FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 4423/08

In the matter between:-

YOLISWA EUNICE MLENZANA Plaintiff

and

GOODRICK AND FRANKLIN INCORPORATED Defendant

HEARD ON: 27 MAY 2011

JUDGMENT BY: RAMPAI, J

DELIVERED ON: 14 JULY 2011

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[1] The plaintiff sues the defendant for damages in the amount of R493 574,00 which she alleges she has suffered as a result of the defendant's negligence. Her damages arise out of a contract of mandate. She engaged the defendant, a lawfirm, to act as her attorneys against the Road Accident Fund. The action is defended.

[2] In her summons the plaintiff alleged that she engaged the services of the defendant in Bloemfontein on or about 17 August 2004. The contract of mandate was then concluded. The defendant was obliged, in terms of the agreement, to lodge

her claim against the Road Accident Fund for the recovery of compensation for her loss of support and funeral expenses.

[3] She alleged that her husband, Zamile Eric Mlenzana, sustained fatal bodily injuries in a road accident which took place at Bethal in Mpumalanga Province on 22 June 2004. The scene of the accident was at the intersection of Eufees Street and Lakeside Avenue. There were three motor vehicles involved in the accident, which occurred at or about 08h00 hours. Her husband, she alleged, was a passenger in an International Truck with registration number CPL905FS.

[4] According to her the collision was occasioned by the negligence of one or more or all the three drivers she named in her summons. The various grounds of their negligence were then spelt out.

[5] She also alleged that her husband was employed as a truck driver and that during his lifetime he had a legal duty to contribute towards her support and that he would have legally been obliged to continue to support her had he not died as a result of the injuries he sustained in the aforesaid road accident.

[6] The plaintiff alleged that, in breach of the aforesaid contract of

mandate, the defendant wrongfully neglected to lodge her claim with the Road Accident Fund within the three year prescriptive period from the date of the accident in terms of section 23 of the Road Accident Fund Act, 56 of 1996 as amended. By the exercise of such care and diligence as could reasonably be expected of an average attorney, the prescription of the plaintiff's claim could have been prevented. So she alleged.

[7] In the defendant's plea the following allegations of the plaintiff were doubted: the alleged marriage of the plaintiff; the alleged identity of the driver of the International truck as being Mr. M.P. Mahlantsa; the alleged status of Mr. Z.E. Mlenzana as being a passenger on such a truck; the alleged negligence on the part of any of the alleged drivers; the alleged cause of the victim's death; the alleged employment of the victim; the alleged duty of the victim towards the plaintiff; the alleged loss of support and plaintiff's obligation to incur the funeral expenses; the alleged details of the accident, the motor vehicles and owners thereof as well as the alleged grounds of negligence. All these were not admitted.

[8] The defendant admitted certain averments made by the plaintiff. I shall revert to those admissions in due course. At this juncture

I am concerned with the essence of the defendant's defence.

[9] The defendant specifically denied that his failure to lodge the plaintiff's claim in good time was caused by negligence on its part. The defendant specifically pleaded that its failure to lodge the plaintiff's claim was brought about by the plaintiff's failure to provide certain information and to sign certain documents, which were necessary to lodge her claim. The defendant pleaded further that despite all its reasonable attempts to obtain the necessary information or documents from the employer of the plaintiff's husband, such employer failed to provide same.

[10] The defendant pleaded, therefore, that as a result of the plaintiff's own failure as well as of her husband's employer to furnish the defendant with the necessary information and documents, the defendant could not reasonably ensure substantial completion of the claim documents for the purpose of lodging the plaintiff's claim with the Road Accident Fund. The defendant pertinently denied the allegation that when the contract of mandate was concluded, the parties ever contemplated that the plaintiff would suffer damages in the event of the defendant failing to lodge her claim within the prescribed period with the Road Accident Fund. The defendant

also specifically denied that it failed to exercise reasonable care in executing the plaintiff's mandate; that any of its members or employees was, at all material times, acting within the course and scope of her employment with the defendant and in the furtherance of the defendant's business interest and that the plaintiff had suffered the alleged damages.

[11] By agreement between the parties the issues were separated before the trial commenced. I ordered that the issues of quantum should be held in abeyance and that the issues of liability be determined first. Therefore, at this juncture I am only called upon to determine the merits. The only evidence I have to hear, will be limited to the broad question as to whether or not the defendant was liable for the loss which the plaintiff allegedly suffered as a result of the defendant's alleged neglect to lodge her third party claim with the Road Accident Fund. The assessment of the quantum, that is the amount of the loss, stands over for later adjudication, if necessary.

[12] The plaintiff's cause of action against the defendant depends on proof of the following *essentialia*: the likelihood of success in the aborted proceedings against the Road Accident Fund; the conclusion of the contract of mandate; the breach of the

mandate by the defendant; the defendant's negligence to execute the mandate and the damages which were contemplated by the parties at the time they concluded the contract. I now proceed to consider whether or not each of these elements of a claim based on professional negligence has been established.

[13] As regards the first element, it was incumbent upon the plaintiff to establish that her third party claim against the Road Accident Fund was likely to succeed. The element required proof that, but for the defendant's negligence, the Road Accident Fund would have been obliged to compensate the plaintiff. This in turn required the plaintiff to establish that the victim's death was occasioned by the exclusive or contributory negligence of one or more or all of the alleged drivers: Logic dictates that the alleged negligence relative to driving be considered before the alleged negligence relative to the execution of the mandate.

[14] The version of the plaintiff as regards the merits of her third party claim against the Road Accident Fund, was narrated by one witness only, one Mr. Vuka Aubrey Nkosi. His evidence was that he was a passenger sitting on the trailer of the first vehicle, *viz* a Mercedes Benz truck driven by Mr. Paulus

Mahlangu. He was facing backwards in the direction of Trichardts. It was misty that morning. The second vehicle he saw, was a red sedan. The third vehicle he saw, was a truck. The three vehicles were travelling in the same direction. They were travelling towards Bethal in Mpumalanga from the direction of Trichardts. The road on which they were travelling was sloping towards an intersection where four way stop signs regulated traffic.

[15] The first vehicle was still travelling towards the intersection when he saw the third vehicle. It was speeding down faster and faster. The driver was blowing its horn and flicking its headlamps, apparently struggling to slow it down and driving on the incorrect side of the road. The first vehicle stopped at the intersection. The third vehicle kept on coming closer and closer. The first vehicle pulled off from its stationary position, entered the intersection and turned right.

