

SOUTH AFRICA / JUDGMENT

Van der Merwe v Road Accident Fund (1661/04) [2005] ZAGPHC 120; 2006 (3) SA 88 (T) (22 November 2005) [2005] ZAGPHC 120

COURT

High Courts - Gauteng

BEFORE

WJ Hartzenberg, A de Vos

CASE / FILE NUMBER

1661/04

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IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION) REPORTABLE DATE: 22/11/2005 Appeal no. 1661/2004 In the appeal of C J VAN DER MERWE APPELLANT and ROAD ACCIDENT FUND RESPONDENT JUDGMENT HARTZENBERG J: [1] Does section 17(5) of the Road Accident Act, No. 56 of 1996, ("the Act") confer a separate right of action, unrelated to the claim of the third party, to a supplier, or not? The appellant argues that it does. The respondent disagrees. [2] The common cause facts are very uncomplicated. One Grundlingh sustained injuries in a collision that occurred on 2 October 1998. He was treated on 20 February 2002, by the appellant, an anesthetist. The necessity for the treatment relates to the injuries sustained in the collision. The account was R1319,82. The appellant submitted a claim on the prescribed form on 27 June 2002. The respondent maintains that the claim has prescribed. The appellant argues that it only arose on 20 February 2002. The magistrate found for the respondent. [3] The liability of the Fund to pay compensation is derived from section 17. Subsection 1 provides that the Fund is obliged to pay compensation for damages, suffered as a result of bodily injury or of the death of someone, arising from the negligent driving of motor vehicles. It does not matter whether the particulars of the driver or owner of the vehicle are known or not. Subsections 2 and 3 make provision for the payment of interest and costs. Subsection 4 confers an option on the Fund to give undertakings, in respect of future medical expenses and loss of income, to be paid only at a later stage. The future medical expenses are defined as "the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her" and only become payable after they have been incurred and proof thereof has been submitted. Future loss of income becomes payable when the claimant would have had the benefit of the income. In terms of subsection 6 the Fund may make interim payments. [4] Subsection 5 provides as follows: "(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who

provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may claim the amount direct from the Fund or an agent on a prescribed form, and such claim shall be subject *mutatis mutandis*, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.” (My accentuation) [5] As far as prescription is concerned it is dealt with in section 23(1) which provides: “(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.” [6] It is noteworthy that the supplier, that the Legislature defined in section 17(5), supplies exactly those things and services in respect of which the Fund is given the option to give an undertaking in terms of section 17(4)(a). It has to do with the hospitalization, frail care and medical treatment that become necessary as a result of injuries sustained in collisions. If the third party is unable to or does not prosecute a claim against the fund but the supplier renders the service the section creates the right for the supplier to hold the Fund responsible. Clearly a hospital or institution or doctor treating a third party who has already been provided with a section 17(4)(a) certificate will be able to claim the fees directly from the Fund and need not depend upon the third party to do so.. Because of the way that section 17(5) is worded, there does not seem to be a reason why a supplier who has rendered services or will definitely render a service in future. It may be somewhat of a daunting task to prove that a particular supplier will definitely render a future service. cannot institute an action despite the fact that the third party has already instituted an action or plans to institute an action. [7] The question really is what the Legislature intended to do when it enacted section 17(5). Firstly it is plain that the claim “shall be subject ... to the provisions applicable to the claim of the third party”. Some of those provisions are the limitation of liability of the Fund in respect of passengers in terms of section 18, the provisions of section 19 in terms of which a third party will only have a claim if the insured driver was at fault. Section 19(a), was not conveyed for reward on a motor cycle or a passenger in a vehicle driven by a member of the household. Section 19(b), if he/she has submitted a proper claim. Section 19(c), did not enter into an agreement with another person in terms of which that other person will be entitled to a portion of the compensation or remuneration for an investigation or a service unless properly instructed by the third party’s representative. Section 19(d), did not refuse to be medically examined, to supply medical reports to the Fund or to allow the Fund to inspect his/her hospital records. Section 19(e) or did not refuse, when in a position to do so, to submit an affidavit giving particulars about the accident or to furnish statements and documents relating to the accident. Section 19(f), the provisions of section 23 in respect of prescription and the provisions of section 24 regulating the manner in which a claim is to be lodged. Section 24(3) specifically provides that a supplier’s claim shall be in the prescribed form and subject to the provisions of the section. Secondly the supplier’s claim may not exceed the amount which the third party could have recovered. The Legislature statutorily ceded that portion of a third party’s claim for which he/she had or would have incurred liability to a supplier, directly to the supplier. The cession only becomes effective when the supplier accepts it and lodges a

