THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable
Case No: 285/2016

In the matter between:

NTSIENI JOSEPHINE MANUKHA **APPELLANT**

and

ROAD ACCIDENT FUND **RESPONDENT**

Neutral Citation:	*Manukha v Road Accident Fund* (285/2016) [2017] ZASCA 21 (24 March 2017)
Coram:	Leach, Tshiqi, Theron, Petse JJA and Molemela AJA
Heard:	20 February 2017
Delivered:	24 March 2017

Summary: Road Accident Fund Act 56 of 1996: ss 17(1); 23 and 24 read with regulation 3(3)*(b)*(ii): Damages: motor vehicle accident: claim for compensation against Road Accident Fund: non-pecuniary loss forming part of a unitary claim for compensation and not constituting a separate and discrete claim: prescription: late filing of RAF4 form thus not constituting separate claim, and consequently, claim for damages for non-pecuniary loss not prescribed.

ORDER

On appeal from: Limpopo Local Division of the High Court, Thohoyandou (Kganyago AJ sitting as court of first instance):

1 The appeal is upheld with costs.

2 The order of the high court is set aside and substituted with the following:

'The special plea of prescription is dismissed with costs.'

JUDGMENT

Petse JA (Leach, Tshiqi, Theron JJA and Molemela AJA concurring):

[1] This appeal concerns the question whether a claim for general damages in terms of s 17(1)*(b)* of the Road Accident Fund Act 56 of 1996 (the Act) had prescribed, due to the fact that the serious assessment report incorporated in the RAF4 form was lodged outside of the time period allowed for the issuing of summons under s 23(3) of the Act ie more than five years from the date on which the cause of action arose.

[2] The appeal arises from the following factual background. On 14 August 2008 the appellant, Ms Ntsieni Josephine Manukha, was a passenger in a motor vehicle travelling on the Mavhoi Road in Limpopo. The motor vehicle overturned allegedly as a consequence of the negligence of the driver of a passenger bus and the appellant suffered personal injuries.

[3] Subsequently, in July 2011, the appellant (as the plaintiff) instituted an action in the Limpopo Local Division of the High Court for compensation arising out of the accident in terms of s 17(1) of the Road Accident Fund Act 56 of 1996 (the Act) against the respondent (the Road Accident Fund). The Fund was established under

the Act[1] and its object is the payment of compensation for loss or damage wrongfully caused by the driving of motor vehicles.[2] It was alleged in her particulars of claim that she had, inter alia, suffered a fracture of her left radius and ulna, and sustained bruises on her hand. She accordingly claimed damages in the sum of R700 000, of which R200 000 was for non-pecuniary damages. The particulars of claim also indicated that she 'complied with the provisions of s 24 of the Act by lodging the prescribed form and documentation'.

[4] The Act prescribes certain requirements relating to lodgement of claims for compensation against the Fund. It is apposite at this early stage to set these out first before turning to the further background facts. The liability of the Fund to compensate third parties for damages arising from the driving of a motor vehicle is set out in s 17 of the Act, which provides that:

'17 (1) The Fund or an agent shall-

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(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: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

(1A) *(a)* Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act 56 of 1974.'

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[1] Section 2 of the Act.
[2] Section 3 of the Act.

[5] Section 24 of the Act provides that a claim for compensation, which must be accompanied by a medical report, shall, inter alia, be set out in the prescribed RAF1 claim form which shall be completed in all its particulars.[3] A medical report is also to be completed on the prescribed form by the medical practitioner who treated the injured person for the bodily injuries sustained in the accident from which the claim arises.[4]

[6] Prescription of a claim is regulated by s 23, which in material parts, provides that:

'23(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.

. . .

(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17 (4) *(a)* or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.'

[7] It is also apposite at this stage to refer to regulation 3(3)*(b)*(i) of the Fund's regulations[5] promulgated in terms of s 26 of the Act. It reads:

'*(b)* A claim for compensation for non-pecuniary loss in terms of section 17 of the Act shall be submitted in accordance with the Act and these Regulations, provided that:

(i) the serious injury assessment report may be submitted separately after the submission of the claim at any time before the expiry of the periods for the lodgement of the claim prescribed in the Act and these Regulations.'

