THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 1286/18

In the matter between:

A A JONES **APPELLANT**

and

ROAD ACCIDENT FUND **RESPONDENT**

Neutral Citation: *Jones v RAF* (1286/18) [2019] ZASCA 173 (2 December 2019)

Coram: Wallis and Zondi JJA and Tsoka, Gorven and Eksteen AJJA

Heard: 18 November 2019

Delivered: 2 December 2019

Summary: Motor vehicle accident – claim for compensation against Road Accident Fund in terms of s 17(1)*(a)* of the Road Accident Fund Act 56 of 1996 – identification must establish the identity of the owner or driver of offending motor vehicle. Identification of a series of vehicles and their owners – requirements of s 17(1)*(a)* not met – claim falls under s 17(1)*(b)* of the Act read with regulation 2.

ORDER

On appeal from: The Gauteng Division of the High Court, Pretoria (Van der Schyff AJ sitting as court of first instance):

The appeal is dismissed with costs.

JUDGMENT

Zondi JA (Wallis JA and Tsoka, Gorven and Eksteen AJJA concurring):

[1] Two issues arise for determination in this appeal. The first, is whether a claim for compensation lodged by the appellant, Mr A Jones with the Road Accident Fund (RAF) is a claim in terms of s 17(1)*(a)* of the Road Accident Fund Act 56 of 1996 (the Act), or one in terms of s 17(1)*(b)* of the Act read with regulation 2(1)*(b)* of the Regulations promulgated in terms of s 26 the Act. The second issue is whether the appellant's claim has become prescribed. The difference between s 17(1)*(a)* and s 17(1)*(b)* is that the former is concerned with claims where the identity of the owner or driver of the insured vehicle has been established and the latter with the case where the identity of the owner or driver of the insured vehicle has not been established. In the former case the prescriptive period is three years, while in the latter it is two years from the date of the accident.

[2] The Gauteng Division of the High Court, Pretoria (Van der Schyff AJ) determined that the appellant's claim was a claim that falls under s 17(1)*(b)* of the Act, read with regulation 2(1)*(b)*. The high court accordingly held that the appellant's claim had become prescribed as it was not lodged within the prescribed period of two years contemplated in regulation 2. In the result the high court dismissed the appellant's claim with costs but granted the appellant leave to appeal to this court.

[3] The issue allegedly arose in the following circumstances: On 17 February 2012 the appellant was the driver of a Volkswagen Golf motor vehicle with registration letters

and number HGS 171 NW. On the road between Orkney and Stilfontein, a chunk of gold ore, forming part of a load being transported from the mine at Orkney to a refining facility, fell from or became dislodged from a moving truck (insured vehicle). He alleged that this was as a result of the negligence of the insured driver. The rock penetrated the windscreen of the appellant's vehicle and struck him on the forehead. In consequence the appellant claimed to have sustained a head and brain injury. Following the accident and the resultant bodily injuries the appellant on 15 February 2015 lodged a claim with the RAF.

[4] Thereafter, on 25 April 2016 the appellant caused summons to be issued in the high court against the RAF for the damages he had allegedly sustained. In paragraph 3.2 of his amended particulars of claim the appellant listed 23 vehicles and the nine owners thereof. He contended that one of these vehicles was probably the insured vehicle conveying the ore at the time of the accident. The RAF defended the action and filed a special plea in which it contended that the insured vehicle was a vehicle as contemplated in s 17(1)*(b)*, read with regulation 2. This covers a vehicle of which neither the identity of the owner, nor the identity of the driver has been established. The RAF contended that the appellant's claim had become prescribed because it was lodged more than two years after the cause of action arose.

[5] By agreement between the parties the high court made an order that the special plea be separately adjudicated. To that end on 22 August 2013 the parties prepared a stated case setting out the issues to be decided in terms of rule 33(4) of the Uniform Rules of Court. The material portion of the document reads as follows:

'THE AGREED FACTS

1.1 The action, instituted in terms of the Road Accident Fund Act, 56 of 1996 ("the Act"), arises from bodily injuries sustained by the plaintiff (whilst being the driver of his vehicle) in a motor vehicle accident which occurred on 17 February 2012 on the road between Orkney and Stilfontein.

2.

The accident allegedly occurred when a rock, forming part of gold ore being transported fell from or became dislodged from a heavy motor vehicle/truck trailer combination ("the insured vehicle"), penetrated the windscreen of the plaintiff's vehicle and struck the plaintiff on his

head – this allegation is not admitted by the defendant, but can be accepted solely for purposes of adjudicating the prescription issue which falls to be decided.

3.

