

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**Case no. 4510/15**

**Date heard: 13/2/19**

**Date delivered: 19/2/19**

**Not reportable**

**In the matter between:**

**AVUYILE SOKATSHA**

**Plaintiff**

**and**

**ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT**

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**Plasket J:**

[1] I am required to determine one limited issue in this matter – a special plea to the effect that the plaintiff's claim has prescribed.

[2] Mr Avuyile Sokatsha, the plaintiff, alleged in his particulars of claim that, on 23 March 2009, he was a passenger in a vehicle that overturned as a result of its driver's negligence. He suffered various injuries in the accident.

[3] He alleged further that, on 5 March 2010, he submitted a claim form to the Road Accident Fund, the defendant. Employees of the defendant had undertaken to process his claim. It was his expectation that 'his claim would be appropriately processed by the Defendant's employees, without the assistance of his own legal representative, and that he would be assisted and advised by the employees of the Defendant in order to ensure that he would receive such compensation that he may be entitled to in terms of the Road Accident Fund Act 56 of 1996, as a result of the injuries sustained by him in the said accident'.

[4] The plaintiff pleaded that he received no response from the defendant when he enquired about the progress of his claim. As a result, he consulted an attorney, Mr Mbulelo Dyushu. He testified that his attempts to ascertain what progress had been made and to obtain a copy of the defendant's file were frustrated by the defendant's employees over a protracted period of time. Eventually, on 20 May 2014, he obtained a copy of the file. All it contained were the claim form that the plaintiff had submitted in 2010 and his medical reports in relation to the accident. Nothing had been done to process the plaintiff's claim. By the time Mr Dyushu obtained the file, the plaintiff's claim in terms of the Road Accident Fund Act had prescribed.

[5] The plaintiff pleaded that the defendant's employees owed him a 'duty of care to ensure that he was fully assisted and advised in regard to all necessary steps to be taken, and timeously advised if his claim was to be rejected by the Defendant, and timeously advised to consult an attorney to issue Summons before the lapse of five years'.

[6] The plaintiff claims damages from the defendant arising from the negligent (and wrongful) conduct of its employees in allowing the plaintiff's claim in terms of the Road Accident Fund to prescribe.

[7] The defendant's special plea reads as follows:

'1 The Defendant hereby pleads that the Plaintiff's Claim has prescribed for the following reasons:

i Section 23(3) of the Road Accident Fund Act as amended ("Act") states the following:

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

ii It is common cause that the cause of action in this matter arose on the **23<sup>rd</sup> day of March 2009.**

iii It is also common cause that the Plaintiff lodged his claim against the Defendant on the 5<sup>th</sup> day of March 2010.

iv It is further common cause that the Plaintiff's claim was not settled in time and that the Plaintiff failed to issue summons within the period of 5 years from the date of the accident as required by Section 23(3) of the Act. The Plaintiff was supposed to have issued summons on or before the 22<sup>nd</sup> day of March 2014 to prevent the running of prescription thereof.

2 The Defendant therefore pleads that it is not liable to compensate the Plaintiff for his alleged loss as his claim has prescribed.

**WHEREFORE** the Defendant prays that:-

a) The Plaintiff's claim be dismissed, with the Plaintiff to pay the Defendant's costs.'

[8] The thrust of the special plea is that the plaintiff's claim against the defendant in terms of the Road Accident Fund Act 56 of 1996 has prescribed. That fact is common cause but the plaintiff is not claiming in terms of the Act. His cause of action is based on the negligence of the employees of the defendant who allowed his claim in terms of the Act to prescribe. The special plea is directed at the wrong target. It does not address whether and, if so, when the plaintiff's actual cause of action may have prescribed. That being so, the defendant has not established that the plaintiff's claim has prescribed.

[9] The special plea is dismissed with costs.

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C Plasket

Judge of the High Court

APPEARANCES

For the plaintiff:

G Brown

Instructed by:

Dyushu Majebe Attorneys, East London

N N Dullabh & Co, Grahamstown

For the defendant:

T Mgidlana

Instructed by:

Nongogo Nuku Inc, East London

Nolte Smit Attorneys, Grahamstown