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

**JUDGMENT**

Case No: 319/13
Reportable

In the matter between:

**JOHANNA CHRISTINA PITHEY** **APPELLANT**

and

**ROAD ACCIDENT FUND** **RESPONDENT**

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| **Neutral citation:** | *Pithey v Road Accident Fund* (319/13) [2014] ZASCA 55 (16 April 2014) |
| **Coram:** | Navsa, Theron and Petse JJA and Swain and Legodi AJJA |
| **Heard:** | 13 March 2014 |
| **Delivered:** | 16 April 2014 |

**Summary:** Motor vehicle accident – claim against the Road Accident Fund – adequacy of information provided in claim form as read with supporting documentation – whilst crucial to properly identify whether claim under s 17(1)*(a)* or *(b)* provision of contradictory information not invalidating claim where the category of the claim can still be determined.

## ORDER

**On appeal from:** North Gauteng High Court, Pretoria (Bertelsmann J, Preller and Mabuse JJ concurring, sitting as court of appeal):

1 The appeal is upheld with costs.
2 The order of the Full Court is set aside and in its place is substituted the following:
'The appeal succeeds with costs. The order of Sapire AJ is set aside. In its place is substituted the following order:
The special plea is dismissed with costs.'

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## JUDGMENT

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**Petse JA (Navsa and Theron JJA and Swain and Legodi AJJA concurring):**

[1] The issue arising in this appeal is whether a claim for compensation lodged with the Road Accident Fund (Fund) established in terms of the Road Accident Fund Act 56 of 1996 (the Act) is rendered invalid because the claim form apparently conveys that it is a claim under s 17(1)*(a)* of the Act whereas it is evident from the accompanying documents that such a claim is in terms of s 17(1)*(b)* of the Act. This issue arises against the following backdrop.

[2] The appellant, Ms Johanna Christina Pithey, instituted an action against the Fund in the North Gauteng High Court, Johannesburg, for damages she suffered as a result of a motor vehicle collision which occurred on 29 November 2004. The appellant alleged in her particulars of claim that on 29 November 2004 on the N12 national road between Westonaria and Alberton a collision occurred between a motor vehicle of which she was the driver and a truck driven by a Mr M Ntshangase. She further alleged that the sole cause of the said collision was the negligence, in the respects alleged in her particulars of claim, of the driver of an unidentified blue minibus which was itself not directly involved in the collision. The appellant was

unable to establish the identity of either the owner or the driver of the blue minibus at the material time. This was thus a claim for compensation in terms of s 17(1)(*b*) of the Act, the relevant parts of which read as follows:

'**17 Liability of Fund and agents**

(1) The Fund or an agent shall–

*(a)* . . .;

*(b)* subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle *where the identity of neither the owner nor the driver thereof has been established*, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: . . .' (My emphasis.)

[3] The Fund defended the action and delivered a special plea and a main plea disputing liability. For present purposes only the special plea raised by the Fund is relevant. In that special plea the Fund averred that the appellant's claim was unenforceable because the appellant had not lodged a claim in respect of an unidentified vehicle within a period of two years from the date on which her claim arose, as required in terms of regulation 2(3) of the Regulations, promulgated in terms of s 26 of the Act. That regulation provides:

'(3) Notwithstanding anything to the contrary in any law a claim for compensation referred to in section 17(1)*(b)* of the Act shall be sent or delivered to the Fund, in accordance with the provisions of section 24 of the Act, within two years from the date upon which the claim arose, irrespective of any legal disability to which the third party concerned may be subject.'

The rationale for this regulation was explained in these terms in *Mbatha v Multilateral Motor Vehicle Accidents Fund* 1997 (3) SA 713 (SCA) at 718H-I:

'. . . there are good reasons for having stricter requirements for unidentified vehicle cases, the argument has to fail. In these cases the possibility of fraud is greater; it is usually impossible for the Fund to find evidence to controvert the claimant's allegations; the later the claim the greater the Fund's problems; in addition, whilst in the identified vehicle case the claim against the agent comes in the stead of the claim against the wrongdoer, the claimant

in the present case is given an enforceable right in a case where there otherwise would not have been any . . .'[1]

[4] At the trial before the court of first instance (Sapire AJ) the parties reached agreement on certain facts relating to the validity of the special plea which were recorded in a written statement. The question which, in terms of Uniform rule 33(4), the trial court was called upon to decide was in essence whether the appellant's claim as set out in her claim form read together with the documents which she lodged with the Fund, under cover of a letter dated 17 October 2005 sent by her attorney to the Fund, constituted a valid claim in terms of the Act and the regulations promulgated thereunder.

