

THE SUPREME COURT OF APPEAL OF SWAZILAND

CIVIL APPEAL CASE NO. 3/2007

In the matter between

JOSHUA SIBUSISO SIMELANE

APPELLANT

And

**THE MOTOR VEHICLE ACCIDENT
FUND**

RESPONDENT

Coram

**BANDA CJ
STEYN JA
ZIETSMAN JA**

**For the Appellant:
For the Respondent:**

**MR. B. S. DLAMINI
MR C. MAPHANGA**

JUDGMENT

ZIETSMAN JA

In the court *a quo* a special plea that the appellant's claim against the respondent had become prescribed before summons was issued by the appellant against the respondent was upheld, and the appellant's claim was dismissed with costs. The appellant appeals against this order of the court *a quo*.

In his particulars of claim the appellant alleges that on 21 December 2002 he was critically injured in a motor vehicle accident. It appears from the pleadings that the appellant was the driver of a motor vehicle which collided with a vehicle driven by one Thulani Banda. He alleges that the collision was caused by negligence on the part Thulani Banda. He instituted his action against the respondent in terms of the provisions of the Motor Vehicle Accidents Act, No. 13 of 1991.

The collision occurred on 21 December 2002. Appellant alleges that he lodged a claim for compensation against the respondent on 8 May 2003. The respondent, by letter dated 26 March 2004, repudiated the appellant's claim. This letter never reached the appellant but during or around October

2004 he became aware of the fact that the respondent had repudiated his claim. These allegations are all made by the appellant in his particulars of claim.

The summons issued by the appellant is dated 23 August 2005. It was filed with the Registrar of the High Court on 26 August 2005.

The appellant's action is governed by the provisions of the Motor Vehicle Accidents Act. Sections of that Act relevant to this matter are Sections 15 (1), 16 (1) and 16 (2). These sections provide:

15 (1) Notwithstanding the provisions of any other law in Swaziland relating to prescription, and subject to the provisions of subsection (2) of this section, the right to claim compensation under section 10 shall become prescribed upon the expiration of a period of two years from the date on which the claim arose: Provided that the period of prescription shall be suspended during the period of ninety days referred to in section 16 (2) (a) of this Act.

(Subsection (2) of section 15 is not applicable to the present matter).

16 (1) A claim for compensation under section 10 shall-

(a) **be set out in the prescribed manner on a prescribed form and shall include provision of a medical report or reports completed by the prescribed person or persons, in regard to the cause of the death or the nature and treatment of the bodily injury in respect of which the claim is instituted and of the prescribed supporting proof and particulars;**

(b) **be sent by registered post or delivered by hand, at the registered office or local branch office, of the MVA Fund which shall, in the case of delivery by hand, acknowledge receipt thereof and the date of such receipt in writing**

(2) No such a claim shall be enforceable by legal proceedings commenced by a summons served on the MVA Fund-fa) before the expiration of a period of ninety days as from the date on which the claim was sent by registered post or delivered by hand to the MVA Fund in accordance with subsection (1); and (b) before all the prescribed requirements of the MVA Fund have been complied with;

Provided that if the MVA Fund repudiates in writing liability for the claim before the expiration of the ninety days, the claimant may at any time after such repudiation serve summons on the MVA Fund.

The date upon which the claim arose in the present case was 21 December 2002. In terms of the provisions of the Act, quoted above, the appellant's claim became

prescribed after the lapse of 2 years and ninety days from 21 December 2002, namely on 20 March 2005. The appellant's summons was issued in August 2005, and these facts prompted the Judge in the court *a quo* to uphold the respondent's special plea and dismiss the appellant's claim.

The appellant submits that the decision reached in the court *a quo* is incorrect.

In his heads of argument Mr. Dlamini, who appears for the appellant, submits that where the MVA Fund repudiates a claim section 15 (1) of the Act does not apply. He alleges further that in the present case the respondent repudiated the appellant's claim after the period of 90 days had elapsed from the date upon which the appellant submitted his claim in terms of section 16 (1). He submits further that after a claim has been submitted and all necessary documents have been served upon the Fund, the issue of prescription no longer arises.

Mr. Dlamini seeks to rely also upon the wording of the proviso to section 16 (2). This proviso reads:

"Provided that if the MVA Fund repudiates in writing liability for the claim before the expiration of the ninety days, the claimant may at any time after such repudiation serve summons on the MVA Fund".

In the present case the appellant's claim was not repudiated before the expiration of the ninety days, but Mr. Dlamini nevertheless seeks to rely upon the words "at any time after such repudiation". He submits that once a claim has been repudiated, the prescription period no longer applies and summons can then be issued against the Fund at any time thereafter. This submission by Mr. Dlamini is clearly wrong. The Act makes it clear that the period of prescription is 2 years, and the only proviso thereto is that the running of prescription will be suspended during the 90 day period referred to in section 16 (2) (a). Section 16 (2) (a) provides that summons may not be issued before the lapse of 90 days after a claim has been submitted in terms of section 16 (1). This is to give the Fund the opportunity to consider, and if necessary deal with, the claim before summons is issued against it. The proviso to section 16 (2) merely provides that if the Fund repudiates the claim in writing before the 90 days have passed the claimant need not wait for the full 90 days to elapse before issuing his summons.

Mr. Dlamini has made reference to section 15 (3) of the Act. This section provides that where a claim has become prescribed a court can, if special circumstances exist, grant leave to a claimant to bring his claim against the Fund before a date to be determined by the court. In the present case it is

not suggested that any special circumstances exist and the appellant does not seek relief under this section.

The various submissions made by Mr. Dlamini are without merit. The purpose of the Act is clear and section 15 (1) applies.

The Judge in the court *a quo* correctly upheld the special plea and dismissed the appellant's claim.

In the result the appeal is dismissed with costs.

N.W. ZIETSMAN
JUDGE OF APPEAL

I agree

R.A. BANDA
CHIEF JUSTICE

I agree

J. H. STEYN
JUDGE OF APPEAL