[16] The second vehicle slightly moved to the left, away from the centre line of the road. The third vehicle tried to move back to its correct lane to avoid colliding with the turning first vehicle. Its efforts were abortive. It hooked the second vehicle, went on to crash into the rear of the trailer attached to the first vehicle

and overturned. Its driver was instantly killed. The plaintiff's case was then closed.

[17] The version of the defendant was also narrated by a single witness, namely, Ms Maria Julikana de Villiers. Her evidence was that she was the driver of the second vehicle, a sedan. The first vehicle, a Mercedes Benz truck, moved and turned right towards Bethal at the intersection. Her aim was also to turn right like the first vehicle, while she was gradually approaching the intersection, she looked in her side mirror and saw the third vehicle, an International Truck, approaching her very fast from behind. It was moving on the incorrect side of the road. She realised that it was not going to stop. She alerted her daughter, who was a passenger, about the imminent danger posed by the third vehicle.

[18] Her sedan was already stationary when the third vehicle struck its front right-hand-side, proceeded to strike the first vehicle at the back before it eventually overtuned. She stated that she looked in the mirror as a matter of habit to ascertain whether or not it was save for her to turn right. However, she did not see the third vehicle flickering its lights or heard it blowing its horn. In an attempt to avoid the collision, she slightly moved away

towards the yellow strip to her left. There was an oncoming vehicle from Kriel. The defendant's case on the merits was then closed.

[19] Mr. Dutton, counsel for the plaintiff, submitted that the plaintiff had established that the driver of the first vehicle was negligent and that his negligence was the contributory cause of the collision which claimed the life of the plaintiff's husband. However, Ms Bester, counsel for the defendant, differed. She submitted that the driver of the first vehicle was not negligent, as alleged or on any other grounds whatsoever. Accordingly, counsel urged me to find that the plaintiff's claim against the Road Accident Road, was unlikely to succeed even if the defendant had lodged it in good time.

[20] The following facts were common cause or not seriously disputed: An accident happened at Bethal in Mpumalanga on 22 June 2004. The scene of the accident was at the intersection formed by Eufees Street and Lakeside Avenue. In other words, the vehicles collided where the main road between Trichardts and Kriel intersected the main road between Bethal and Secunda. The accident took place between 07h00 and 08h00. There were three vehicles involved. The front vehicle

was a Mercedes Benz truck with registration number CCP897MP and was driven by Mr. Paulus Mahlangu. The middle vehicle was a sedan with registration number CCJ890MP and was driven by Ms M.J. de Villiers. The back vehicle was an International truck with registration number CPL905FS and was driven by a man, to witnesses unknown. Before the accident, the truck was seen by the plaintiff's witness and the defendant's witness moving on the wrong side of the road.

[21] The evidence further revealed that the driver of the International truck was instantly killed. According to the undisputed evidence, there was no passenger who was fatally injured. From these two facts, it implicitly followed that the fatally injured driver of the aforesaid truck was Mr. Zamile Eric Mlenzana. Therefore, the defendant's denial of the plaintiff's allegation was correct. The victim was not a passenger but rather a driver of the truck concerned. The legal position is that if the collision was caused by his sole negligence in the driving of the truck, the Road Accident Fund would not have been liable to the dependent members of his family. In such a scenario the defendant's alleged professional negligence would be negligence in the air.

[22] There is a duty, in certain circumstances, for a driver to look in the rear view mirror of a vehicle before turning to the right. The court has held that a motorist whose intention it is to execute a right hand turn, has a duty to satisfy himself that any signals which he may have given of his intention so to turn, had actually been seen and heeded by the other road users – **BROWN v SANTAM INSURANCE CO LTD AND ANOTHER** 1979 (4) SA 370 (W) at 374 A – B per Cilliers AJ; **BUTT AND ANOTHER v VAN DER CAMP** 1982 (3) SA 819 (A).

[23] The general duty of a driver to keep a proper lookout includes both looking for vehicles from whatever direction and listening to them as well – **HARRINGTON NO AND ANOTHER v TRANSNET LTD AND OTHERS** 2007 (2) SA 228 (C). In that case people on a railway track failed to see or to hear an oncoming train. They then sued the defendant for damages as a result of the injuries they sustained in the train accident. They were unsuccessful. The court held that they were negligent in that they should have heard or seen the train approaching.

[24] In **S v PHILLIP** 1968 (2) SA 209 (C) at 216 the court held that it was obviously negligent for the driver of any vehicle on a public

road to ignore traffic signals irrespective of whether they are visual or auditory.

[25] In the case of a sudden emergency, the critical question is whether the driver ought reasonably to have become aware, at the stage when effective avoiding action could still be taken, that the vehicle in an emergency was not going to stop – **BAY PASSENGER TRANSPORT LTD v FRANZEN** 1975 (1) SA 269 (A).

[26] The issue in the instant matter was whether the driver of the front vehicle, Mr. Paulus Mahlangu, ought reasonably to have become aware, before he turned right and at a stage when effective action could still be taken to avoid the collision, that the third vehicle was not going to stop.

[27] The undisputed facts were that the accident happened early in the winter morning; that there was a mist in the vicinity of the scene; that the intersection was busy between 07h00 and 08h00; that traffic converged there from Kriel, Trichardts and Secunda; that there was geographical downhill on the road from Trichardts towards the intersection; that the traffic was regulated by means of four way stop signs at the intersection

and that the driver of the first vehicle was in the employ of Mooifontein Brickmakers, whose factory was situated on the outskirts of Bethal.

[28] The diminished visibility early in the morning rush to work and the traffic convergence should have made any reasonable driver to be more careful than usual. The evidence of Ms Viljoen was that the second vehicle was gradually slowing down towards the intersection when she first saw the third vehicle speeding towards the intersection. She then stopped. At that moment the first vehicle was already inside the intersection where it was busy turning right towards the town of Bethal.

[29] On the other hand was the evidence of Mr. Nkosi. The crucial aspect of his evidence was that the crossing was still ahead of the first vehicle when he noticed the third vehicle descending towards the intersection. At that moment the first vehicle had not yet reached the intersection. It was still moving towards the intersection. The third vehicle was approximately 25 metres behind the first vehicle at the time he first saw it on the road.

