

CIV/T/114/86

IN THE HIGH COURT OF LESOTHO

In the matter of:

'MAMPE LISEBO MPOBOLE .....Plaintiff

and

LESOTHO NATIONAL INSURANCE COMPANY	1st Defendant
THABISO SEKELEOANE .....	2nd Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 24th day of October, 1995.

In an action wherein Plaintiff, inter alia, claimed, pursuant to the provisions of the Motor Vehicle Insurance Order, 1972, damages in the amount of M33,144-60, against the defendants, the 1st defendant has raised a special plea of prescription.

It is not in dispute that on 24th June, 1983, two vehicles with registration numbers A.1141 and A.2323 driven by the 2nd defendant and a certain Ketso Masilo, respectively, were involved in a road accident at a place called Borokhoaneng in the district of Maseru. Plaintiff, a 22 years old employee of the 2nd

defendant was a passenger in vehicle A 1141. As a result of the accident she sustained injuries.

The two vehicles were, at the material time, insured with the 1st defendant, against the third party. Consequently on 26th November, 1985, Plaintiff handed, to the 1st defendant, a duly completed M.V.A. form by which she claimed compensation, presumably in accordance with the provisions of section 13 (1) read with section 14(1) of the now repealed Motor Vehicle Insurance Order, 1972 which was, however, the applicable law at the time the present proceedings were instituted. The subsections read, in part:

"13(1) A registered company which has insured or is deemed to have insured a motor vehicle in terms of sections 4 or 6 shall be obliged to compensate any person whatsoever (in this section called the third party) for any loss or damage which the third party has suffered as a result of -  
(a) any bodily injury to himself; ..."

"14(1) A claim for compensation under section 13 shall be set out on the form prescribed by regulation in such manner as may be so prescribed and shall, accompanied by such medical report or reports as may be so

prescribed, be sent by registered post or delivered by hand to the registered company at its registered office or local branch office ..."

The decision in this matter pivots, in my view, around the provisions of subsection (2)(a) of section 13 of the now repealed Motor Vehicle Insurance Order, 1972. The subsection read, in part:

"(2)(a) The right to claim compensation.... from a registered company shall become prescribed upon the expiration of a period of two years as from the date upon which the claim arose:  
 Provided that prescription shall be suspended during the period of sixty days referred to in subsection (2) of section fourteen."  
 (My underlining)

I have underscored the word "shall" in the above cited subsection (2) (a) of Section 13 of the Motor Vehicle Insurance Order, 1972 to indicate my view that the provisions thereof were mandatory. It is significant that in the instant case, the cause of action first accrued on 24th June, 1983 i.e. the date on which the accident, as a result of which Plaintiff sustained injuries, occurred. However, it was not until 26th November, 1985 that Plaintiff handed the

completed M.V.A. form by which she claimed, from the 1st defendant, compensation, in the amount of M33,144-60 i.e. some 5 months and 2 days after the prescription period of two years had expired. When she thus handed, to the 1st defendant, her claim for compensation, Plaintiff's right to do so had, on the authority of the above cited subsection (2) (a) of section 13 of the Motor Vehicle Insurance Order, 1972, become prescribed.

It may be mentioned that on 5th March, 1986, Plaintiff served, upon the defendants, summons commencing an action for damages in the amount aforesaid. The summons was, therefore, served upon the defendants some 2 years, 8 months and 9 days after the cause of action had first accrued i.e. 24th June, 1983. Regard being had to the fact that the prescription period was, in terms of the provisions of subsection (2) (a) of section 13 of the Motor Vehicle Insurance Order, 1972, two (2) years, it stands to reason that when, on 5th March, 1986, Plaintiff served, upon the defendants, summons commencing the action for damages, the prescription period had run out.

It was, however, argued, on her behalf, that as a result of the injuries she had sustained in the course of the accident, Plaintiff was not fully

conscious and aware from June, 1983 up to September, 1983 i.e. she was of unsound mind and, therefore, a person under legal disability. It was contended that until such time as Plaintiff would have regained her consciousness, the prescription period could not have started running. For that contention, reliance was made on the provisions of the Prescription Act, 1861 of which section 6 provides:

"6. If at the time when any such cause of action as in sections three, four and five of this Act mentioned first accrued, the person to whom the same accrued was a minor or under coverture, or of unsound mind, or absent from Basutoland, then such person or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action has expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may be) next after the time at which the person to whom such cause of action first accrued ceases to be under disability as aforesaid or has died, whichever of these two events has first happened."

I am unable to agree with this argument. The Motor Vehicle Insurance Order, 1972 was clearly enacted after the Prescription Act, 1861 had been

enacted. That being so, when subsection (2)(a) of section 13 of the Motor Vehicle Insurance Order, 1972 was enacted, the legislature was presumably aware of the provisions of section 6 of the Prescription Act, 1861. If in enacting subsection (2)(a) of section 13 of the Motor Vehicle Insurance Order, 1972, it was intended that the provisions of section 6 of the Prescription Act, 1861, relating to persons under legal disability should apply, the legislature would have used language which made that clear. For instance: "subject to the provisions of section 6 of the Prescription Act, 1861 the right to claim compensation from a registered company shall become prescribed upon the expiration of a two years prescription period." As it stands, subsection (2) (a) of section 13 of the Motor Vehicle Insurance Order, 1972 makes no such provision. Moreover, the language used by the legislature, in enacting subsection (2) (a) of section 13 of the Motor Vehicle Insurance Order, 1972 is so plain that there is no room for ambiguity. To import words into the subsection would be to presume to legislate which is certainly not the function of a court of law. The provisions of section 6 of the Prescription Act, 1861 have, in my finding, no application in the present case.

In the result, I come to the conclusion that the special plea of prescription was well taken and Plaintiff's claim is accordingly dismissed with costs.

B.K. MOLAI

JUDGE

24th. October, 1995.

For Plaintiff: Mr. Pheko  
For 1st Defendant: Mr. Molyneaux  
For 2nd Defendant: Mr. Nthethe.