3.1 The accident was allegedly caused by the negligence of the driver of the insured vehicle which conveyed the ore, such negligence being set out in paragraph 5 of the particulars of claim – this allegation is not admitted by the defendant, but can be accepted solely for purposes of adjudicating the prescription issue which falls to be decided; and

3.2 Whilst the driver of the insured vehicle could not be identified, a series of vehicles and their owners were subsequently identified, one of which probably conveyed the ore at the time and of which the details are set out in paragraph 3.2 of the particulars of claim (one being in the alternative to the other).

4.

The plaintiff's claim was lodged more than two years after the date on which the cause of action arose i.e. the date of the accident, i.e. too late for a claim in terms of section 17(1)*(b)* of the Act (read with regulation 2(1)) but in time for a claim in terms of section 17(1)*(a)* thereof.

5.

<u>THE PLAINTIFF'S CASE</u>

It is the plaintiff's case that

5.1 the fact that a group of vehicles and their owners were identified of which one was the vehicle from which the ore fell and injured the plaintiff, is sufficient identification to place the claim outside the envisaged scope of section 17(1)*(b)* of the Act and regulation 2(1)(b) ("the regulation") of the regulations promulgated in terms of the Act; and

5.2 which means that the insured vehicle was not a vehicle where the identity of the owner has not been established (as contemplated in the regulation) albeit that the identity of the driver has not been established; and

5.3 that the claim is therefore a claim which falls within the scope of section 17(1)*(a)* of the Act, being a claim where the identity of the owner of the vehicle has been established and that it was accordingly timeously lodged.

6.

<u>THE DEFENDANT'S CASE</u>

It is the defendant's case that

6.1 the insured vehicle was a vehicle as contemplated in section 17(1)*(b)* and in the regulation viz. one of which neither the identity of the owner nor the identity of the driver has been established and

6.2 the claim has become prescribed because it was lodged more than two years after the cause of action arose.

7.

THE ISSUE FOR ADJUDICATION

The parties agree that the following issues serve to be adjudicated:

7.1 Is the plaintiff's claim a claim as contemplated in section 17(1)*(a)* of the Act or is it a claim to be adjudicated in terms of and subject to section 17(1)*(b)* read with regulation 2(1)(b) of the regulations promulgated in terms of the Act?

7.2 Has the plaintiff's claim accordingly become prescribed for want of lodging it within the prescribed two years contemplated in regulation 2(1)(b) or has it been timeously lodged?'

[6] This is what was dealt with by Van der Schyff AJ. She found in favour of the respondent on both issues. According to the high court the crisp question was whether, where an accident is caused in circumstances where it is not possible to identify a specific vehicle as 'the insured vehicle', but it is possible to identify a series of vehicles and their owners, one of which probably caused or contributed to the accident at the time and place where the accident occurred, the claim falls in the category of what is often referred to as an 'identified' claim as opposed to an 'unidentified' – or hit-and-run – claim. The high court rejected the appellant's contention that the stated case before it did not involve the interpretation of any provision of the Act and that it had only to be discerned whether the claim was formulated as a so called 'identified' claim. It held that the substance of the appellant's particulars of claim, not the form in which it was formulated, should be considered and that the enquiry should involve the interpretation of s 17(1)*(a)*. I cannot find fault with the high court's reasoning in this regard.

[7] It went on to hold at para 28:

'In the current case, a series of vehicles and their owners were identified, 23 vehicles to be precise, respectively linked to one of 9 different vehicle owners, one of which probably conveyed the ore at the time (one being in the alternative to the other). This scenario is to be distinguished from a multi-vehicle accident where more than one vehicle was undeniably involved in the collision, but the degree of fault of each driver needs to be determined. In the current case the driver and/or owner of only one out of 23 vehicles probably caused the plaintiff's damages. The vehicle is not identified, and as a consequence neither can the identity of the driver or owner from whose vehicle the gold carrying ore fell, be established *prima facie* on a balance of probabilities. On the facts as accepted for purposes of deciding the stated

case, the plaintiff is not able to show the causal link between any specific vehicle being driven at a specific time, and the damages that he suffered. It accordingly follows that, on these facts, the claim had to be instituted in accordance with s 17(1)*(b)*.'

[8] In argument before us counsel for the appellant submitted that if the claim, as formulated, is a claim where the owner of the insured vehicle has been identified, the claim is one which factually clearly falls within the provision of s 17(1)*(a)* of the Act. He said that the only 'unidentified' aspect of the claim was that the driver of the vehicle at the time had not been identified. He emphasised that s 17(1)*(a)* requires no more than identification of either the driver or the owner and, if either one is identified, it is clearly a claim which falls under that section and not s 17(1)*(b)*. The issue was whether the identification tendered was sufficient to establish the identity of the owner of the insured vehicle.