[30] What emerges from these two versions is significant in two respects. Firstly, Mr. Nkosi saw the third vehicle earlier than Ms

Viljoen. Secondly, the third vehicle was still some distance behind the first vehicle. Thirdly, all the three vehicles were still in motion at that stage. In those circumstances an alert driver in the position of the first vehicle would have carefully used the rear view mirror in the cabin and the side view mirror to ascertain the traffic situation behind him. In my view, the driver of the first vehicle ought reasonably to have become aware, as Mr. Nkosi did, before he reached the intersection, that the driver of the third vehicle was in some crisis. At the very latest, as Ms Viljoen did, the driver of the first vehicle ought reasonably to have seen the third vehicle after stopping but before he set his truck in motion again in order to turn right.

[31] There was no sound reason as to why Mr. Mahlangu did not become aware of the other truck at the same time as Mr. Nkosi did. If he was as alert as he was expected to be, he would have realised before he even stopped at the intersection, that the truck which was speeding on the wrong side of the road towards the intersection where he intended to turn right, was not going to stop. At that stage he still had an opportunity to take an effective action to avoid the collision – **FRANZEN'S**,- case, *supra*. That he could have done by delaying his actual manoeuvre to turn. Had he done that, he would have given the

truck speeding on the wrong lane a chance to safely overtake his stationary truck.

[32] Moreover, there is no apparent reason as to why after stopping to obey a stop sign, he simply turned across the traffic lane on which the other truck was dangerously travelling. If he had looked in the rear view mirror of his truck, as Ms Viljoen did, before he again started moving, entering the intersection and turning, he would certainly have realised, just like Ms Viljoen did, that Mr. Mlenzana was not likely going to stop on the wrong traffic lane to let him safely turn – **BROWN'S**-case, *supra*.

[33] Ms Viljoen did not hear the hooting sound or see the flashing lights of the third vehicle. If her evidence can be regarded as been in contrast to that of Mr. Nkosi, on these aspects, then the evidence of Mr. Nkosi on those two aspects should be preferred. In the first place, he was in a better position to observe what was going on on the road behind the lady's vehicle than she was. He was facing he third vehicle whereas she was facing in the opposite direction. He was a passenger. She was a driver. He was on a higher position that she was. He used his eyes whereas she used the mirror. He observed the third vehicle approaching from behind for a longer time than

she did. In my view, Nkosi's observations were more reliable than those of Ms De Villiers. The driver of the first vehicle was negligent by ignoring indications of hazards given by the driver of the third vehicle. The hooting was so loud that it could be heard and the flashing so conspicuous that it could be seen by a passenger on the truck he was driving – **PHILLIP'S**-case.

[34] In the instant matter driver number 3 warned driver number 2 and number 1 who were ahead of him of his dangerous approach. He did so by sounding the hooter and flashing the headlamps of his truck. This was a critical distinction between this accident and the usual accident at intersections. The majority of collisions inside intersections are usually occasioned by drivers who, while driving on the correct lanes negligently disobey the traffic stop signs or traffic lights. Here the third driver did not negligently drive on the wrong side of the road. He did not deliberately disobey the stop sign. On the contrary, he did so in an attempt to avoid an accident. Mr. Nkosi's evidence was that he got the impression that something was wrong with the brakes of the third vehicle. He could see how the driver made fruitless and desperate attempts to slow it down.

[34] It seemed to me that the flashing of the headlamps, the blowing of the horn, the driving on the incorrect side and the apparent attempt to slow down, indicated that the third vehicle was in a crisis and that the driver did his best to warn the other road users about the imminent danger or crisis at hand. The hooting would have been heard, the flashing would have been noticed and the abnormal moving truck would have been seen by the driver of the first vehicle had he been keeping a proper lookout in the sense of been alert and aware of his immediate traffic surroundings. That then gave rise to a positive obligation on the part of the driver of the first vehicle to hear the hooting, to examine the situation before executing a turn to ensure that there were no signs of danger. By noticing the fast approaching truck, the lane on which it was travelling and its flashing headlamps, the insured driver would probably not have turned. In that way the accident would have been avoided. I am persuaded, therefore, that he failed to keep a proper lookout. He could, but the third driver could not, avoid the accident.

[36] I am persuaded that Mr. Nkosi generally gave credible and reliable evidence. His evidence was materially corroborated by the defendant's witness, Ms De Villiers. Accordingly I find that the plaintiff has established on a balance of probabilities that

her third party claim against the Road Accident Fund was likely to succeed had it been lodged on time. It follows from this finding that she had a valid mva claim. It was common cause that the plaintiff had to prove 1% negligence on the part of the driver of the first vehicle, Mr. Paulus Mhlongo, in order to succeed. I am of the firm view that she has succeeded to prove just that. This conclusion makes imperative to proceed further.

[37] As regards the second element, *viz* mandate, it was common cause that the contract of mandate was concluded between the parties and that it was a term of such agreement that the defendant, through its members and employees, would lodge the plaintiff's third party claim against the Road Accident Fund for the recovery of damages for her loss of support and funeral expenses. The averments were made in paragraph 3 of the plaintiff's particulars of claim and admitted in paragraph 2 of the defendant's plea. Therefore, the plaintiff has proved the second element.

[38] Perhaps I need to revert to the contract of mandate between the parties before I proceed to the next element. The defendant's mandatory obligation were, at least, to do all that was necessary and practicable in order to ensure that the mva

13 claim form, duly completed, was duly delivered to the Road Accident Fund before the period of prescription ran out. Since there was no debate as to the nature and scope of the contract of mandate between the plaintiff and the defendant, this brief exposition thereof will suffice.

[39] The defendant was aware that the plaintiff sought compensation for the support she lost and the funeral expenses she incurred as result of the victim's death. Those were the damages within the contemplation of the parties when the contract of mandate was concluded. Moreover, the defendant was fully aware that the plaintiff's claim for compensation against the Road Accident Fund would become prescribed within three years from the date upon which her right to claim arose. Notwithstanding such awareness, there was no delivery of the mva 13 claim form to the Road Accident Fund within the three year prescriptive period following upon the collision. Consequently, the plaintiff's right to recover compensation for the damages she has suffered, was extinguished by extinctive prescription. I have already found that evidence adduced concerning the driving negligence established, on a balance of probabilities, that the driver of the first vehicle or the front truck was also negligent.