[8] Reverting to the factual matrix, during January 2009 the appellant lodged her RAF1 claim form with the Fund. Paragraph 22 of the RAF1 claim form, being the medico-legal report which s 24(2) of the Act requires to be completed by the medical practitioner who treated the appellant for the bodily injuries she sustained, was left blank. And as stated earlier, the compensation claimed by the appellant incorporated

[3] Section 24(1)*(a)* of the Act.
[4] Section 24(2)*(a)* of the Act.
[5] Promulgated in the Road Accident Fund Regulations G N R770, GG 31249 dated 21 July 2008.

a claim relating to non-pecuniary loss. The proviso to s 17(1)*(b)* provides that the obligation of the Fund to compensate for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A).

[9] That subsection (ss 17(1A)*(a)* and *(b)*) provides that the assessment of a 'serious injury' shall be based on a prescribed method and shall be carried out by a medical practitioner registered under the Health Professions Act 56 of 1974. The prescribed method is catered for in the regulations. To constitute 'serious injury' the injuries must meet a threshold of 30 per cent of what the regulations describe as 'Impairment of the Whole Person' or specified permanent or long-term impairments.

[10] Both the Act and the regulations require that a third party who claims for non-pecuniary loss furnish the Fund with a serious injury assessment report in an RAF4 form. The RAF4 form need not be submitted to the Fund simultaneously with the RAF1 form.

[11] The dismal state of the RAF1 form submitted on behalf of the appellant elicited a response from the Fund on 1 July 2009 wherein it, inter alia, alerted the appellant's attorneys to the fact that there was no serious injury assessment report to substantiate the claim for non-pecuniary loss, as required by the Act and the regulations. The appellant's attorneys did not respond until on 26 July 2014 (which was more than five years from the date on which the appellant's cause of action arose) when they belatedly served the RAF4 form on the respondent's attorneys. According to this report, prepared by a Dr Monyai on 3 May 2014, the appellant was assessed to have suffered 36 per cent 'Whole Person Impairment'. The report indicated that the appellant sustained head injuries. The narrative test was prepared by Dr Kumbirai who concluded that the appellant's injuries had, inter alia, resulted in serious long-term impairment or loss of bodily function.

[12] As already mentioned, long before she submitted the RAF4 form, the appellant had instituted action against the Fund in which she, inter alia, claimed payment of R200 000 representing non-pecuniary loss for pain and suffering which she had included in her RAF1 form (albeit for a lesser amount). The Fund raised a

special plea of prescription relative to the claim for non-pecuniary loss. It asserted that:

'The [appellant] had failed to provide the [respondent] with the RAF4 serious injury assessment report timeously as same should have been submitted by 13 August 2013.'

[13] At the trial the high court heard the parties on the issue raised in the respondent's special plea only. How this came about is not clear from the record. There was, for example, no evidence led at the trial. Nor was there any statement of agreed facts prepared for adjudication by the high court as contemplated in Uniform Rule 33.[6] Had that approach been adopted by the parties and sanctioned by the high court it would then have become necessary for the court to make an order to that effect. We were, however, informed by the appellant's attorney that the salient facts as to when: (a) the RAF1 and 4 forms were submitted to the Fund; and (b) the action was instituted against the Fund as encapsulated above were common cause between them. And that it was on that basis that the high court dealt with the matter.

[14] The high court, having heard argument, upheld the special plea with costs. Most significantly, the high court considered that the pertinent question to be asked was 'whether the serious injury assessment report should have been lodged with the defendant within a period of five years'. After considering the import of s 23(1) and regulation 3(3)*(b)*(i), and noting that the regulations do not deal with prescription, the high court concluded that the appellant's claim for non-pecuniary loss had prescribed under s 23(3) of the Act because her RAF4 form was submitted after the expiry of a period of five years from the date on which her cause of action arose. Consequently, the high court upheld the special plea with costs. It subsequently refused leave to appeal but made no order as to costs. The appeal before us is with the leave of this court.

