IN THE SUPREME OF SOUTH AFRICA

COURT OF APPEAL

Reportable
Case no: 105/2007

In the matter between:

BULELWA NONKWALI **Appellant**

and

ROAD ACCIDENT FUND **Respondent**

CORAM: **STREICHER, VAN HEERDEN et MAYA JJA**
HEARD: **21 FEBRUARY 2008**
DELIVERED: **6 MARCH 2008**

Summary: Claim in terms of s 17 of the Road Accident Fund Act 56 of 1996 – no new claim form required in terms of s 24 in respect of additional injury discovered after institution of action – claim in respect of subsequently discovered injury not introducing new cause of action.

Neutral Citation: **This judgment may be referred to as *Nonkwali v Road Accident Fund* (105/2007) [2008] ZASCA 3 (06 March 2008).**

JUDG

MENT

MAYA JA/

MAYA JA:

[1] At about 16h00 on 16 October 2001 a motor vehicle in which the appellant was being conveyed as a passenger was involved in a collision as a result of which

she sustained serious bodily injuries. She instituted an action for damages arising out of the accident in terms of s 17(1) of the Road Accident Fund Act 56 of 1996 (the Act)[1] in the Mthatha High Court which the respondent duly defended.

[2] Almost four years after the collision, on 10 June 2005, the appellant amended her pleadings, without objection, to include a claim for damages suffered consequent upon a head injury allegedly sustained in the accident. The head injury was not previously listed among the injuries detailed in her claim form and accompanying medical report lodged with the respondent in terms of s 24 of the Act as it was discovered only subsequently. The respondent filed a special plea alleging that, in respect of the head injury, the claim form did not comply with the provisions of s 24 for failure to specify such injury. In the alternative, the special plea averred that such claim was prescribed in terms of s 23 of the Act[2] in that it was instituted more than three years after the accident.

[3] At the trial the parties agreed that the court below should first determine the validity of the issues raised in the special plea. The court (Ndzondo AJ) upheld the special plea on the main ground, on the basis that the appellant was obliged to first submit to the respondent a duly amended claim form specifying the head injury before amending her pleadings so as to enable the respondent to investigate whether or not the head injury was sustained in the accident. The court went further and held that even if it had decided the latter question in the appellant's

[1] Section 17 of the Act confers on a third party a claim against the Road Accident Fund for any loss or damage suffered by him or her as a result of any bodily injury to himself or herself arising from the driving of a motor vehicle if the injury is due to the negligence or other wrongful act of the driver or owner of the motor vehicle.

[2] Section 23 of the Act provides:

'(1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.

(2) …

(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.'

favour, such a claim would nonetheless be unenforceable by reason of prescription. The appellant challenges the decision with the leave of the court below and the issues before us remain unchanged.

[4] The relevant provisions of s 24 of the Act read:

'**Procedure**

(1) A claim for compensation and accompanying medical report under section 17(1) shall –

(a) be set out in the prescribed form, which shall be completed in all its particulars;

(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

(2) (a) 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 death or the nature and treatment of the bodily injuries in respect of which the claim is made.'

[5] It was submitted on the appellant's behalf that she substantially complied with the relevant provisions as she completed the claim form in good faith and filled in all such details as were available to her at the time. Counsel for the appellant further contended that the additional claim did not introduce a new cause of action but was merely a new item of damages such that it was not necessary to amend her claim form to avoid prescription.

[6] It was contended on the respondent's behalf, on the other hand, that the provisions of s 24 obliged the appellant to submit a claim form, including a medical report duly completed by a medical practitioner, in respect of the head injury. Her failure to do so was fatal as it meant that no claim had been lodged in respect of this injury, so continued the argument.

[7] I cannot agree with the respondent's submissions. The reasons are simple. It was not in issue in the court below that the head injury had not been diagnosed when the claim form was completed and submitted to the respondent. No allegation at all was made in the special plea that the injury was known at the material time and the case clearly proceeded on the basis that the injury was discovered in subsequent medical examinations. It was further not in dispute that the appellant placed all the relevant facts available to her at the time at the respondent's disposal. That being so, there is no basis whatsoever on which it could be found that the appellant did not comply, not just substantially as argued on her behalf, but fully with the provisions of s 24 of the Act.

[8] The alternative argument relating to prescription can, in my view, also be given short shrift. Authorities are legion to the effect that a plaintiff who claimed compensation for damages sustained as a result of wrongful and negligent driving under the Act's predecessors[3] had but a single, indivisible cause of action[4] and that the various items constituting the claim were thus not separate claims or separate

[3] The Motor Vehicle Insurance Act 29 of 1942 and the Compulsory Motor Vehicle Insurance Act 56 of 1972.
[4] In *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) the court, discussing the proper legal meaning of the expression 'cause of action' in the context of an action for damages for bodily injury, said at 838H-839A: '[T]he basic ingredients of the plaintiff's cause of action are (a) a wrongful act by the defendant causing bodily injury, (b) accompanied by fault, in the sense of *culpa* or *dolus*, on the part of the defendant, and (c) *damnum*, ie loss to plaintiff's patrimony, caused by the bodily injury. The material facts which must be proved in order to enable the plaintiff to sue (or *facta probanda*) would relate to these three basic ingredients and upon the concurrence of these facts the cause of action arises.'

causes of action.[5] This interpretation, in my view, necessarily extends to claims brought under the Act as it has the same objective and effect as these previous statutes.

[9] The effect of this finding cannot be articulated better than Corbett JA did in *Evins v Shield Insurance Co Ltd*.[6] There, the court dealing with the concept of a single cause of action in the context of prescription with regard to the amendment of a plaintiff's claim as originally pleaded by him, said:

> 'Where the plaintiff seeks by way of amendment to augment his claim for damages, he will be precluded from doing so by prescription if the new claim is based upon a new cause of action and the relevant prescriptive period has run, but not if it was part and parcel of the original cause of action and merely represents a fresh quantification of the original claim *or the addition of a further item of damages*.'

(Emphasis added.)

[10] In the event, the claim for damages relating to the appellant's head injury did not constitute a new cause of action but was merely an additional item to her original cause of action. The appellant's amendment to her summons did, therefore, interrupt the running of prescription in respect of the further claim. It was thus not necessary for her to lodge an amended claim form.[7]

[11] Accordingly, the appeal is upheld with costs. The order of the court below upholding the special plea is set aside and substituted with an order dismissing the special plea with costs.

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[5] See, for example, *Lampert-Zakiewicz v Marine & Trade Insurance Co Ltd* 1975 (4) SA 597 (C) at 601D-E; *Schnellen v Rondalia Assurance Corporation of SA Ltd* 1969 (1) SA 517 (W) at 520H-521F.
[6] 1980 (2) SA 814 (A) at 836C-E.
[7] See *Boti v Unie en Nasionale Versekeringsmaatskappy, Bpk* 1968 (4) SA 567 (O).

MML MAYA

JUDGE OF APPEAL

CONCUR:

STREICHER JA

VAN HEERDEN JA