[40] As regards the third element, *viz* breach of mandate, it was also common cause that despite the defendant's acceptance of the plaintiff's instructions, the defendant failed to lodge the plaintiff's claim with the Road Accident Fund within the prescribed three year period as from 22 June 2004. The plaintiff has, therefore, established the third element as well.

The aforesaid conclusions make it imperative to consider the question of the alleged negligence pertaining to the execution of the mandate.

[41] As regards the fourth element, in other words, the defendant's professional negligence, there was no common cause. The alleged negligence of the defendant was in dispute. The plaintiff alleged that the defendant in failing to lodge her third party claim in accordance with the provisions of the applicable legislation was negligent. To succeed, the plaintiff had to show that the defendant as an attorney, failed to exercise the necessary skills, knowledge and diligence of an average attorney.

[42] The defendant denied the plaintiff's allegation. The defendant

put up the defence that it could not reasonably ensure that the claim documents were properly completed for the purpose of lodging the plaintiff's mva claim with the Road Accident Fund. According to the defendant it could not lodge the plaintiff's third party claim, firstly, because the plaintiff failed to provide the defendant with documents and information when she was requested to do so and secondly, because the employer of the plaintiff's husband also failed to do likewise, despite the defendant's direct request.

[43] In effect, the defendant's contention was that its failure to lodge the plaintiff's mva claim did not constitute negligence since the defendant had taken all reasonable steps in an attempt to obtain the necessary information and documents for the purposes of completing the prescribed claim form. Put differently, the defendant contended that it had done everything a reasonable attorney would have done in the circumstances to obtain the information necessary to lodge the plaintiff's third party claim.

[44] The plaintiff raised a two pronged argument to meet the defendant's aforesaid contention, the main argument was that the defendant should and could in any event, have lodged the claim because it had sufficient information to validly complete

and lodge the claim form. The alternative argument was that, if it was found that the defendant did not have sufficient information to complete the claim form, which primary contention the plaintiff still denied, the defendant negligently failed to take reasonable steps to obtain the required information from the victim's employer.

[45] The plaintiff's version in connection with the element of professional negligence was narrated by Ms Yoliswa Eunice Mlenzana, the plaintiff herself. Her evidence was that she appointed the defendant on 17 August 2004 to institute a third party claim on her behalf. She testified that her matter was handled by Ms Smith. She informed her that Zamile Eric Mlenzana was her husband; that he was employed as a truck driver; that he earned R5 100,00 per month; that he was instantly killed in a road accident; that she suffered loss of support and incurred funeral expenses in connection with his burial.

[46] She added that she furnished the defendant's representative with certain documents such as her late husband's identity document, his salary payslip, his marriage certificate, her identity document, his death certificate, the funeral undertaker's

account, her address and contact number and the name of a certain Patrick, an eyewitness and her late husband's co-worker. She complained that the attorney was difficult to reach. She received no regular progress reports. Every time she went to see her attorney about the matter, she was merely told that the matter was receiving attention or that her attorney was not available.

[47] The version of the defendant, in connection with the element of professional negligence, was narrated by Attorney Stella Smith. She testified that she held the first consultation with the plaintiff on 17 August 2004 and the last consultation on 28 February 2007. During that period she received certain personal family documents from the plaintiff. By 18 January 2007 she had al the necessary information concerning the merits of the claim in her possession.

[48] From then on the outstanding information necessary to complete the claim form and to lodge the claim was limited to the amount of the compensation to be claimed. The plaintiff could give her no sufficient information concerning contact details of her deceased husband's employer. All she could provide was the name of the employer and that the employer

carried on business elsewhere outside Bloemfontein. She struggled to trace the employer, but eventually traced the employer at Theunissen. However, the employer was very uncooperative. He refused to furnish her with the employer's service certificate. She wrote several letters to the plaintiff in which she requested for the necessary information such as her deceased husband's salary advice and bankstatement, but she failed to provide the documents. She required such documents in order to instruct an actuary. Without such information she could not appoint an actuary to compile an actuarial assessment report.

[49] Since she was not provided with sufficient information or documentation she could not have the amount of the compensation calculated by an actuary. As a result of that she could not substantially complete the relevant portion of the mva claim form. She was aware that the plaintiff's personal claim would become prescribed on 21 June 2007. She asserted that she was not furnished with important documents such as the salary advice of the plaintiff's deceased husband, his contract of employment, the employer's service certificate and various other documents.

[50] During her cross-examination, however, Ms Smith conceded that the plaintiff had verbally informed her that her husband earned R5 100,00 per month at the time of his death. The first purported sworn statement which Ms Smith obtained from the plaintiff during the very first consultation of 17 August 2004 showed that the plaintiff informed Ms Smith that the deceased was the sole breadwinner. Moreover, the plaintiff's evidence was that she also provided Ms Smith with her husband's salary advice on 17 August 2004. Ms Smith admitted that she indeed received the salary advice but answered that she only received it after the prescription date which was on 21 June 2007 but before her letter to Dr. Robert Koch dated 12 July 2007.

[51] Mr. Dutton submitted that a rough estimate of an amount of compensation the plaintiff wanted to claim for loss of support could have been calculated by multiplying the deceased annual income by x number of years where x represented a number of years during which her husband would but for his premature sudden death have remained gainfully employed before he retired at the age of 65.

[52] Ms Bester submitted that a precise actuarial assessment of the plaintiff's loss of support was required before the applicable

portion, in other words paragraph 8 of the claim form, could be validly completed. The defendant's contention was thus premised on the erroneous belief that any estimate of the amount claimed as compensation which was unsupported by a precise actuarially assessed calculation, would not be substantial compliance. Ms Smith's understanding of the legal position was that once an amount claimed as compensation had being inserted in the claim form, it could only be decrementally but not incrementally adjusted at any stage subsequent to the date of its lodging. The law was lamentably misconceived.

[53] The law which governs the information to be included in the mva claim form is set out in section 24 of the Road Accident Fund Act, 56 of 1996. Subsection 1 thereof provides:

> "24. (1) A claim for compensation and accompanying medical report under section 17 (1) **shall-**
>
> a) be set out in the prescribed form, **which shall be completed in all its particulars**;
>
> (b) **be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office**, or to the agent who in terms of section 8 must handle the claim, at the agent's

registered office or local branch office, **and the Fund** or such agent **shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing**."

