



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

Reportable
Case no: 111/2002

In the matter between:

THE ROAD ACCIDENT FUND

Appellant

and

RHESIA SCHOLTZ Respondent

Coram: *Streicher, Navsa JJA and Jones AJA*

Date of hearing: **20 May 2003**

Date of delivery: **3 June 2003**

Summary: Interpretation of articles 55, 56 and 57 of Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 – five-year prescription period in article 57 does not run against a minor.

JUDGMENT

NAVSA JA:

[1] The appellant ('the Fund') is a statutory insurer established in terms of section 2 of the Road Accident Fund Act 56 of 1996 and is the successor to the Multilateral Motor Vehicle Accidents Fund, which was established in terms of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 ('the Act').

[2] The respondent was allegedly injured in a motor vehicle collision where the identity of the driver who allegedly caused the collision was established. The respondent instituted a claim for compensation in the Transvaal Provincial Division of the High Court against the Fund in terms of the Act, which at the time of the collision was the applicable legislation. At the commencement of proceedings in that court the parties agreed that the issue of prescription raised in the Fund's special plea should be separated from the merits and *quantum* and should be heard first, against the backdrop of a stated

case.

[3] Swart J, who heard the matter, decided the issue of prescription against the Fund, dismissing the special plea with costs. The present appeal with the leave of this Court is against that decision.

[4] The stated case as recorded by the Court below is set out

hereunder:

1. The collision occurred on 3 June 1994.
2. The plaintiff was born on 24 March 1976.
3. The plaintiff's claim was to be adjudicated on in accordance with the provisions of the Multilateral Motor Vehicle Accident Fund Act, Act 93 of 1989.
4. The plaintiff's claim was timeously lodged with the defendant on 29 February 2000.
5. The summons was served on the defendant on 20 July 2000.
6. It is the plaintiff's contention that the summons was served timeously.
7. The defendant contends that the summons was served at the time when the plaintiff's claim had already become prescribed.'

[5] The question in this appeal is which of the two contentions set out in paras 6 and 7 of the stated case is correct. Chapter XVIII of the Agreement which has the force of law in terms of the Act is entitled *Prescription of Claim* and contains the applicable provisions, the interpretation of which provides the answer. The three applicable articles are set out in the following three paragraphs.

[6] Article 55 provides:

'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.'

[7] Article 56 reads as follows:

'Prescription of a claim for compensation referred to in Article 55 shall not run against –

- (a) a minor;
- (b) any person detained as a patient in terms of the provisions of mental health legislation applicable within the area of jurisdiction of a Member; or
- (c) a person under curatorship.'

[8] Article 57 provides:

'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.'

[9] As can be seen from the stated case the respondent was a minor at the time of the collision. It was correctly accepted by the Fund that the three-year prescription period set out in article 55 would in terms of article 56 (a) only start running from the time that she became a major. The respondent's claim was lodged with the Fund on 29 February 2000 in terms of article 62 of the Act by the

completion of the prescribed forms and the submission of the necessary information. In terms of article 55 read with article 56 the claim was therefore lodged within a three-year period after the plaintiff became a major.

[10] The summons as can be seen from the stated case was issued on 20 July 2000, more than five years after the collision but less than five years from the time the respondent attained the age of majority. It was contended by the respondent that, as was the case with the three-year period referred to in article 55, the five-year period referred to in article 57 only starts running after a minor becomes a major and that consequently the summons was issued timeously.

[11] The Fund contended that in terms of article 57 the five-year prescription period starts running from the time of the event which gave rise to the claim, namely, the collision, and unlike the three-year prescription period in article 55 prescription in respect of the former is not suspended in the case of a minor, and consequently the plaintiff's claim had become prescribed.

[12] The following are the submissions on behalf of the Fund in support of the aforesaid contention:

- (i) Article 57 has not been made subject to article 56 with the result that the suspension of prescription that operates in favour of minors and others with legal disabilities provided

for in article 56 does not extend to article 57.

- (ii) Article 57 does not itself provide for the prescription of a claim and is therefore not qualified by the provisions of article 56.
- (iii) Article 56 expressly states that the prescriptive period set out in article 55 does not run against minors and others with legal disabilities whilst there is no corresponding provision in respect of article 57.