[5] It is convenient at this juncture to quote the statement of the agreed facts between the parties. The material parts of which read as follows:

'1 . . .

2. . . .

3. Plaintiff's action against Defendant falls under section 17(1)(b) of the act and in the circumstances regulation 2 of the regulations promulgated in terms of the act ("*the regulations*") applies;

4. Defendant raised a special plea in terms of which it alleges that no debt exists against Defendant under the act, due to Plaintiff's failure to comply with regulation 2(3);

5. In order to have claim a against Defendant, Plaintiff would, in terms of regulation 2(3), have to lodge a claim with Defendant within two years after the date of the accident, being, at the least, 28 November 2006;

6. Plaintiff lodged a claim against Defendant by lodging a bundle of documents under cover of a letter from her attorneys dated 17 October 2005 ("*the claim bundle*"). A copy of this letter is attached hereto as Annexure "SOF1";

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[1] *Rondalia Versekeringskorporasie van Suid-Afrika Bpk v Lemmer* 1966 (2) SA 245 (A) at 256A; *Nkisimane & others v Santam Insurance Co Ltd* 1978 (2) SA 430 (A) at 434F-G.

7. Defendant acknowledged receipt of the claim bundle on 24 October 2005 by affixing its date stamp to the first page of the covering letter;

8. Defendant did not object to the validity of the claim in terms of section 26;

9. The following documents, excluding those which are irrelevant for the purpose of deciding this issue, were included in the claim bundle:

    9.1 A statutory claim form in terms of section 17(1) and 24(1)(A) of the act and regulation 3(1) of the regulations. A copy of the claim form is attached hereto as Annexure "SOF2";

    9.2 Plaintiff's affidavit in compliance with section 19(f)(i) of the act. A copy of the affidavit is attached hereto as Annexure "SOF3";

    9.3 An affidavit by Arie Willem Jacobs, a passenger in Plaintiff's vehicle. A copy of the affidavit is attached hereto as Annexure "SOF4";

10. Plaintiff completed paragraph 2 of the claim form, where provision is made for the particulars of the motor vehicle from the driving of which the claim arises, by entering the particulars of a truck with registration number LFG 030 GP, which was driven by one M N Tshangase.

. . .

11. Nowhere on the claim form was mention made of any vehicle of which the driver or the owner is unknown to Plaintiff.

. . .

12. In paragraphs 6 to 8 of her affidavit Plaintiff mentions the involvement of "*an unknown blue minibus*" and in paragraph 18 states that "*[T]he accident was caused by the sole negligence of the driver of the blue taxi. . .*",

. . .

13. In the affidavit of A W Jacobs, he states that:

    13.1 he was a passenger in the vehicle driven by Plaintiff.

    13.2 "*a truck approaching from the opposite direction turned right into the R558.*"

13.3 "*an unknown taxi also turned right directly behind the truck. . . . .we had to swerve to avoid driving into the taxi.*"

13.4 "*both the truck and the taxi were negligent and caused the accident.*"

. . .

14. On May 2006, Defendant repudiated liability in a letter of repudiation, stating that Plaintiff was the sole cause of the collision. A copy of this letter is attached hereto as . . ."

15. On 21 August 2006 Plaintiff's attorneys received a letter from Defendant dated 17 August 2006 which referred to plaintiff's statutory affidavit and the fact that Plaintiff attempted to avoid a collision with a taxi when her vehicle slipped and collided with the rear of the insured vehicle. A copy of this letter is attached hereto as Annexure "SOF5";

16. On 29 May 2007

17. The South African Police Services, Lenasia investigated a case of reckless and negligent driving and culpable homicide, relating to the collision, under docket with MAS number 1331/11/2004. A copy of the first page of the docket cover is attached hereto as Annexure "SOF6".

18. The following documents, excluding those which are irrelevant for the purpose of deciding this issue, was contained in the docket.