[54] It is also important to bear in mind the provision of subsection 4 thereof which provides:

> "(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.
>
> (b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words 'not applicable' shall be inserted.
>
> (c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.
>
> (d) **Precise details shall be given in respect of each item under the heading 'Compensation claimed' and shall, where applicable, be accompanied by supporting vouchers.**"

[55] The author, H.B. Kloppers: **The Road Accident Fund Guide – Service Issue 20**, page A-117 summarises the requirements of

a valid mva claim form and makes commentaries on that section. An mva claim form which discloses the identity of the claimant; the particulars of the accident which gave rise to someone's injury or death; the identity of the driver or owner of the offending vehicle and the calculation and composition of the amount of compensation claimed substantially complies with this section.

[56] It was undisputed fact that the defendant had the necessary information about the claimant, the accident, the offending vehicle(s) and the drivers involved. The dispute concerned the last of the requirements mentioned in the aforegoing paragraph 8 – the amount of compensation. Moreover, it was also undisputed that the defendant knew the deceased breadwinner's age. The plaintiff had placed Ms Smith in possession of her deceased husband's identity document, marriage certificate and death certificate. From any of these documents the deceased date of birth could be ascertained.

[57] Ms Smith's evidence that she only received the deceased's salary advice after prescription was unconvincing. She had no notes in her file relating to the exact date of the specific consultation. On the contrary, the plaintiff was certain that she

gave the salary advice to Ms Smith during the first consultation on 14 August 2004. Her version on the point was more probable than that of the defendant's witness, Ms Smith. The very statement which Ms Smith took from her, tended to give credence to her version. However, precisely when the defendant received the salary advice, was not really important. What was crucial was that the defendant knew within seven weeks after the accident, that the deceased breadwinner earned R5 100,00 per month (*vide* the plaintiff's first statement) drawn up by the defendant's witness on 14 August 2004.

[58] The critical question in this matter was therefore whether the aforegoing information which the defendant had in its possession sufficed to unable the defendant to figure out an informed calculation and composition of the quantum of compensation to be claimed in order to satisfy the requirements of substantial compliance.

[59] The plaintiff's argument was that as early as 14 August 2004 the defendant had sufficient information necessary to quantify her claim for compensation. The defendant's argument was that unless an actuarial assessment report was annexed to the mva claim form at the time the mva claim form was lodged, the

claim form was not substantially completed in terms of section 24.

[60] A brief overview of some caselaw appeared to be necessary. Section 24 has received judicial attention on a number of occasions.

[61] Where the appointed agent, in other words, the third party insurance company had repudiated the claim of the claimants on the grounds that the mva claim forms were not fully completed in all respects, the victims appealed. On appeal the court reversed the decision of the court *a quo* whereby the repudiation was upheld and the claims dismissed. Notwithstanding the omission relied upon by the insurer, the court found that the claimants had substantially complied with the applicable section since their mva claim forms contained, among others, vital information concerning the identity of each appellant or claimant, particulars of the accident, a description of the offending vehicle involved, the driver thereof, the hospital where they were medically treated, the police station where the accident was reported, the particulars of the employers of each claimant, save for one of them, the amount of the compensation claimed and the general description of the injuries. See

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1978 (2) SA 430 (A) at 435 H – 436 A for the minimum information that has to be supplied for substantial compliance.

[62] The ratio of the decision was that the purpose of the section was to ensure that before a claimant sued for compensation, an authorised insurer was informed of sufficient particulars about the claim, afforded sufficient time to consider it and to decide whether to resist or to settle or to compromise it before any costs of litigation were incurred – **NKISIMANE**, *supra*, at 434 F - G. The court held that injunctions, similar to those now set out in section 24(4), that the claim form shall be completed in all its particulars; that a clear reply shall be given to each question and that precise details shall be given in respect of each item claimed as compensation – must be regarded as directory and not peremptory – **NKISIMANE**, *supra*, at 436 B – D. Trollip JA cautioned, though, that claimants were well-advised to do their best to comply fully with these injunctions.

[63] In **SA EAGLE INSURANCE CO LTD v PRETORIUS** 1998 (2) SA 656 (SCA) the plaintiff lodged a claim in good time. However, the names and the addresses of the driver and owner of the other vehicle involved in the accident were not stated in

the mva claim form. By the time the claimant supplied such information the three year prescriptive period had already expired. The insurer repudiated the claim on the grounds that the claimant's right of action had already prescribed. The court *a quo* dismissed that special plea.

[64] The mva insurer appealed. The appeal was dismissed and the decision of the court *a quo* confirmed. The court held that such information as was furnished before prescription relating to the one vehicle coupled with the information concerning the accident and the police station to which it has reported, would reasonably have enabled the appellant itself to make successful enquiries as to the identity of the driver or owner of the other vehicle involved, whose particulars were not furnished in the mva form – **SA EAGLE INSURANCE CO LTD v PRETORIUS**, *supra*, at 664F – H.

[65] The court found that the claim form contained sufficient information which reasonably afforded the appellant adequate opportunity to consider its position in relation to such claim and to carry out such further investigation as it deemed necessary. The appellant, the court found, had thus effectively received the benefit the claim form was designed to give it (*vide*

PRETORIUS, *supra*, par 665A – C). Accordingly, the court held that the respondent had substantially complied with the section. The court found that the information contained in the claim form reasonably afforded the insurer a proper opportunity to consider its position and to carry out such investigation as it deemed necessary. The court held, further, that the fact that the respondent might have prudently done more than she had actually done was, in itself, not sufficient to justify the conclusion that her claim was inadequately advanced and that the claim was therefore invalid.

[66] The legal position is, therefore, clear. An omission of information from the claim form or the inaccuracy or inadequacy thereof *per se* does not necessarily mean that there has been no substantial compliance with the section in the completion of the claim form. A mere failure by a claimant to sufficiently and accurately answer questions of the kind under consideration *in casu* (i.e. computation of compensation) does not render a claim a nullity – **PRETORIUS**, *supra*, at 663 I – 664 A. Much depends on the nature degree and significance of the omission or inaccuracy or inadequacy as well as the significance of the information already provided. For this reason the claim form had to be

fully and accurately completed as far as practically possible before it is lodged with the Road Accident Fund in order to avoid unnecessary objections or special pleas based on lack of substantial compliance with the requirements of section 24.