[6] In terms of rule 33(1) of the Uniform Rules of Court, parties to a dispute may agree upon a written statement of facts in the form of a special case for the adjudication of points of law. This statement sets out the facts agreed upon and the questions of law in dispute between the parties, as well as their contentions. Rule 33(3) gives the court the discretion to draw any inference of fact or law from the facts and documents as if proved at trial. See in this regard: *Mighty Solutions t/a Orlando Service Station v Engen Petroleum Ltd & another* [2015] ZACC 34; 2016 (1) SA 621 (CC) para 61, and *Bane & others v D'Ambrosi* [2009] ZASCA 98; 2010 (2) SA 539 (SCA) para 7 where this court said that rule 33(1) and (2) made it clear that the resolution of a stated case proceeds on the basis of a statement of agreed facts, and is, after all, seen as a means of disposing of a case without the necessity of leading evidence.

[15] At the hearing of the appeal we were informed by counsel from the bar that liability in relation to all of the other components of the appellant's claim (barring non-pecuniary loss) was ultimately conceded by the Fund. Accordingly, what remains in contention is the claim relating to the appellant's non-pecuniary loss.

[16] It is thus only necessary to determine whether the appellant's lodgement of the RAF4 form with the Fund in substantiation of her claim for non-pecuniary loss can be defeated by a defence of prescription. The claim for non-pecuniary loss was also listed in her RAF1 form which was lodged with the Fund during January 2009 (after a period of four and a half months from the date on which her cause of action arose). But the RAF4 form itself was submitted after the expiry of a period of five years. This is what lies at the heart of this case.

[17] The judgment of the high court was assailed by counsel for the appellant on several grounds. Significantly, it was contended that the high court erred in concluding that the appellant's claim in respect of general damages had prescribed when in fact a claim therefor had been lodged within a period of three years from the date on which the cause of action arose (s 23(1) of the Act). And that an action in pursuit of that claim was instituted within a period of five years as provided for in s 23(3) of the Act.

[18] The Fund, however, contended that it was incumbent upon the appellant to lodge the RAF4 form within 'the extended period of five years' from the date on which her cause of action arose. And that the appellant's failure to do so, so the argument continued, meant that she had no claim against the Fund in respect of non-pecuniary loss. Thus, so the argument went, as it was common cause that the RAF4 form was lodged on 14 August 2014 after the expiry of a period of five years from the date of the accident, it followed that whatever claim for non-pecuniary loss that the appellant may have had prescribed on 13 May 2013. Before us, counsel for the Fund accepted, rightly so, that the appellant had but one unitary claim for compensation against the Fund arising from the accident that occurred on 14 August 2008.

[19] To my mind, on a proper reading of the Act and the regulations, the Fund's contentions cannot be sustained. First, s 17 of the Act makes reference to 'a claim for compensation' and not multiple claims. In addition, s 17 provides that the Fund is obliged to compensate a third party for non-pecuniary loss in respect of serious injury only. The serious injury is required to be assessed as provided for in the regulations. Second, s 24 of the Act in turn provides for the lodgement of such 'a claim' and the requirements that the third party must meet in lodging 'the claim'. Third, s 23(1) of the Act which pertinently deals with prescription talks of 'a right to claim compensation under s 17 from the Fund'. In particular, s 23(3) provides that no claim (in singular) lodged in terms of s 17(4)*(a)* or s 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose, and the appellant had instituted action within that period. Fourth, regulation 3 (3)*(b)*(i) provides that the serious injury assessment report may be submitted separately from the submission of the claim itself. Implicit in this is that 'the claim' exists independently of 'the assessment report'. Thus the claim (inclusive of a claim for non-pecuniary loss) may be submitted in terms of s 24 of the Act without the 'serious injury assessment report'. And, as the high court correctly observed, there is nothing in the regulations dealing with prescription, which is dealt with exclusively by the Act.