17.1 An affidavit by Arie Willem Jacobs dated 27 April 2005. A copy of this affidavit is attached hereto as Annexure "SOF7";

17.2 A warning statement by Plaintiff dated 15 April 2005. A copy of this statement is attached hereto as Annexure "SOF8";

19. In paragraph 2 of the affidavit by Arie Willem Jacobs he states that a blue taxi turned in front of them and that it "*. . . never stopped and we didn't take the registration down.*"

. . .

20. In the warning statement of Plaintiff she states that a taxi "*. . . turned towards north without stopping at the robots. . .*",
. . . .'

[6] I consider it apt, at this stage, to set out the list of documents sent by the appellants attorneys to the Fund under cover of their letter of 17 October 2005:

'*(a)* the statutory Form 1 claim form for compensation and medical report;
*(b)* the statutory medical report;
*(c)* a copy of appellant's identity document;
*(d)* a copy of appellant's driver's licence;
*(e)* the statutory affidavit in terms of s 19*(f)*(i) of the Act;
*(f)* a copy of the official accident report;
*(g) a* copy of clinical notes by appellant's physician;
*(h)* a copy of a radiologist's report;
*(i)* a copy of a certificate issued by appellant's employer;
*(j)* a copy of appellant's statement to the investigating officer;
(*k)* a copy of appellant's statement to comply with s 19*(f)*(i) of the Act;
*(l)* a copy of receipts evidencing appellant's medical expenses;
*(m)* a copy of a statement by a passenger in appellant's vehicle, Mr Jacobs, made to the investigating officer; and
*(n)* one made by him to comply with the Act; together with
*(o)* the power of attorney granted to appellant's legal representatives.'

[7] On 19 May 2006 the Fund, apparently having confined its determination of the fate of the claim with reference to the claim form only, repudiated liability, asserting that the appellant was the sole cause of the collision. On 17 August 2006 the Fund's claim handler wrote to the appellant's attorneys as follows:

'Your letter dated the 2nd of August 2006 refers.
On her S19(f) affidavit, claimant stated that she was trying to avoid a collision with a certain taxi by trying to make a dead stop but her motor vehicle slipped and ended up colliding with our insured driver on the rear.
Unfortunately, this does not prove any negligence on the part [of] our insured driver and instead, he is the one that was rear ended by your client.'

This was the first time in communication with the appellant's attorneys that the Fund made reference to the appellant's affidavit that accompanied the claim form. It ignored what was said in the accompanying documentation concerning the

culpability of the unidentified taxi which, it was alleged, was the cause of the collision.

[8] The court of first instance based its finding on the statement of agreed facts and upheld the Fund's special plea. It dismissed the action with costs. Sapire AJ's reason essentially was that the appellant's claim form did not relate to a claim based on the negligence of the driver of an unidentified vehicle. In reaching this conclusion the learned judge opined that:

'The indisputable fact is and remains that the basis of the plaintiff's claim as specifically stated in the claim form was the negligence of the vehicle there specified. Negligence on the part of the driver of an unidentified vehicle may have given rise to a claim on a different basis altogether.'

In short, the trial court found that the appellant had in fact instituted an action against the Fund without first lodging a claim for compensation in the prescribed form with the Fund in respect of the claim that she sought to advance in her action, that is, in respect of an unidentified vehicle.

[9] The trial court subsequently granted leave to appeal to the Full Court. On appeal the Full Court upheld the judgment of the trial court in a judgment reported as *Pithey v Road Accident Fund* 2013 (5) SA 226 (GNP), (Bertelsmann J, Preller and Mabuse JJ concurring) and dismissed the appeal with costs. The present appeal, with the special leave of this court, is against that judgment and order.

[10] The Full Court noted that the appellant had provided the Fund with two statements of her own, as to how the collision giving rise to her claim arose and two further statements from a Mr Jacobs who was a passenger in the cab of the vehicle of which she was the driver. In her first statement, the appellant inter alia averred that in her attempt to avoid a collision with a taxi travelling in an easterly direction she swerved towards the left lane but her vehicle skidded and collided with the rear-end of a truck. In the second statement she attributed the collision to the sole negligence of the driver of 'the blue taxi' whose identity and that of the owner were not established. Mr Jacobs in his second statement attributed the collision to the joint negligence of both the truck and the blue taxi.