I shall deal with each of these submissions in turn.

[13] It is true that article 57 does not in terms state that it is subject to article 56. However, article 55, including the prescriptive period referred to therein, has been made subject to articles 56 and 57. It follows that article 55 is qualified by what is set out in those two articles. Its provisions must be read subject to and in conjunction with the provisions of articles 56 and 57.

[14] There is no merit in the appellant's submission that article 57 does not contain a prescriptive period. When articles 55, 56 and 57 are read together it is clear that the prescriptive period in respect of claims referred to in article 55 is three years, but in the event of such a claim having been lodged under article 62, before having become prescribed, the prescriptive period is 5 years subject, however, to the provisions of article 56.

[15] The opening words of article 56 read: 'Prescription of a claim for compensation referred to in article 55 shall not run against . . .'. The appellant submitted that the words 'referred to in article 55' qualify the word 'prescription'. For that reason, so the submission went, s 56 suspends the prescription period referred to in s 55 and not the prescription period referred to in s 57. I do not agree. In my view the words 'referred to in article 55' qualify the words 'a claim for compensation' and not the word 'prescription'.

[16] Before their amendment in 1993 by Proclamation 62 of 16 July 1993, articles 55 and 56 read as follows (article 57 remained as it was):

'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 an appointed agent in respect of claims referred to in Article 13 (b)*** shall become prescribed upon the expiry of a period of three years from the date upon which the claim arose.

56. Prescription of ***a claim for compensation under Article 13 (b) and Chapter XII shall not run against:***

- (a) a minor;
- (b) any person detained as a patient in terms of the provisions of mental health legislation applicable within the area of jurisdiction of a Member; or
- (c) a person under curatorship.'

(emphasis added)

A 'claim for compensation under article 13(b) and Chapter XII' is a claim '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.

[17] Reading article 57 with article 56 prior to its amendment there can be no doubt that prescription in terms of article 57 did not run against a minor whose claim for compensation was a claim under article 13(b) and had been lodged under article 62. Article 57 contains a prescriptive provision and article 56 specifically states that prescription of such a claim shall not run against a minor.

[18] In the amended article 55 the words 'the right to claim compensation under Chapter XII from an appointed agent in respect of claims referred to in article 13(b)' were replaced with the words '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'. This amendment necessitated an amendment of the description of the relevant claim in article 56. In terms of the resultant amendment the words 'a claim for

compensation under article 13(b) and Chapter XII' were replaced with the words 'a claim for compensation referred to in Article 55'. Instead of unnecessarily repeating the long description of the relevant claim the amended article 56 simply describes the relevant claim by reference to the description in article 55. If the intention was that the words 'referred to in Article 55' should qualify the word 'prescription' that intention would, in the light of prior wording of the articles have been made clear by simply wording the article: 'Prescription referred to in Article 55 shall not run . . .'

[19] It follows that in terms of article 56 the running of both the prescriptive period of 3 years and the period of 5 years provided for in articles 55 and 57 respectively in respect of a claim referred to in article 55 are suspended during the minority of the claimant — provided, in the case of article 57, that the claim is a claim that has been lodged under article 62.

[20] In support of its submissions the Fund relied on an unreported judgment of Stegmann J in the Johannesburg High Court in *Toerien and Others v Padongelukkefonds* (Case no: 28030/96-WLD). In that case the learned judge was dealing with the unusual situation of plaintiffs who sought an amendment of the pleadings after he had made a ruling on the merits of their claim. Stegmann J was concerned with the question whether just cause was shown for the amendments and found against the plaintiffs. In his judgment he dealt briefly with articles 55, 56 and 57 and concluded that the five-year period set out in article 57 runs against a minor. Stegmann J set out

the provisions of the three articles in question in their entirety but supplied no reasons for this conclusion. Counsel for the plaintiffs in the case before Stegmann J appears to have made no submissions to the contrary. If they were made the learned judge did not record them. For the reasons set out earlier the conclusion reached by Stegmann J about the meaning and effect of the three articles in question is clearly wrong.

[21] For the reasons stated earlier the appeal must fail. The following order is made:

1. The appeal is dismissed with costs.

M S NAVSA

JUDGE OF APPEAL

CONCUR:

**STREICHER JA
JONES AJA**