

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO. 3153/05

In the matter between:

JOSHUA SIBUSISO SIMELANE

PLAINTIFF

and

MOTOR VEHICLE ACCIDENTS FUND

DEFENDANT

CORAM: Q.M. MABUZA-AJ

FOR THE PLAINTIFF: MR. B.S. DLAMINI

FOR THE DEFENDANT: MR. C.S. MAPHANGA

RULING 7/12/06

[1] The Plaintiff herein issued summons for damages in the amount of E170,000.00 in respect of bodily injuries sustained by the Plaintiff as a result of a motor vehicle collision between the Plaintiff and the insured motor vehicles.

[2] The accident occurred on the 21/12/02. The statutory claim form was lodged on the 8/5/03. The claim was repudiated by the Defendant by letter dated 26/3/04. Summons were issued on 26/8/05 and served on the Defendant on the 1/9/05.

[3] The Defendant has filed a special plea and has pleaded that the Plaintiffs claim became prescribed by the operation of Section 15 of the Motor Vehicle Accident Act, 1991 as prescription had set in on the 20/3/05.

[4] With regard to prescription Section 15 states as follows:-

"25. (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."

[5] The Plaintiffs attorney in his Heads of Argument however submitted as follows:

"The present claim by the Plaintiff is one that is governed by Section 16 (2) of the Act which provides that;

No such claim shall be enforceable by legal proceedings commenced by a summons served on the MVA Fund -

(a) 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. (Underlining his emphasis)"

[6] The Plaintiffs attorney therefore concludes that this is a matter in which the MVA Fund repudiated the claim after 90 days of receipt of the claim and that the Plaintiff thereafter issued summons against the Fund within the proviso of Section 16 (2) of the Act. (See clause 11 - 12 of the Plaintiffs Heads of Argument).

[7] I disagree. The Plaintiff issued and served summons after the claim had prescribed. Prescription set in on the 20/3/05. The Act should be interpreted as a whole and not piecemeal in order to avoid absurd conclusions.

[8] In the event the special plea is upheld and the Plaintiffs claim is dismissed with costs.

Q.M. MABUZA-AJ