[11] The Full Court went on to observe that in completing the claim form the appellant provided the particulars of the truck and of its owner and driver at the time of the collision being those of the motor vehicle from the driving of which her claim for compensation arose. As against that, the Full Court again noted that the appellant completed paragraph 2(d) of the claim form relating to an unidentified vehicle with the words 'not applicable'. It then concluded that the claim form (Form 1) unequivocally conveyed to the Fund that the collision was caused by the driver of the truck whose particulars were provided as were the particulars of the owner and the truck.

[12] The Full Court found that in the context of the case before it, the question whether there was substantial compliance with ss 17 and 24 of the Act did not arise. It took the view that the pertinent question was whether Form 1 (being the claim form for compensation sent to the Fund) 'correctly indicated that the claim to be instituted by the appellant was one in terms of s 17(1*(b)* rather than s 17(1)*(a)*'.

[13] Emphasising that viewpoint the Full Court stated:

'[33] . . . As has been said above, there is a fundamental difference in the nature of the respective claims. The respondent faces significantly different scenarios, depending on the nature of the claim. The investigation of those claims and the steps that need to be taken to enable the Fund to deal with potential litigation or the consideration of an offer of settlement assume different proportions, depending on whether the insured driver can be consulted or is unknown and therefore never able to enlighten the respondent in respect of any facts that might assist in the decision to oppose or to compromise any claim.

[34] For these reasons it is essential that the respondent be correctly informed whether the insured driver's identity is known or not, whether the prescriptive period is two or three years and whether the owner of the insured vehicle — and the vehicle itself — can be traced or not. The requirement to indicate that the claim falls either under s 17(1)*(a)* or s 17(1)*(b)* is therefore clearly non-negotiable and an essential requirement of the correct application of the claim process. If the incorrect information is supplied in this regard the result must be fatal to the claim.'[2]

[14] It went further to say the following:

[2] *Pithey v Road Accident Fund* 2013 (5) SA 226 (GNP) paras 33-34.

'[41] The true question in this appeal is whether the claim as such was correctly identified in Form 1. The delivery of the form, duly completed, has always been a peremptory requirement. The distinction between claims submitted in terms of s 17(1)*(a)* on the one hand, and s 17(1)*(b)* on the other, has always been regarded as fundamental and therefore the correct identification of the claim to be instituted either as one in which the insured vehicle is identified, or as one in which the opposite is the case, must be regarded as peremptory.

[42] It follows that the unambiguous identification of a claim as one that arose as a result of the driving of an identified vehicle cannot be substituted by the filing of a contradictory affidavit as one caused by an unidentified vehicle.'[3]

[15] Dealing with the contention advanced on behalf of the appellant that the incorrect information provided in the claim form was cured by the affidavits which accompanied it, the Full Court held that it was unavailing because the four affidavits contained contradictory averments concerning the accident and were incapable of correcting any error in the claim form. That error, it concluded, remained uncorrected despite the fact that the appellant should have realised from the content of the Fund's letter of 17 August 2006 that 'the respondent accepted, on the basis of the information supplied to it, that it was dealing with a claim in terms of s 17(1)*(a)*'.

[16] Since the claim form and the documents submitted to the fund are pivotal to a decision in this matter, it is necessary to consider the statutory provisions pertaining thereto. First, the relevant parts of s 24 read as follows:

'(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.

. . .

(4)*(a)* Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

[3] Fn 6 paras 41-42.

*(b)* A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

. . .

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.'

[17] Second, s 19 excludes liability in the event of a failure to provide information in a particular form. Section 19(*f*) provides that if the third party refuses or fails:

'(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof. . . .' the Fund shall not be obliged to compensate the third party in terms of s 17 for any loss or damage. The affidavit and copies of statements and the documents mentioned in s 19*(f)* are required to provide details of how the accident giving rise to the claim arose. It is abundantly clear that the purpose of this provision is, inter alia, to furnish the Fund with sufficient information to enable it to investigate the claim and determine whether or not it is legitimate.[4]

[18] I pause to say something about the primary purpose and objectives of the Act. It has long been recognised in judgments of this and other courts that the Act and its predecessors represent 'social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle'.[5] Accordingly, in interpreting the provisions of the Act, courts are enjoined to bear this factor uppermost in their minds and to give effect to the laudable objectives of the Act. But, as the Full Court correctly pointed out, the Fund which relies entirely

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[4] See further in this regard *Geldenhuys & Joubert v Van Wyk & another*; *Van Wyk v Geldenhuys & Joubert & another* 2005 (2) SA 512 (SCA).