[67] The case of **NONKWALI v ROAD ACCIDENT FUND** 2009 (4) SA 333 (SCA) is important. Almost four years after the collision, on 10 June 2005, the appellant amended her pleadings, without objection by the respondent, to include her claim for damages suffered consequent upon a head injury allegedly sustained in the accident. The head injury was not previously listed among the injuries detailed in her claim form, sworn statement or accompanying medical report lodged in terms of section 24. The reason for the belated disclosure of the head injury was that it was only detected subsequent to the lodging of the claim.

[68] The respondent filed a special plea alleging that, since the head injury was not specified in the claim form before it was lodged, the claim form did not comply with the provisions of section 24. The respondent also raised an alternative special plea. It averred that the appellant's additional claim, based on the head injury, constituted a new cause of action which, in

terms of section 23, had already become prescribed in that it was instituted after the expiry of the three year prescriptive period. The trial court upheld the special plea.

[69] It was not an issue in the court below that the head injury had not been diagnosed when the claim form was completed and lodged with the respondent. In the special plea there was no allegation at all made to the effect that the head injury was known at the material time when the claim was lodged. The case had clearly proceeded on the basis that the injury was discovered in subsequent medical examination. The court, on appeal, found that the appellant had fully furnished the respondent with all the relevant facts available to her at the time her claim was lodged. The court held that a supplementary claim in respect of the additional head injury, which injury was discovered after the institution of the action for compensation in terms of section 17(1) of the Road Accident Fund Act, 56 of 1996, did not constitute a distinct new cause of action, but merely a supplementary item of the same original cause of action – long since recognised to be a single and indivisible caution of action – **NONKWALI**, *supra*, at par. [10]. I pause to point out that the inclusion of the head injury necessarily entailed increasing the amount of the

compensation claimed by addition of a further item.

[70] In these circumstances I am persuaded that the defendant indeed had sufficient information in respect of the plaintiff's claim to substantially comply with the basic requirements of section 24. The defendant had all the information necessary to complete the mva claim form for about five months or so before the date of prescription. The defendant's understanding of the legal position, as regards the information necessary to complete the paragraph of the claim form, which deals with the breakdown and calculation of the amount of compensation, was materially wrong.

[71] The defendant could, as knowledgeable practitioners often do, have performed a rough calculation of the compensation claimed in order to lodge the claim for the time being. Such a simple mathematical exercise would have sufficed to prevent the extinction of the claim by prescription. Doing this sort of an estimation is a common practice. An inaccuracy does not invalidate a claim. After the lodging of the claim the defendant could have proceeded to instruct an actuary to expertly assess the plaintiff's claim. Once a fairly precise assessment had been compiled, the original amount of the compensation claimed

could then had been varied even after the expiry date of the three year prescriptive period. The inexact amount originally claimed could in that way be substituted with the exact amount expertly and mathematically determined by an actuary. It was clear and obvious that Ms Smith read too much into section 24(4)(d). The words precise details and supporting vouchers for purpose of lodging an mva claim include meaningful information statement designed by the claimant or an attorney acting as the claimant's agent.

[72] Where legal proceedings have not yet been initiated the variation of the mva claim form is informally done by means of a letter to the Road Accident Fund to that effect. Needless to say that, a copy of the actuarial assessment report, must then be annexed to the letter of variation. Where, however, litigation has already commended the amount claimed can be formally changed by means of an amendment to the summons at any time before judgment on quantum. The purpose of the variation or amendment may either entail an incremental or decremental adjustment of the original amount claimed. Ms Smith's opinion that an mva claimant was inextricably bound by the original amount claimed as the maximum compensation was a clear misconception of the law.

[73] The question which now arises is whether the defendant took reasonable steps to obtain the information which the defendant subjectively believed it still required to lodge the plaintiff's claim.

[74] The defendant's witness, Ms Smith, maintained throughout her testimony that the plaintiff was very uncooperative and that due to her lack of cooperation her claim prescribed. The plaintiff's contention was that she did all she could, but that her attorney did not properly handled her mandate.

[75] The initial consultation between the plaintiff and her ex attorney, Ms Smith, was held in Bloemfontein on 14 August 2004, seven weeks after the accident. During that first consultation Ms Smith noted, among others, that her client's physical address was 37739 Freedom Square, Bloemfontein, 9300; that her cellular contact number was cell 073 205 4668; and that she was unemployed at the time.

[76] Now Bloemfontein is a very big city with many suburbs, street names and suburban post offices and postal codes. Any physical address without these features rings a warning bell. Such was the address given to the defendant in this matter.

The defendant would have known that its client was a shack dweller and that postal deliveries to such informal communities were notoriously unreliable or completely non-existent. In **SLOMOWITZ v KOK** 1983 (1) SA 130 (AD) the trial judge, O'Donovan J, was quoted as follows on appeal:

> "According to evidence that was adduced in this case, and not challenged, **the residents of Vanderbijlpark are a floating community**, most of whom do not own the houses in which they reside. **Difficulties and delays with regard to service are of frequent occurrence in any Court. An ordinarily competent attorney having a proper perception of the importance to the plaintiff of her claim against the Fund, would not needlessly have run the risk of her claim being defeated on account of possible delays** in effecting the service of a summons. **To incur such a risk was negligent.**"

[77] Between the first consultation (14 August 2004) and the second consultation (16 September 2005) Ms Smith wrote six letters to the plaintiff. In the first letter (20 August 2004) she required information concerning the police from her client. The plaintiff did not respond. Four and a half months later (5 January 2005) Ms Smith wrote the second letter to the plaintiff. Again she asked her client to furnish her with police information. In

addition to that she also asked her to furnish her with details of the employer of her deceased husband. Despite repeating her request for such information in four more similar letters she received no such information concerning the police and the employer from her client or any reaction from her. (*Vide* 5 exhibit b – 18 exhibit b)

[78] Seemingly the plaintiff went to see her attorney again. The second consultation apparently took place on 16 September 2005, approximately twelve and a half months after the first. There were apparently no notes of significance kept by the defendant concerning the second consultation. By the look of things the serious and apparent problem of communication brake down was not addressed. Ms Smith obviously did not ask her client to provide her with an alternative address which was more reliable than the one she previously provided. It seemed doubtful whether she asked her client as to whether she was receiving her letters and if she was, why she was so uncooperative as she claimed her to be. All we know about the second consultation was through reference to it in Ms Smith's letter to her client dated 11 October 2005.

