



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1016/22

In the matter between:

KING PRICE INSURANCE COMPANY LIMITED

APPELLANT

and

SIZWE ANTONIO MHLONGO

RESPONDENT

Neutral citation: *King Price Insurance Company Limited v Mhlongo* (Case no 1016/2022) [2023] ZASCA 152 (15 November 2023)

Coram: GORVEN, MABINDLA-BOQWANA and WEINER JJA and BINNS-WARD and KEIGHTLEY AJJA

Heard: 6 November 2023

Delivered: 15 November 2023

Summary: Civil procedure – claim under insurance policy arising from motor vehicle collision – market value pleaded – evidence led on shortfall of amount owed to the financier – no evidence led on market value – incongruity between pleadings and evidence – claim not proved.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Phooko AJ with Khumalo J concurring, sitting as court of appeal):

- 1 The appeal is upheld with costs.
- 2 The order of the Gauteng Division of the High Court, Pretoria is set aside and is substituted by the following order:
'1 The appeal is upheld with costs.
2 The order of the Regional Court for the Regional Division of Gauteng, Pretoria is set aside and is substituted by an order granting absolution from the instance with costs.'

JUDGMENT

Keightley AJA (Gorven, Mabindla-Boqwana and Weiner JJA and Binns-Ward AJA concurring)

[1] The respondent in this appeal, Mr Mhlongo, was a policy holder with the appellant, King Price Insurance Company Ltd (King Price). The policy was for comprehensive cover for his Mercedes Benz E200 motor vehicle. In 2018, Mr Mhlongo's vehicle was involved in a collision, and as a result, it was written off. He duly lodged a claim under his policy with King Price. However, King Price rejected the claim and cancelled the policy.

[2] Mr Mhlongo then issued summons out of the regional court, Pretoria (the trial court), averring a breach of the agreement by King Price. He claimed contractual damages in the amount of R374 960.50 being ‘the fair, alternatively reasonable, alternatively market related value of the motor vehicle’ (the market-related value). In response, King Price pleaded that Mr Mhlongo had failed to comply with his obligations under the agreement. He was thus not entitled to indemnity, and King Price was entitled to avoid the agreement of insurance.

[3] The parties did not seek to separate issues in the matter, proceeding on both merits and quantum. Much of the trial focused on whether King Price was entitled to avoid the agreement. The only evidence adduced by Mr Mhlongo to establish the quantum of the damages he claimed to have suffered was a written settlement quotation, supposedly from Standard Bank which had financed the purchase of the vehicle, stating that the settlement amount due to the bank under the vehicle finance agreement was R374 960.50.

[4] The trial court found in Mr Mhlongo’s favour. It awarded damages in the amount pleaded. The matter went on appeal to a full bench of the Gauteng Division of the High Court, Pretoria (the full bench), which upheld the trial court’s judgment and order. On petition to this Court, leave to appeal was granted, although it was limited to ‘[w]hether the respondent (Plaintiff) proved the quantum of the claim’.

[5] The nub of King Price’s case on appeal is that the evidence adduced by Mr Mhlongo did not support his pleaded case on quantum. As noted above, he claimed as damages the market-related value of his vehicle. He confirmed that this was the basis of his claim in cross-examination. Yet he presented no evidence at all on the market value of the vehicle. King Price pointed out that Mr Mhlongo

conceded under cross-examination that he had no knowledge of its market value. According to King Price, Mr Mhlongo's reliance on the settlement amount due to Standard Bank was misplaced, as it bore no relation to the case as pleaded. In the absence of evidence which established the pleaded quantum of his claim, King Price contended that the claim ought to have been dismissed by the trial court, and the full bench ought to have upheld its appeal.

[6] The full bench dismissed King Price's appeal on two bases. First, it found that, correctly interpreted, the agreement between the parties obliged King Price to pay the settlement amount, and hence Mr Mhlongo was entitled to claim that amount by way of contractual damages. Second, it found that the onus lay on King Price to plead and prove an alternative basis for the calculation of damages, and it had failed to do so.

[7] The full bench erred in respect of the first basis for dismissing the appeal. What was fundamentally at issue was not the correct interpretation of the agreement, but rather the case as pleaded by Mr Mhlongo. He pleaded his damages based on the market-related value of the vehicle. He did not plead damages based on the settlement amount (nor, incidentally, did he even prove that amount adequately). It was thus irrelevant to Mr Mhlongo's case whether, on a particular interpretation of the agreement, King Price was obliged to pay the settlement amount: this was simply not the case that Mr Mhlongo pleaded, or King Price was asked to meet. Consequently, the full bench ought not to have dismissed the appeal on this basis.

[8] As to the second basis for dismissing King Price's appeal, here too, the full bench erred. It is trite that it is for a plaintiff to prove its damages. Having appropriately elected to frame his damages as the market-related value of the

vehicle, Mr Mhlongo bore the onus of proving the damages so pleaded. King Price elected to defend the action on the basis that Mr Mhlongo had not discharged his onus. King Price was entitled to defend the action in this manner. As such, there was no duty on King Price to plead or present evidence to prove an alternative quantum of damages, as the full bench suggested. When Mr Mhlongo failed to prove his pleaded damages, that should have been the end of the matter.

[9] Unfortunately for Mr Mhlongo, there was a fatal incongruity between the case he pleaded and the case he presented to the trial court. In the absence of evidence to establish the market-related value of his vehicle, it could not properly be found that he had proved his claim. The claim ought to have failed for this reason. It follows that the appeal must succeed.

[10] In the result the following order issues:

1 The appeal is upheld with costs.

2 The order of the Gauteng Division of the High Court, Pretoria is set aside and is substituted by the following order:

‘1 The appeal is upheld with costs.

2 The order of the Regional Court for the Regional Division of Gauteng, Pretoria is set aside and is substituted by an order granting absolution from the instance with costs.’

R M KEIGHTLEY
ACTING JUDGE OF APPEAL

Appearances

For appellant: C Richard

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Matsepes Inc, Bloemfontein

For respondent: S Mahabeer SC

Instructed by: Mahomed Salek Inc, Durban
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