[5] *Road Accident Fund v M obo M* [2005] 3 All SA 340 (SCA) para 12; *Aetna Insurance Co v Minister of Justice* 1960 (3) SA 273 (A) at 285E-F; *Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (A) at 152E-I; *Bezuidenhout v Road Accicent Fund* 2003 (6) SA 61 (SCA) para 7 and the cases therein cited.

on the fiscus for its funding should be protected against illegitimate and fraudulent claims.

[19] It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices.[6] As to the latter requirement this court in *SA Eagle Insurance Co Ltd v Pretorius*[7] reiterated that the test for substantial compliance is an objective one.

[20] In *Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (A) at 152E-I, Nestadt JA said:

'It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand the benefit which the claim form is designed to give the fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the possible early investigation of the case. In addition, it also promotes the saving of the costs of litigation. . . . These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant. . . .'

Although these remarks were made in a different context they articulate, in my view, the purpose that the claim form is intended to serve.

[21] The argument advanced on behalf of the appellant was in essence the following. It was contended that although s 17(1) distinguishes between two categories of claims the fact that the appellant, in completing the claim form, conveyed the impression that she was advancing a claim relating to an identified motor vehicle whereas her claim pertained to an unidentified vehicle did not

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[6] See *Rondalia Versekeringskorporasie van Suid-Afrika Bpk v Lemmer* 1966 (2) SA 245 (A); *Nkisimane & 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 865B–F; *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 831B–F; *Guardian National Insurance Co Ltd v Van der Westhuizen* 1990 (2) SA 204 (C) at 210B–211F.

[7] *SA Eagle Insurance Co Ltd v Pretorius* 1998 (2) SA 656 (SCA) at 663D-E.

invalidate her claim. In support of this contention, Mr Botha, who appeared on behalf of the appellant, contended that the claim form ought not to have been read in isolation but together with the documents that accompanied it. Had that approach been adopted by the Fund, continued the argument, rather than focusing intently on a specific paragraph of the form, the Fund would have realised that the claim advanced by the appellant was that arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof had been established.

[22] Mr Botha further submitted that even on the acceptance that the claim form ─ read with the accompanying documents ─ contained incorrect or contradictory information it was not open to the Fund to seize upon that fact and employ it as a subterfuge to defeat the appellant's otherwise legitimate claim. What the Fund ought to have done, concluded the argument, was to investigate the claim by making enquiries. For this proposition counsel relied on *Constantia Insurance Co Ltd v Nohamba* 1986 (3) SA 27 (A). There, Galgut AJA, after referring to earlier decisions of this and other courts said (at 39G-H):

As we have seen from the *Commercial Union* case *supra* at 517 [*Commercial Union Assurance Co of South Africa Ltd v Clarke* 1972 (3) SA 508 (A) at 517E] and the *Gcanga* case *supra* at 865 [*AA Mutual Insurance Ltd v Gcanga* 1980 (1) SA 858 (A)] the purpose of the form is to enable the insurance company to "enquire into a claim" and to investigate it. It is designed to "invite, guide and facilitate such investigation". It follows, in my view, that, if an insurance company is given sufficient information to enable it to make the necessary inquiries in order to decide whether "to resist the claim or to settle or to compromise it before any costs of litigation are incurred", it should not thereafter be allowed to rely on its failure to make the inquiries.'

