVA 13 form. If the affidavit is to be read in isolation it cannot suffice to establish that the deceased was the person killed in the collision. If however the other documents are to be read with it the lacuna in the affidavit is made good. The issue is framed in the stated case as follows:

> "The defendant contends that the plaintiff has not submitted a valid claim form and that by virtue of the
> provisions contained in the Multilateral Motor Vehicle Accidents Fund, Act 93 of 1989, the plaintiffs claim is invalid; alternatively premature and consequently falls to be dismissed with costs."

[In 1996 claimant did obtain a copy of the inquest record and, well after the close of pleadings, submitted this to appellant. In the stated case the effect of this was also raised as an issue but this was seemingly either abandoned or simply disregarded and it need not now be considered.]

In terms of s 2(1) of the Act, the Agreement set out in the Schedule thereto had the force of law as if it were a statute. Article 40 imposed an obligation on the Fund or its appointed agent (in this case the appellant) to compensate a claimant who had suffered loss. Article 62(a) provided that the claim for compensation was to be set out in a prescribed form and was to be accompanied by a medical report. The manner in which the medical report was to be completed was laid down in article 62(b)(i). This then brings me to article 62(b)(ii) which is the article in issue in the appeal. Article 62(b)(ii) read as follows:

> "(ii) Where a person is killed outright in a motor accident the completion of the said medical report shall not be a requirement, but in such an event the form prescribed by the Board in terms of paragraph (a) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such

person's death resulted from the accident to which the claim relates."

While I have confined the quotation to the provisions of article 62(b)(ii) it must be borne in mind that this must be interpreted in the context of the agreement as a whole and in the light of the history of the legislation. In this regard it is clear that the Act was at the relevant time but the latest in a line of statutory enactments which date back to 1942 designed to compensate persons injured or the dependants of persons killed as a result of the negligent driving of motor vehicles. The intention throughout has been to give such persons the greatest possible protection. See Aetna Insurance Company v Minister of Justice 1960 (3) SA 273 (A) at 285 E-F. A court construing the legislation will then not be astute to uphold technical objections based on form rather than substance. It will also recognise that the legislative amendments and re-enactments since 1942 must be seen as attempts to adapt, refine and improve the system of compensation. See SA Eagle Insurance Company Limited v Lynne

Pretorius (case no 397/96 in this Court - still to be reported).

In the court below appellant's argument was founded on the lacuna between the death certificate and the affidavit. It was contended firstly that what was called for by article 62(b)(ii) was proof in the form of a document which, standing alone and independently of supplementary documentation and, in particular, independently of anything stated in the MVA 13 form, established that the person concerned's death resulted from the accident to which the claim related. The court a quo held that the documents sent under cover of the letter of 18 March 1991 and the MVA 13 form had to be read together and that when so read, if the claimant had not literally complied with the article, she had so nearly done so as to unambiguously render it plain that the death had resulted from the accident. There had accordingly been substantial compliance. Substantial compliance has been held in a long line of decisions to be sufficient to render the claim enforceable under earlier provisions.

These cases held, in relation to article 62(a)(i) (and its predecessors), that the requirement of a claim form was peremptory; that the prescribed requirements in regard to contents of the claim form were directory and that what was required was substantial compliance with such requirements. See SA Eagle Insurance Company Ltd v Lynne Pretorius (supra);Rondalia Versekeringkorporasie van Suid-Afrika Bpk v Lemmer 1966(2) SA 245 (A); Nkisimane and Others v Santam Insurance Co Ltd 1978(2) SA 430 (A), particularly at 435F - 436E; AA Mutual Insurance Association Ltd v Gcanga 1980(1) SA 858 (A) at 865 B-F; Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A); Guardian National Ins Co Ltd v Van der Westhuizen 1990(2) SA 204 (C).

I shall consider later whether there is any need in the present case to debate further these principles.

In this Court the focus of appellant's argument was slightly different but in essence the same questions arise, namely, does an

affidavit constitute documentary proof; what is encompassed by the word "proof; need the document submitted as proof be of an essentially official character and must the documentary proof be read independently of the claim form and establish on its own that the person's death resulted from the accident to which the claim relates?

