B.145/86

Box 86(3)

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

CONSTANTIA INSURANCE COMPANY LIMITED ..... appellant

and

WELCOME NXOLISI NOHAMBA ..... respondent

CORAM: Corbett, Joubert, Boshoff, JJA, Galgut et Nicholas AJJA.

Date of Hearing: 24 February 1986

Date of Judgment: 27 March 1986

J U D G M E N T

GALGUT AJA:

This is an appeal from the judgment of the Full Court of the Eastern Cape Division which is reported as Constantia Insurance Co Ltd v Nohamba 1984 (4) SA 927 (E).

/ The.....

The Full Court was dealing with an appeal to it from a decision of KROON AJ. That decision is also reported. See Nohamba v Constantia Insurance Co Ltd 1984 (2) SA 791 (E). The Full Court made an order dismissing the appeal with costs. As stated it is that judgment which is before us on appeal.

The facts and relevant sections of the Act and regulations are set out in the above reports. Because of certain issues raised during and after the hearing of this appeal and also because it will facilitate the reading of this judgment, I deem it advisable to set out the evidence in some detail.

On 17 September 1980 respondent ("plaintiff") was walking across a road in Fort Beaufort when he was knocked down by a motor vehicle being driven by one Rumbu. The vehicle was insured by appellant ("defendant") under the Compulsory Motor Vehicle Insurance Act 56 of 1972 ("the Act").

/ Plaintiff.....

Plaintiff sued the defendant, as the authorised insurer of the vehicle, for compensation for his injuries. These, he alleged, had been caused by the negligent driving of the said Rumbu.

Prior to the issue of summons the plaintiff had, on 19 March 1982 forwarded to defendant the MVA 13 claim form ("the form") as he was required to do by sec 25(1) of the Act. It is the form prescribed in the regulations published pursuant to sec. 32 of the Act. Sec 16(1)(a)(i) of the regulations requires a reply to be given to each question in the form, and states that if a question is not applicable the words "Not applicable" shall be inserted and that supporting documents, including medical reports, are to be attached. The information required from a claimant is very detailed and is not limited to the accident. Para. 6 seeks answers to nineteen questions. Of these the following are relevant. The claimant has to set out:

/ "(h) (His) Business...

"(h) (His) Business or occupation."

"(m) Names and addresses of all medical practitioners who attended to him/her after the accident (if known)."

"(n) (i) At which hospital or nursing home or other place if any did he/she receive treatment after the accident?

(ii) .....

(iii) .....

(iv) ..... "

"(q) (i) Name and address of employer at date of accident.....

(ii) Period in his employ, from _____ to _____.

(iii) Nature of work.

(iv) Date of resumption of work."

"(r) Was he/she injured.... in the course of his/her employment (Yes or no)."

"(s) State his/her income for the 12 months preceding the accident -

(i) from employment.....

(ii) from any other source....."

Para. 9 is headed COMPENSATION CLAIMED. The opening paragraph under this heading stresses that precise details must be given supported by vouchers where applicable. The details then

/ sought.....

sought are listed as follows:

" (i) Hospital expenses (Provincial Hospitals) ..... R

(ii) Hospital expenses (other hospitals) ..... R

(iii) Medical expenses ..... R

(iv) Estimated future medical expenses ..... R

(v) Loss of earnings (from date of accident to date hereof) ..... R

(vi) Estimated future loss of earnings ..... R

(vii) Estimated loss of support ..... R

(viii) General damages (specify whether for pain and suffering, permanent disability, etc.) ..... R "

Paragraph 10 of the form reads:

"10. If the person mentioned in para. 6 above was killed or injured in the course of his/her employment state:

(i) Whether the claimant is entitled to compensation under the Workmen's Compensation Act 1941 (Act 30 of 1941), as amended. (YES or NO)

(ii) If YES, state whether the Workmen's Compensation Commissioner or his/her employer, as the case may be, has been notified that a claim is

/ being.....

being lodged against the authorised insurer named in paragraph 1 above (YES or NO) _____

(iii) If YES, give date and details of such notification and state by whom given _____

(iv) If the claimant has already been compensated in terms of the Workmen's Compensation Act, state amount received _____ and Workmen's Compensation Commissioner's reference _____ "

The form then ends as follows:

" I hereby declare that to the best of my knowledge and belief all the information contained in this form is true and correct."

In subpara. (i) the plaintiff's answer given was "NO", the printed word "YES" being deleted. Diagonally across the whole of the subparas. (ii), (iii) and (iv) the words "Not applicable" were written. I pause to say that

/ having.....

having answered "No" to subpara. (i) it followed that plaintiff was required by reg. 16(1)(a)(i) to write "Not applicable" in answer to subparas. (ii) and (iv). The form was duly signed by plaintiff as being true and correct to the best of his knowledge and belief. It was received by appellant on 19 March 1982.