[9] It should be mentioned that it was accepted by all that the identity of the driver was not established. The issue was whether the identity of the owner of the insured vehicle had been established within the meaning of those words in the section in question. It was argued on behalf of the appellant that the fact that the appellant relied on a number of different vehicles (identified by their registration numbers) and different owners in the alternative, did not render his claim one against an 'unidentified' vehicle in terms of s 17(1)*(b)* and the regulation. This was so, it was argued, because, in the first place, a claim in terms of s 17(1)*(a)*, but for the enactment and provisions of the Act, has its origin in the common law as a delictual claim against the wrongdoer. So too a claim in terms of s 17(1)*(b)*, save that the absence of knowledge of the identity of the owner or driver made it difficult to pursue a claim at common law.[1] The Act, so the argument proceeded, effectively provides that the RAF steps into the shoes of such common law wrongdoer, as the previous legal right to claim compensation for damages suffered from the common law wrongdoer has been replaced by a statutory legal right to claim from the RAF.

[10] The principal argument advanced on behalf of the RAF was that the appellant's identification did not bear scrutiny as neither the driver, nor the owner's identity had

[1] *Engelbrecht v Road Accident Fund & another* [2007] ZACC 1; 2007 (6) SA 96 (CC) para 20.

been established. It was argued that furnishing a series of vehicles and their owners on the assumption that one of them caused the accident does not amount to establishing the identity of the owner of the vehicle involved in the specific accident. It was submitted that because the appellant was uncertain about the identity of the owner of the accident-causing vehicle, the appellant should have lodged his claim for compensation within two years of the date of the accident under s 17(1)*(b)*, which does not require him to establish the identity of the driver or owner.

[11] The question whether the appellant's identification of the owner of the insured vehicle meets the requirements of the Act involves the interpretation of s 17(1) which is the section that imposes the obligation on the RAF to provide compensation. The relevant portion of s 17(1) reads:

'17. Liability of Fund and agents

(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: . . .'

[12] The regulations at issue in the present appeal are regulations 2(1)*(a)* and *(b)* of the regulations contained in Government Gazette 31249 of 21 July 2008. They read:

'2 Further provision for liability of Fund in terms of section 17(1)*(b)*

(1)(a) A claim for compensation referred to in section 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 cause of action arose.

(b) A right to claim compensation from the Fund under section 17(1)*(b)* of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of

neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a).
(c) In the event of a claim having been lodged in terms of paragraph (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.
(2) Notwithstanding anything to the contrary contained 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 within two years from the date upon which the cause of action arose irrespective of any legal disability to which the third party concerned may be subject.'

[13] This court, in *Mbatha v Multilateral Motor Vehicle Accident Fund*,[2] explained the rationale for this regulation in unidentified vehicle cases in these terms:
'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 . . .'[3]

[14] The question in this appeal is whether the appellant has established the identity of the driver or owner of the truck from which the rock which caused injury to him, fell or was dislodged. This turns on the meaning to be attached to the word 'established' appearing in s 17(1) of the Act.

[15] One is required to interpret s 17(1) in accordance with the principles enunciated in recent cases such as *KPMG*[4], *Endumeni*[5], *Bothma-Batho*[6] and *Dexgroup*.[7] The approach to interpretation of written instruments, whether they are contracts or statutes, is usefully summarised thus in *Dexgroup*:
'. . . These cases make it clear that in interpreting any document the starting point is inevitably the language of the document but it falls to be construed in the light of its context, the apparent purpose to which it is directed and the material known to those responsible for its production.

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[2] *Mbatha v Multilateral Motor Vehicle Accident Fund* [1997] ZASCA 25; 1997 (3) SA 713 (SCA) at 718H-I.
[3] See also *Road Accident Fund v Thugwana* [2003] ZASCA 139; [2004] 1 All SA 275 (SCA) para 10).
[4] *KPMG Chartered Accountants (SA) v Securefin Ltd and another* 2009 (4) SA 399 (SCA) paras 39–40.
[5] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.
[6] *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) para 12.
[7] *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd* 2014 (1) All SA 375 (SCA) paras 10–17.

Context, the purpose of the provision under consideration and the background to the preparation and production of the document in question are not secondary matters introduced to resolve linguistic uncertainty but fundamental to the process of interpretation from the outset.'

[16] In para 25 of *Endumeni* Wallis JA pointed out that

'...[s]ometimes the language of the provision, when read in its particular context, seems clear and admits of little if any ambiguity. Courts say in such cases that they adhere to the ordinary grammatical meaning of the words used. However that too is a misnomer. It is a product of a time when language was viewed differently and regarded as likely to have a fixed and definite meaning, a view that the experience of lawyers down the years, as well as the study of linguistics, has shown to be mistaken. Most words can bear several different meanings or shades of meaning and to try to ascertain their meaning in the abstract, divorced from the broad context of their use, is an unhelpful exercise. The expression can mean no more than that, when the provision is read in context, that is the appropriate meaning to give to the language used. At the other extreme, where the context makes it plain that adhering to the meaning suggested by apparently plain language would lead to glaring absurdity, the court will ascribe a meaning to the language that avoids the absurdity. This is said to involve a departure from the plain meaning of the words used. More accurately it is either a restriction or extension of the language used by the adoption of a narrow or broad meaning of the words, the selection of a less immediately apparent meaning or sometimes the correction of an apparent error in the language in order to avoid the identified absurdity.'