claim. The Legislature did not create a separate liability for the Fund over and above the liability to the third party in terms of the Act.[8] A third party's claim for bodily injuries is subject to the "once and for all" rule *Evins v Shield Insurance Co. Limited*, 1980 (2) 814 (A) at 835 A-E and the cases referred to therein. The purpose of the rule is to prevent a multiplicity of actions and to ensure that there is an end to litigation. The third party can claim damages already sustained and prospective damages. In the *Evins* matter P.835 F-H Corbett JA explains that as a result of the principle of *res judicata* and the "once and for all" rule a claimant for Aquilian damages who has litigated finally is precluded from subsequently claiming from the same defendant upon the same cause of action further damages even though such loss manifests itself or become capable of assessment only after the conclusion of the original action.[9] In this matter it is clear that Grundlingh can no longer claim the fees which the appellant claims from the fund. There is no question of Grundlingh having been unaware of a claim against the Fund like in the matter of *De Lange v Multilaterale Motorvoertuigongelukkefonds*, 2000(1) SA 921(T) on which Mr. Holland-Mter relies for his argument that the claim only arose on 20 February 2002. Grundlingh was since 2 October 1998 entitled to claim damages from the fund. He could have claimed future medical expenses and more in particular he could have claimed the appellant's prospective fee. The Fund would have been obliged to make provision for such a fee either by paying it or by giving an undertaking in terms of section 17(4)(a) of the Act. By failing to have lodged a claim Grundlingh's right to claim that fee has now prescribed. The appellant now tries to divorce her action from Grundlingh's action. That is precisely the opposite of what the Act states i.e. "that the claim shall be subject, *mutatis mutandis*, to the provisions applicable to the claim of" Grundlingh. Moreover if she is entitled to payment of her fee she is going to get more than what Grundlingh could have recovered. In my view the fact that Grundlingh failed to lodge a claim within three years and the appellant also failed to do so led thereto that both claims have prescribed in terms of the provisions of section 23(1) of the Act. The appeal is dismissed with costs.

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APPELLANT

and

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

HARTZENBERG J:[1] Does section 17(5) of the Road Accident Act, No. 56 of 1996, (“the Act”) confer a separate right of action, unrelated to the claim of the third party, to a supplier, or not? The appellant argues that it does. The respondent disagrees.[2] The common cause facts are very uncomplicated. One Grundlingh sustained injuries in a collision that occurred on 2 October 1998. He was treated on 20 February 2002, by the appellant, an anesthetist. The necessity for the treatment relates to the injuries sustained in the collision. The account was R1319,82. The appellant submitted a claim on the prescribed form on 27 June 2002. The respondent maintains that the claim has prescribed. The appellant argues that it only arose on 20 February 2002. The magistrate found for the respondent.[3] The liability of the Fund to pay compensation is derived from section 17. Subsection 1 provides that the Fund is obliged to pay compensation for damages, suffered as a result of bodily injury or of the death of someone, arising from the negligent driving of motor vehicles. It does not matter whether the particulars of the driver or owner of the vehicle are known or not. Subsections 2 and 3 make provision for the payment of interest and costs. Subsection 4 confers an option on the Fund to give undertakings, in respect of future medical expenses and loss of income, to be paid only at a later stage. The future medical expenses are defined as “the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her” and only become payable after they have been incurred and proof thereof has been submitted. Future loss of income becomes payable when the claimant would have had the benefit of the income. In terms of subsection 6 the Fund may make interim payments.[4] Subsection 5 provides as follows:

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“(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may claim the amount direct from the Fund or an agent on a prescribed form, and such claim shall be subject mutatis mutandis, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.” (My accentuation)

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[6] It is noteworthy that the supplier, that the Legislature defined in section 17(5), supplies exactly those things and services in respect of which the Fund is given the option to give an undertaking in terms of section 17(4)(a). It has to do with the hospitalization, frail care and medical treatment that become necessary as a result of injuries sustained in collisions. If the third party is unable to or does not prosecute a claim against the fund but the supplier renders the service the section creates the right for the supplier to hold the Fund responsible. Clearly a hospital or institution or doctor treating a third party who has already been provided with a section 17(4)(a) certificate will be able to claim the fees directly from the Fund and need not depend upon the third party to do so.

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.....WJ HARTZENBERG JUDGE OF THE HIGH COURT.

I agree

.....A DE VOS JUDGE OF THE HIGH COURT

HEARD ON

:

16/05/2005

FOR THE APPELL

ANT

: ADV J HOLLAND-MTTER

INSTRUCTED BY

MESSRS

OOSTHUYSEN NAUD&

SCHOEMAN ATTORNEYS,

PRETORIA

FOR THE RESPONDENT

: ADV

F BEZUIDENHOUT

MOTHLE JOMMA SABDIA

ATTORNEYS,

DATE OF JUDGMENT

: 22/11/2005

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