The summons was issued on 20 August 1982. The plaintiff in paras. 1 - 7 thereof gave details of the accident, the acts of negligence on which he relied and the amounts he was claiming. There then followed the following allegation in para. 8:

> "8. The provisions of Section 25(1) of Act No 56 of 1972 have been complied with."

The defendant requested further particulars. These were furnished on 11 February 1983. They set out inter alia that plaintiff was employed, at the time of the accident, as a salesman. A medico-legal report dated 12 August 1982

/ was.....

was annexed to the further particulars. This report states that plaintiff was a door-to-door salesman. It further states, under the heading "Loss of Earnings", that during the time he was off work "he would have received some compensation from the Workmen's Compensation Commissioner".

Defendant then filed its plea on 22 February 1983. It denied therein that Rumbu had been negligent and denied liability. It did however in its para. 5 admit para. 8 of the plaintiff's particulars of claim, viz, that the provisions of sec. 25(1) of the Act had been complied with.

On 24 May 1983 the defendant gave notice of its intention to amend its plea by the addition of the following paragraph:

> "7. In the event only of this Honourable Court however finding that the defendant is liable to the plaintiff for damages arising out of the said collision, the defendant pleads further as follows:

/ (a) At.....

(a) At the time of the said collision the plaintiff was a 'workman' in terms of the Workmen's Compensation Act 30 of 1941 and the said collision was 'an accident' as envisaged by the Act.

(b) The Workmen's Compensation Commissioner has to date paid to the plaintiff the sum of R2 150,34 as compensation in respect of the damages which he has suffered in consequence of the said collision.

(c) In the premises the defendant's liability to the plaintiff must be reduced by the said sum of R2 150,34 and by any further amount which may be paid by the Workmen's Compensation Commissioner to the plaintiff as compensation arising out of the said collision'."

There being no objection the defendant filed the amended plea on 16 June 1983.

/ It.....

It is quite clear that appellant on both dates had full knowledge of the fact that respondent was a "workman" at the time of the collision; that he was entitled to workman's compensation that he had received such compensation in the amount of R2 150,34; that this amount fell to be deducted from respondent's claim. Appellant did not seek to withdraw the admission in its plea, viz, that sec. 25(1) of the Act had been complied with.

Thereafter on 27 October defendant gave notice, together with the details, of its intention to amend its plea. Plaintiff did not object and defendant accordingly on 21 November filed a special plea. It also withdrew the admission in para. 5 of its plea and denied that plaintiff had complied with sec. 25(1) of the Act. It is surprising that the withdrawal of the admission was not opposed. In the special plea defendant alleged that plaintiff had given false and inaccurate answers in para. 10 of the form; that

/ by.....

by so doing he had failed to comply substantially with sec. 25(1) of the Act; that by reason of the provisions of section 25(2) of the Act his claim against the defendant was unenforceable. No replication to the special plea was filed and indeed in terms of rule 25(a) of the Rules of Court ("the Rules") there was no need to do so.

When the matter came to trial the parties placed before the learned Judge a minute. I have substituted Roman figures for each paragraph therein. In par. (i) it was agreed that the Court would be asked to decide, separately from any other question, the issue in the special plea on the basis of "the agreed stated case annexed hereto and with reference to the pleadings".

Paras. (ii), (iii) and (iv) of the minute read:

> "(ii) The parties have further agreed that the above issue shall be the only matter to be determined at this stage .....
>
> /(iii) In .....

(iii) In the event of the question referred to in paragraph (i) above being determined in favour of Defendant it is agreed that the Plaintiff's claim should be dismissed with costs.

(iv) In the event of the question referred to in paragraph (i) above being decided in favour of the Plaintiff against the Defendant, the costs of the argument on such question will be costs in the cause in the main action which will then continue against the defendant."

The "Stated Case", which was duly signed by both counsel and the attorneys as required by rule 33, sets out prior history in paras. 1 and 2 thereof and proceeds:

"3. (a) In the MVA 13 claim form submitted by the Plaintiff to the Defendant as aforesaid, it was expressly stated that the Plaintiff was not entitled to receive compensation under the provisions of the Workmen's Compensation Act No 30 of

/ 1941 due.....

1941 due to him having been injured in the collision.

(b) Furthermore, the words "NOT APPLICABLE" were written by the Plaintiff through all the stated questions in Clause 10 of the claim form, thereby indicating that the Plaintiff had not been compensated by the Workmen's Compensation Commissioner in terms of Act No 30 of 1941 in consequence of having been injured in the collision.