In the case of Multilateral Motor Vehicle Accidents Fund v Radebe 1996 (2) SA 145 (A) at 152 E-I this Court held that the benefit which the claim form was intended to give the Fund had to be given effect to and such benefits were not to be "whittled away". Appellant sought to apply this dictum to the present case. It should, however, be borne in mind that in Radebe's case the question debated was one of non-compliance with the then applicable regulation and the Court's decision was related to this question. Over and above that, in this case a provision which reads differently from regulation 9(1)(b)(ii) (which is quoted by Nestadt JA at p 148 C-D) which then applied, has to be considered.

The benefit the MVA form is intended to confer on the insurer or the Fund (obviously for practical reasons) is that it is to "invite, guide and facilitate" investigation by the insurer. See Guardian National Insurance Co Ltd Van der Westhuizen (supra) at 21 OF. No doubt this is so and equally it is no doubt clear that there is no obligation on the insurer on its own to undertake an investigation in relation to matters which a claimant is obliged to bring to its notice. But the question which arises in the present case is not, as I see it, whether the insurer has been given the information which the claimant is obliged to give it or which it needs to facilitate any investigation which it may wish to make, but whether this information has been given in a particular manner or form.

It is, I think, plain that if the separate documents enclosed under cover of the letter of 16 March are read together and with proper insight then the information the claimant is required to give may be garnered therefrom. I understood appellant's counsel to concede, in

answer to questions put by the Court, that it was possible by reading the documents as a whole and together to determine that the death of the person concerned had resulted from the accident to which the claim related. Is there then implicit in the article some technical requirement as to the manner in which the information must be supplied which, if not met, would render the claim unenforceable?

The first questions are what constitutes "documentary proof and what is the effect of phrase in article 62(b)(ii) "such as a copy of the relevant inquest record or, in the case of a prosecution……a copy of the charge sheet". It will have been seen that in the plea as (originally) framed the underlying premiss was that it was one or other of these two documents which had to be supplied. This was perhaps influenced by the terms of earlier regulations and decisions dealing with them. In this Court the emphasis shifted to a challenge as to whether an affidavit such as that by Madonsela constituted documentary evidence and also involved the contention that at least

a document of an official character was called for.

It clearly cannot be correct that only one or other of the two specified documents would suffice. They are mentioned as examples following upon general words which have to be given effect to. They are not imperatively called for - which indicates that some other document may suffice. Furthermore, in the context it does not seem that there is a need for an ejusdem generis interpretation. I should add that while the maxim noscitur a sociis is sometimes useful in ascertaining the intention of the legislature it is not a hard and fast rule to be applied in all cases. Rex v Jones 1925 AD 117 at 129. It is a rule applied normally where the general words follow upon special ones. Here the order is the opposite and it would seem evident both from this fact and from the words "such as" that the legislature intended that general words should have their full effect.

This conclusion would seem to be supported also by posing the question as to whether there is any special significance to be given to

the word "proof. In as much as one is concerned with an obligation to provide information at the very commencement of procedures to enforce a claim which will (if contested) ultimately be decided by a court it is difficult to accept that proof such as is required in a criminal or even civil case could have been contemplated. What it seems is called for is rather some other documentary form of confirmation of the more terse averments in the MVA 13 form.

Example were suggested to appellant's counsel, namely, what better documentary proof of the fact that the person's death had resulted from the accident in question than an affidavit from, say, the investigating officer in the case or by a medical practitioner who had both witnessed the accident and attended the deceased at the time of his death? One is aware that an inquest does not necessarily always have a conclusive outcome. Nor does a charge sheet necessarily confirm such facts as those required. It contains mere allegations. I understood counsel to concede the point and in so doing he was in my

view clearly correct. Once one is merely concerned to obtain confirmation from a source other than the claim form itself, why need there be a restriction on the form in which that confirmation is given? The word "documentary" connotes nothing more than the dictionary meaning of the word namely "of the nature of or consisting of documents".

What has been said also, I think, disposes of the contention that the documentary proof must take on some official character. But this contention is even more effectively met by the observation that had this been intended nothing would have been simpler than inserting words such as "of an official nature".

It also seems to me to follow logically and naturally from what has been said that the "confirmation" must be read together with the MVA13 form and that there can be no justification whatever for suggesting that the documentary proof must be contained in one all embracing and self-contained document.

In the result, I am of the view that there was in this case actual and complete compliance with the requirements of article 62(b)(ii). This renders any discussion of the concept of substantial compliance unnecessary.

The order I make is that the appeal is dismissed with costs.

C PLEWMAN JA

CONCUR

NIENABER JA)
HOWIE JA)
MARAIS JA)
MELUNSKY AJA)