[20] In *Nonkwali v Road Accident Fund* [2008] ZASCA 8; 2009 (4) SA 333 (SCA) para 8, this court, with reference to judgments of this and other courts, said:

'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 had but a single, indivisible cause of action and that the various items constituting the claim were thus not separate claims or separate causes of action. 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.' (Footnotes omitted.)

(See also the unreported judgment in *Van Zyl v Road Accident Fund* 2012 JDR 0972 (GSJ).) It suffices to point out that in view of the Fund's belated acceptance that the appellant had a unitary and indivisible claim it is not necessary to belabour that point in this judgment.

[21] In the light of the aforegoing the special plea raised by the Fund should not have been upheld by the high court. At best for the Fund it was entitled to a stay of

that part of the appellant's claim relating to compensation for non-pecuniary loss until the process set out in regulation 3 had been complied with by the appellant. (See in this regard *Road Accident Fund v Duma and Three Similar Cases* [2012] ZASCA 169; 2013 (6) SA 9 (SCA) para 40; *Road Accident Fund v Lebeko* [2012] ZASCA 159; 2012 JDR 2176 (SCA) paras 28-32. See also regulation 3(3)*(c)* which makes plain that the Fund shall *only be obliged to compensate* a third party for non-pecuniary loss as provided in the Act if a claim is supported by a serious injury assessment report submitted in terms of the Act and the regulations and the Fund is satisfied that the injury has been correctly assessed.)

[22] What can be inferred from the narrative set out above is, inter alia, that upon receiving the RAF4 form the Fund adopted the stance that as it was served after the expiry of a period of five years from the date of the accident, the claim for non-pecuniary loss should be left out of the reckoning. In light of what has been said above, the Fund was mistaken in adopting such attitude. In the ordinary course, the regulations provide that when the Fund receives an RAF4 form it must do one of two things. It may either accept it and then deal with the claim on that basis, or reject the RAF4 form if it is not satisfied that it complies with the Act and the regulations. In the latter event, it must, (a) in terms of regulation 3(3)*(d)*(i) provide reasons for doing so; or (b) it may, if it is not satisfied with the medical assessment, direct that the appellant submits herself to a further assessment at the Fund's expense by a medical practitioner designated by the Fund as provided in regulation 3(3)*(d)*(ii). If, notwithstanding this process, the Fund rejects the RAF4 form, the regulations provide for an extensive procedure that would be triggered in the event that the third party wishes to contest the rejection of the RAF4 form. (See, in this regard, *Road Accident Fund v Duma and Three Similar Cases* para 7.) But for the present purposes nothing more need be said on that score. It remains only to emphasise that the Act and the regulations do not contemplate that a claim for non-pecuniary loss will prescribe if the RAF4 form is delivered outside of the period of prescription, should prescription have earlier been interrupted by the institution of proceedings.

[23] It is necessary to comment on the state of the Fund's heads of argument. Its heads of argument comprise 11 pages, but all of the even numbered pages are missing. When this shortcoming was brought to counsel's attention at the hearing he

could offer no intelligible explanation as to how this came about. Accordingly, the conclusion is inescapable that no proper consideration was given to the preparation and collation of the respondent's heads of argument. To my mind, counsel's remissness is deserving of the strictest censure from this court. It must therefore be said without equivocation that the time will come when this court will be less tolerant of counsel who continue to be content with work that can only be described as shoddy.[7]

[24] Accordingly, the appeal must succeed. In the result the following order is made:

1 The appeal is upheld with costs.

2 The order of the high court is set aside and substituted with the following:

'The special plea of prescription is dismissed with costs.'

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X M PETSE

JUDGE OF APPEAL

[7] Rule 10 of the rules of this court clearly set out the manner in which heads of argument must be prepared in this court. It would be useful for counsel to revisit these rules, and also bear in mind the suggestions by the former Deputy President Harms in an article titled 'Heads of argument in courts of appeal' accessible on *www.sabar.co.za/law-journals/2009/.../2009-december-vol022-no3-pp20-22.pdf*.

APPEARANCES:

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