[79] In that letter she requested her client to furnish her with the birth

certificates of all her minor children in addition to the outstanding information about the police and the employer. On 2 December 2005 she repeated the same request. A knowledgeable, skilful and diligent attorney would, herself, have applied to the department of home affairs instead of sending her client for copies of full birth certificates. This can be easily done provided an attorney has a meaningful special power of attorney signed by his client, which authorises her or him to represent the client by taking such steps and performing such acts as may be reasonably necessary to carry out the mandate to its logical conclusion. I did not see such a document in this instance. I am mindful of the fact that children's full birth certificates were not relevant to these proceedings. However, the point indicated that on account of poor knowledge, skill and care, Ms Smith made such onerous demands from her client that they would probably have discouraged and frustrated even a very prudent and cooperative client. It must be borne in mine that the plaintiff was a woman of little education and no legal training whatsoever. She had no clue of what a full birth certificate was which was why she again furnished Ms Smith the same copies of the abridged birth certificates of her children.

[80] On 27 February 2006, over eighteen months since the contract of mandate was concluded, the defendant out of the blue wrote to advise the plaintiff that letters had been addressed to the police and the employer for the necessary information. That was the only letter the defendant ever sent to the plaintiff giving her progress report. The rest were demands for information. Now perusal of the notes which Ms Smith took during the first consultation (14 August 2004) a year and a half earlier, showed that the plaintiff had furnished her with the following vital information concerning the police: that the accident was reported to Bethal Police in Mpumulanga; that the crime administration system was CAS112.06.2004 and that the collision reference was AR15.06.2004.

[81] From the perusal of the initial consultation one can see that it took Ms Smith a considerable period of time to realise that all along she had the necessary information concerning the police in her possession. Her repeated demand for police reference would certainly have left her client wondering as to what information about the police she was still required to give to her attorney.

[82] From day one (14 August 2004) Ms Smith was informed by her client that her deceased husband was in the employ a certain

business enterprise called Ancor Vervoer on a certain farm in the Theunissen district. Now Theunissen is approximately 100 kilometres away from Bloemfontein. Although the employer's further particulars such as contact numbers and postal address were not given, they could have been readily ascertained. In the first place Telkom could have been contacted. In the second place the deceased's co-worker by the name of Patrick could have been of assistance. In the third place a tracing agent could have been instructed. In the fourth place the Bethal police probably had some constructive information about the particulars concerning the owner of the truck which the plaintiff's deceased husband was driving. In the fifth place the defendant could have sent a messenger to Theunissen to look for and find the required information about the employer. None of these steps were taken by the defendant.

[83] The accident report showed that one of the passengers involved in the accident was a certain Mr. Alfred Mene of Leliesdal Plaas, Theunissen whose cellular contact number was given as 083 303 0212 – (*vide* 61D exhibit b). The gentleman was probably a co-worker of the plaintiff's husband. He would probably have given Ms Smith some constructive information about the employer. The point is this: Had the defendant

immediately and properly investigated the accident the employer would have been identified and traced way back in 2004, much earlier than he eventually was in 2006. Once again one can see just how much valuable time Ms Smith practically wasted writing one letter after another to the plaintiff requesting for the information she had in her possession all along.

[84] The defendant's letter (27 February 2006) to Bethal Police for copies of the accident report, accident plan and witness statement apparently yielded no immediate response. The same applied to the defendant's first letter of the same date which was addressed to the employer for the deceased workman's certificate of employment. An ordinarily competent attorney with a proper perception of the importance of the claim to her client, would have written such a letter to Bethal Police before 31 August 2004 or within one month, at the very latest, after the conclusion of the mandate agreement – **SLOMOWITZ**, *supra*.

[85] Instead of taking the matter up directly with the police and the employer, Ms Smith, once again, wrote three more letters to her client between 27 February 2006 and 4 December 2006 asking her to furnish her with the documents she, the attorney, could

not readily get from the police and the employer. Her evidence was that it was the responsibility of her client to provide her with such documents. Therefore, so she testified, she expected her to travel to Theunissen and Bethal, far away from Bloemfontein, to get the required documents. And the poor client did.

[86] I was amazed. It begged the question: What was really the point of appointing and paying an attorney if the poor client, a widow at that, still had to travel to such far away places where she probably had never been before to investigate and to gather the required information. Ms Smith's second letter to the police was dated 4 December 2006, approximately 10 months after the first. A cheque of R75,00 was attached. The third letter was dated 18 January 2007. Official proof of payment of R51,20 was attached.

[87] On 1 February 2007 the defendant wrote to ask the plaintiff to visit her offices. Shortly after that letter the required accident report and witness statements were annexed to a letter from the police to the defendant dated 14 February 2007.

[88] The last letter (30 March 2007) from the police informed the defendant that a case of culpable homicide was opened

following the accident. The defendant's last letter to the plaintiff was dated 10 March 2007. Yet again the plaintiff was called upon to provide the outstanding documents from the police, the employer and the Department of Home Affairs.

[89] The defendant wrote one letter only in three years to the employer. This was a chronicle of procrastination and neglect on the part of the defendant. Ms Smith's explanation was that besides the one letter she also called the employer, Mr. J.A. Smith and his wife in connection with the certificate of employment. The evidence revealed very scant details of the alleged cellular calls. Her efforts, she said, were to no avail. She admitted that she did not give the employer any written warning that he was legally obliged to furnish her with the required information. When Mr. Dutton put it to her that she could have instituted an urgent court application against the employer to compel him to provide the documents or to obtain an *ex parte* Anton Pillar order against the employer, it seemed that Ms Smith was unaware of such legal remedies.

[90] The plaintiff's claim prescribed on 21 June 2007. About three weeks later Ms Smith wrote to Dr. Robert J. Koch for a certificate of values. To that letter were annexed, among

others, what Ms Smith described as work agreement of the deceased together with a salary advice. The information on the salary advice confirmed that the plaintiff's husband worked for Ancor Vervoer and that he earned a basic salary of R4 500,00 plus a subsistence allowance of R600.00 per month which brought his total monthly income to R5 100,00.

[91] All in all Ms Smith wrote 14 letters to her client before the claim prescribed. That was not good enough. All of those letters apparently went astray. But even if they did not, they were useless. As I have already indicated Ms Smith repeatedly demanded from her client information which she, in the first place, was obliged in terms of the contract of mandate to assemble. Her lawfirm was appointed within two months after the fatal accident. Therefore, she had 34 months to investigate the circumstances of the accident, to gather the necessary information and to lodge her client's claim in good time. She failed to perform any of those vital obligations.

