



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

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

From: The Registrar, Supreme Court of Appeal

Date: 6 May 2020

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.*

***Phillipa Susan van Zyl NO v The Road Accident Fund (263/19) [2020] ZASCA 51 (6 May 2020)***

Today the Supreme Court of Appeal (SCA) dismissed the appeal of the appellant, Phillipa Susan van Zyl in her representative capacity as curator *curatrix ad litem* to Mr Jacobs, against the decision of the Eastern Cape Division of the High Court, Grahamstown (high court) upholding the special plea of prescription.

On 1 May 2010 Mr Jacobs sustained serious head injuries in a motor vehicle accident. On 18 January 2017 he lodged a claim with the respondent, the Road Accident Fund (RAF), which repudiated his claim on the basis that his claim had prescribed in terms of s 23 of the Road Accident Fund Act 56 of 1996 (RAF Act); and that Mr Jacobs did not fall under any of the categories of persons referred to in s 23(2) of the RAF Act, against whom prescription does not run, as he was neither a person detained as a patient in terms of any mental health legislation nor a person under curatorship.

On 28 November 2017 the appellant was appointed as the *curatrix ad litem* to Mr Jacobs by order of court. On 8 March 2018 the appellant instituted action against the RAF in which she claimed damages on behalf of Mr Jacobs. The RAF raised a special plea and contended the claim had become prescribed because the claim was not instituted within the period of three years from the date of the accident and further that the summons was not served within five years from the date of the accident. In response thereto the appellant denied that Mr Jacobs's claim had become prescribed. She averred that the provisions of the Prescription Act 68 of 1969 also applied to his claim for compensation under s 23 of the RAF Act and that in terms of s12 and/or 13 of that Act the running of prescription was delayed as since the accident Mr Jacobs had been of unsound mind or insane. In upholding the special plea, the

high court held that Mr Jacobs' claim had indeed become prescribed as the provisions of s 23 of the RAF Act apply to the claim to the exclusion of s 13(1) of the Prescription Act.

On appeal to the SCA the appellant persisted with her arguments. The SCA held that the Prescription Act does not apply to claims for compensation under the RAF Act as its provisions are inconsistent with those of the RAF Act relating to prescription. Further, the SCA held that s 23 of the RAF Act was intended to be fully comprehensive on the subject of claims for compensation under the RAF Act and was intended to exhaust its subject matter. In the circumstances the appeal was dismissed with no order as to costs.