Winnie Mlotsa

IN THE HIGH COURT OF SWAZILAND

Winnie Mlotsa

Vs

The Motor Vehicle Accident Fund

Case No. 1205/98

Coram S.W. Sapire, CJ

For Applicant Mr. Mkhatshwa

For Respondent Mr. Matsebula

Judgment

(14/08/98)

The applicant in this matter was injured in a motor vehicle accident involving the Special Bus Service Fleet in February 1996. She was a passenger on an unidentified vehicle travelling on Malagwane hill. These allegations are of course do not contain any information enabling the Respondent to investigate the circumstances giving rise to this application and to answer the allegations made by the Applicant. The name of the driver is not mentioned, nor have any facts been alleged from which any negligent act on his part can be inferred.

The applicant says that she sustained a number of injuries described as "my right ankle which was permanently dislocated causing me physiological disability." She recites that she has to attend physiotherapy on a regular basis. She does not say that the accident was caused by the negligence of the driver of the vehicle whoever he might be and that she in fact got a claim against the fund.

She informs the court in an affidavit that "during the time of the injury" she was advised that "in terms of the law I will only be compensated by the proprietors of the bus on which I was travelling following a Court hearing of the accident". Who ever gave her that advice was incorrect because the proprietors of the bus by law do not have to compensate her because of the provisions of the act.

She further was advised by her present physician in September 1997 that she may lodge a claim with the respondent, i.e. the Motor Vehicle Accident Fund to compensated for her injuries with a period of two years from the date of the accident. So in September 1997 she was made aware of the provisions of the Act.

She then says that she has been trying to retrieve the hospital records and medical reports for her injuries and subsequent attention thereto. She has been unsuccessful in this because of the disappearance of the records at the Mbabane Government Hospital, and the departure of the medical practitioner from whom she received treatment immediately after the said accident. Even that should not have prevented her from making a claim. She has not even at this stage recovered her records and she has been able to locate or identify the practitioner who is now with a private clinic.

It is common cause that the claim described in February 1998 in terms of the act and that neither the demand has been made, nor summons has been issued as provided for in the act.

She submits that she could not have reasonably been expected to lodge the claim documents timeously as she was embarrassed for her medical records.

This is far too flimsy and vague for the purposes of this application. She says that she has been desirous of lodging her claim with the respondent and that she has no alternative but to seek a relief from the above honourable court to comply with the statutory requirements beyond the two-year period, prescribed by the act. Even now I think the advice is incorrect and I am not satisfied that even if it were possible to extend the two year period that it should be done in this case But without deciding that at all there is certainly no evidence before this court in these papers that she has a claim in view of her failure to mention the name of the driver or identify the vehicle in which she was injured to show that the vehicle was in fact insured in circumstances contemplated in the act, and entitled to be compensated by the respondent..

This application in its present form cannot be acceded to and it is dismissed with costs.

S W Sapire

Chief Justice