[92] Not a single statement by an eye witness was obtained. The hearing had already commenced when, on 28 May 2011, the defendant, for the first time, held consultation with Ms M.J. de Villiers. The scene of the accident was never visited. There

were no scenery photographs taken. The fact of the matter is that Ms Smith, on behalf of the defendant, did not take reasonable steps not only to obtain the information she believed she required, but, and this is very important, also to exercise the necessary skill, knowledge or diligence expected of an average attorney. As a result of such disturbingly shocking lack of skill, knowledge, diligence and care she failed to appreciate the value of the vital information her client had supplied almost three years before the expiry date of the prescriptive period.

[93] I have to say, and it is not pleasant saying it at all, that the plain truth about this whole problem was not of Ms Smith's own making. She was admitted as an attorney in 2003 and on 2 October 2003 she was given a huge responsibility to run not only the mva department of the defendant but also the conveyancing department. She was a virtual novice in the legal profession at the time. She was put in the deep end and left all by herself to navigate the stormy waters of the deep ocean. She was not at all equipped to do such intricate work. Her legal knowledge was still very limited. Since then she has hardly ever attended one mva seminar. Yet she regarded herself as an expert in the field. Her evidence was that a two day practical training course she was compelled to attend as a candidate

attorney was the only meaningful training she ever received. That, in brief, explained why the plaintiff's claim prescribed.

[94] The last letter she wrote to her client was on 10 March 2007. She probably forgot about the matter. Her computer system probably did not remind her about the looming danger. Perhaps it did but she was simply overwhelmed by the magnitude of the problem. If a skilful, knowledgeable and diligent attorney received on 10 March 2007 the sort of instructions Ms Smith received on 14 August 2004, the plaintiff's claim would not have prescribed.

[95] In **MOUTON v DIE MYNWERKERSUNIE** 1977 (1) SA 119 (A) at 142 G – H Wessels JA said the following:

> "**Appellant sou op grond van nalatigheid aangespreek kon word indien hy nie oor die nodige kennis of vaardigheid beskik het nie of, by die uitvoering van sy opdragte nie dié mate van sorg aan die dag gelê het, wat redelikerwys van die deursnee-prokureur verwag kan word nie.** Kyk, Bruce, N.O. v Berman, 1963 (3) SA 21 (T) op bl. 23G; Honey & Blanckenberg v Law, 1966 (2) SA 43 (R) op bl. 46E - 47B; Tonkwanê Sawmill Co. Ltd. v Filmalter, 1975 (2) SA 453 (W) op bl. 454H - 455C."

[96] That, in brief, is the test. I have to judge the conduct of Ms Smith in the light of what she knew and could reasonably have ascertained. She knew very little and solicited very little help from the defendant's senior directors or any knowledgeable colleague. Her last letter to the plaintiff evoked no response whatsoever. A normally prudent attorney would have felt it wise to lodge the claim on the strength of the available information, however inadequate she or he reckoned it to be. What she did, was to throw in the towel and surrendered. She made no constructive and vigorous efforts to resolve the perceived problem. She did not have to have absolutely accurate information about every component of the compensation the plaintiff was entitled to claim – **NONKWALI**.

[97] In **S MAZIBUKO v SINGH** 1979 (3) SA 258 (W) Coleman J said the following at 261 C – D:

> "In the carrying out of his contractual obligations the defendant was obliged (either personally or through others) to exercise knowledge, skill and diligence to be expected of an average practicing attorney. See *Mouton v Die Mynwerkersunie* 1977 (1) SA 119 (A) at 142 – 3 and the authorities there cited. It is the plaintiff's case that the defendant fell short of that standard."

Indeed that is my finding in the instant matter.

[98] Although the end of the prescriptive period was looming large on the horizon, Ms Smith did virtually nothing effective. She had enough information to lodge the claim. All she did in almost three years was to write to her client, who lived in an informal shack setting asking her to provide information. Those letters failed to reach her client. The evidence of the plaintiff in that regard must be accepted. Ms Smith last letter to her client was on 10 March 2007. It was not far too late at that stage to do something. However, Ms Smith did nothing constructive. The prescriptive period was not perilously close. In the circumstances Ms Smith acted negligently, having regard to what was at stake, the available information and the time she had at her disposal before the date of prescription.

[99] The vagaries of postal deliveries to shack communities are well-known. An ordinarily competent attorney would have foreseen that letters mailed to a shack dweller were quite as likely to be delayed as to go astray. But even if the plaintiff had received the last letter, Ms Smith's remissive conduct in allowing the prescription to run out could not be excused. There comes a time when a diligent attorney has to leave the comfort zone of

his or her air-conditioned office and venture out to do some fieldwork in order to safeguard the interests of a client. In the light of all this I can see no sound excuse for Ms Smith's conduct. See **MAZIBUKO**, *supra*, at 264 A – H.

[100] I had to judge the conduct of Ms Smith in the light of what she knew and could reasonably have ascertained. Her conduct was chronicled by hopeless acts of procrastination and utter neglect. A prudent, skilful and knowledgeable attorney would have done and handled the plaintiff's claim in a completely different way. Therefore, the plaintiff has established the final element as well.

[101] Since Ms Smith failed to exercise the skill, knowledge and diligence expected of an average attorney, she acted negligently and her negligence made the defendant liable to the plaintiff. In my view the defendant neglected to lodge the plaintiff's claim. Its omission was due to the fact that its representative did not have the requisite degree of knowledge, skill and diligence which, as an attorney, she was supposed to have.

[102] In the circumstances and for the reasons already given, I have come to the overall conclusion that the plaintiff has established, on a balance of probabilities, all the *essentialia* of her cause of

action against the defendant. The defendant's plea is dismissed *in toto*. In my view no negligence whatsoever could be detected against the plaintiff's conduct.

[103] Accordingly I find that the defendant is liable to the plaintiff for such damages, as may be proved or agreed, plus costs.

M. H. RAMPAI, J

On behalf of plaintiff:	Adv. I.T. Dutton Instructed by: Nonxuba Attorneys BLOEMFONTEIN
On behalf of defendant:	Adv. A. Bester Instructed by: Goodrick & Franklin BLOEMFONTEIN

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