[17] The primary object of the Act as set out in s 3 is 'the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of vehicles'. In achieving this purpose the Act provides for the establishment of the RAF and mechanisms including procedures for the payment of compensation for loss or damage wrongfully caused by the driving of vehicles. Section 21 of the Act abolishes a claimant’s common law delictual claim and substitutes a statutory claim against the RAF in its place to ensure the recovery of damages by a road accident victim, who may have a proven legal claim and proven damages against the common law wrongdoer, but may find that the wrongdoer is unable to pay his or her damages.

[18] The Concise Oxford English Dictionary 12ed defines 'established' to mean 'show to be true or certain by determining the facts'. This is the ordinary meaning of

the word 'established' and in my view, having regard to the context in which it appears and the purpose of the Act, it is the appropriate meaning to give to the language used in s 17(1). In other words, there must be a sufficiently close connection between a readily identifiable vehicle being driven at a specific time and the injury that the claimant suffered.

[19] In the present appeal the appellant sought to bring his claim within s 17(1)*(a)* in order to overcome the problem of prescription. In support of that and in an attempt to establish the identity of the owner of the offending vehicle the appellant identified 23 vehicles, having nine different owners, in the alternative, by their registration numbers. One of these probably conveyed the ore at the time of the accident. In other words, the appellant's identification did not establish that a specific vehicle was driven at the time and place of the accident and that the chunk of ore fell or was dislodged from that vehicle. It was contended on behalf of the appellant that the identification he provided was sufficient to bring his claim within the ambit of s 17(1)*(a)* and was sufficient to enable the RAF to undertake its investigation. I disagree. The appellant's identification did not establish the identity of the owner or driver of the motor vehicle which caused the accident. It was nothing more than a sample of vehicles, one of which, may have been the vehicle from which the ore fell on the day of the accident.

[20] This case does not fall into the category of cases such as *Mazibuko v Santam Insurance*[8] in which a plaintiff, who was uncertain as to which of two persons was legally responsible for the injury sustained by him, sued both of them in the alternative and jointly and severally, as he was permitted to do under rule 10(3) of the Uniform Rules of Court. The distinguishing feature was that in those cases the identity of the owners or drivers of the motor vehicles involved or contributing to the accident was established but what remained to be established was their legal responsibility. In the present case it is not alleged that more than one of the 23 vehicles was involved in the accident. The case was pleaded and the stated case formulated on the basis that one of the 23 vehicles identified by the appellant probably conveyed the ore at the time and place of the alleged accident.

[8] *Mazibuko v Santam Insurance and another* 1982 (3) SA 125 (A).

[21] In my view the word 'established' appearing in s 17(1) does not bear the extended meaning contended for by the appellant. The appellant's construction, if adopted, would lead to a conclusion that would stultify the broader operation of the Act. It would have the effect of blurring the distinction the legislature draws between a claim under s 17(1)*(a)* and one under s 17(1)*(b)*. The ordinary meaning of 'established' does not lead to absurdity. Its meaning does not therefore require to be extended.

[22] Although in terms of s 17(1) the RAF is liable to compensate both categories of claimants for damages arising from driving of a motor vehicle, irrespective of whether the identity of the owner or the driver of the motor vehicle has been established, its liability under s 17(1)*(b)* is rendered subject to the regulation 2(1) which stipulates that a claim under s 17(1)*(b)* should be lodged within two years of the date of the accident. No constitutional challenge was raised to the different prescriptive periods applicable to the two types of claim. The reason appears to be a view that the regulation serves a legitimate government purpose, which is to eliminate fraud and to facilitate proof, because the possibility of fraud is greater in unidentified vehicle, since it is usually difficult for the RAF to find evidence to controvert the claimant's allegations.[9] In this case the claim prescribed because it was not lodged with the RAF within the period of two years from the date of the accident.

[23] In the result the appeal is dismissed with costs.

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D H Zondi
Judge of Appeal

[9] *Bezuidenhout v Road Accident Fund* [2003] 3 All SA 249 (SCA) para 12.

APPEARANCES:

For appellant:	W P de Waal SC Instructed by: Adams & Adams, Pretoria Honey Attorneys, Bloemfontein
For respondent:	J H P Hattingh (heads of argument prepared by C H Badenhorst) Instructed by: Morare Thobejane Attorneys, Pretoria Maponya Attorneys, Bloemfontein