[23] The principal argument advanced on behalf of the Fund in resisting the appeal went as follows. First, it was contended that no claim had been lodged on behalf of the appellant in respect of an unidentified vehicle as provided for in regulation 2(3) which was the claim that the appellant advanced in her action in the court of first instance. It was submitted that the appellant sought to advance a claim for compensation as contemplated in s 17(1)*(b)* of the Act, when in fact, no such claim had been lodged with the Fund within two years of the date of the accident as required by regulation 2(3). In elaboration, it was submitted that in completing

paragraph 2(a) of the claim form and unequivocally stating in paragraph 2(d) of the claim form that the latter was not applicable, the appellant thereby categorically disavowed any claim for compensation in terms of s 17(1)*(b)* of the Act. Pointing out that the requirements of regulation 2(3) were peremptory, counsel contended ─ with reference to what was said by this court in *Geldenhuys & Joubert v Van Wyk & another*; *Van Wyk v Geldenhuys & Joubert & another* 2005 (2) SA 512 (SCA) ─ that having regard to the fundamental difference between a claim under s 17(1)*(a)* and one under s 17 (1)*(b)* the incorrect identification of the claim in the claim form had fatal consequences for the appellant in that no claim other than the one in respect of which a claim form was lodged is enforceable.

[24] In *Geldenhuys* this court was considering the question whether regulation 2(3) made under s 26 of the Act was valid. It reiterated that the distinction that the Act makes between s 17(1)*(a)* and s 17(1)*(b)* claims is fundamental because of its implications as articulated in *Bezuidenhout v Road Accident Fund*.[8] It went on to say that 'the regulatory scheme . . . differs in two ways from the periods the statute determines for the prescription of identified vehicle claims. First, the two-year period for lodging a claim is one year shorter than the prescription period the statute specifies for identified vehicle claims; and, second, the regulatory scheme makes no special allowance for minors'.

[25] It is true that there is, in terms of the Act and regulation 2(3), a fundamental distinction between a claim under s 17(1)*(a)* and one under s 17(1)*(b*). This cannot, however, be taken to mean that even when the Fund, within the prescribed two year period is in possession of information which a claimant is statutorily obliged to supply and which, when read in tandem with the claim form, which in the circumstances of this case the claimant clearly intended, reveals that the claim really relates to an unidentified vehicle, the Fund is entitled to repudiate the claim on the basis that no valid claim had been made. Nor ought the Fund to benefit from its own failure to clarify with minimal time, effort and expense, whatever confusion the claim form and attached documentation revealed. This is not a case where no information was supplied to the Fund in relation to the claim in terms of s 17(1)(*b*). At worst, for the

[8] *Bezuidenhout v Road Accident Fund* 2003 (6) SA 61 (SCA) paras 6 and 15.

appellant, she supplied conflicting information which could be undone with relative ease. Significantly, it has not been suggested that there is even a whiff of a fraudulent or made-up claim.

[26] It was submitted on behalf of the Fund that, since no affidavit was filed by the appellant with the police within 14 days of being able to do so, as was required by regulation 2(1)(*c*),[9] read with s 17(1)(*b*) of the Act which was applicable at the time and which has since been ruled unconstitutional by the Constitutional Court, the Fund could not have been expected to make enquiries about a claim involving an unidentified vehicle. Put simply, it was contended that the absence of such an affidavit together with the claim form created the unambiguous impression that the claim was one in respect of an identified vehicle. As stated earlier, this ignores the factually detailed evidence in the accompanying documentation indicating clearly that the claim was one in respect of an unidentified vehicle. To uphold the Fund's contentions in the circumstances of the present case would be to: (a) elevate form above substance; (b) be rigidly technical against a just result; and (c) to subvert the objects of the Act alluded to above. I emphasise that this judgment does not purport to lay down any general rule but is decided on its own very specific facts

[27] In the result the following order is made:

1 The appeal is upheld with costs.

2 The order of the Full Court is set aside and in its place is substituted the following:

'The appeal succeeds with costs. The order of Sapire AJ is set aside. In its place is substituted the following order:

The special plea is dismissed with costs.'

_____

X M PETSE

JUDGE OF APPEAL

[9] Regulation since declared unconstitutional by the Constitutional Court in *Engelbrecht v Road Accident Fund & another* 2007 (6) SA 96 (CC); [2007 (5) BCLR 457 (CC)].

APPEARANCES:

For the Appellant: E Botha
Instructed by:
Gildenhuys Malatjie Inc, Pretoria
Honey Attorneys, Bloemfontein

For the Respondent: F A Snyckers SC (with him A Viljoen)
Instructed by:
Lindsay Keller, Care of Maponya Inc, Pretoria
Matsepes, Bloemfontein