(c) A copy of the relevant page of the MVA 13 claim form is attached hereto marked 'A'.

4. The Plaintiff's aforesaid statements were false and incorrect as:

(a) The collision which was an 'accident' as envisaged by Act No 30 of 1941 was reported by the Plaintiff's employer to the Workmen's Compensation Commissioner by letter dated 27th February, 1981 and received by the Commissioner on 2nd March, 1981.

/ (b) The.....

(b) The Plaintiff became entitled to receive Workmen's Compensation due to him having been injured in the collision.

(c) On 3rd November 1981 the Workmen's Compensation Commissioner had paid compensation to the Plaintiff in the sum of R190,79 and to the Plaintiff's employer in the sum of R562,50.

(d) During the period 12th November, 1981 to 8th October, 1982 the following compensation payments were made by the Workmen's Compensation Commissioner to various medical practitioners who had administered treatment and provided services to the Plaintiff in respect of his injuries sustained by him in the collision:"

There then follow details of payments made to different doctors and a chemist on dates ranging from 12 November 1981 to 8 October 1982.

Paras. 6, 7 and 8 of the Stated Case read:

/ "6. The.....

"6. The Plaintiff contends that he has complied with the provisions of Section 25 by submitting the MVA 13 form notwithstanding the aforementioned inaccuracies therein contained as the statutory requirements have been substantially complied with.

7. The Defendant however contends that the statutory provisions of Act No. 56 of 1972 have not been substantially complied with due to the inaccuracies in the particulars contained in the MVA 13 Claim Form and that, therefore, the Plaintiff's claims are unenforceable against it.

8. The parties require a decision as to which of the abovementioned contentions is correct, the sole issue being whether the Plaintiff has complied with the provisions of Section 25 of Act No 56 of 1972 as read with Regulation 16 promulgated under Section 32 of the said Act."

Attached to the Stated Case was the last page of the form on which appeared para. 10, and the answers as set

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out earlier in this judgment and plaintiff's signature, declaring that "to the best of my knowledge and belief all the information contained in this form is correct".

It is necessary to stress that it was accepted that plaintiff was not mala fide when submitting the form and when completing para. 10, and that this was accepted in both courts. The concluding paragraph of KROON AJ's judgment, as appears from p 798 of the report of the case, reads:

> "In the result I find that the plaintiff has substantially complied with the provisions of s 25(1) of the Act and the question stated is answered in his favour. As agreed between the parties the costs of the argument on that question will be costs in the cause of the main action".

After the hearing of the present appeal my colleague NICHOLAS AJA expressed the view that the judgment of KROON AJ was not appealable and hence the order made by

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the Full Court was not appealable. I have had the opportunity of reading his judgment and the cases referred to therein. I regret that I am unable to agree with his conclusion. My reasons follow.

The relevant facts were agreed to by the parties. These and their respective contentions (see paras. 6 and 7 of the Stated Case) were placed before the Court. The Court was asked, as I read par. 8, to make a declaratory order having a final effect as to the validity of the special plea. This the Court did. The effect of its declaration was a dismissal of the special plea. It was not an interlocutory decision. It had a final effect in the sense that the special plea could not be raised again in that Court. The decision had all the attributes of a final order. More as to this aspect later.

NICHOLAS AJA states that the words "judgment or

/ order" .....

order" in sec. 20(1) of the Supreme Court Act 59 of 1959 are used in a special, almost technical sense, since it is not every decision or ruling of a Court during the progress of a suit that amounts to a judgment or order. That this is so appears from the cases to which he refers. He also points out that the reasons for a decision cannot be the subject of an appeal. It does not, however, follow that every decision given by a court during the progress of a suit is not appealable. In Shacklock v Shacklock 1949 (1) SA 91 (A) at p 97 CENTLIVRES JA said:

> "In argument Mr Hanson, on the application to strike the appeal off the roll, on behalf of the respondent, relied on the cases of Dickinson v Fisher's Executors (1914, AD 424); Nxaba v Nxaba (1926, AD 392) and Umfolozi Co-operative Sugar Planters, Ltd v SA Sugar Association (1938, AD 87). None of these cases governs the present matter. In Dickinson's case this Court decided that a ruling on a point of evidence is

/ not.....

not appealable. In Nxaba's case a point of law arose on the pleadings and on the application of the plaintiff the trial court by consent made an order that that point should be decided before evidence was led. It was held that the ruling of the trial court on the point of law was not appealable. In the third case where the trial court had given rulings on preliminary points of law and had postponed the matter for further evidence, it was held that the rulings on the preliminary points were not appealable".

The learned Judge went on to say, at p 98, that on the facts of the case before it, the parties had asked the Court to make a declaration of rights and that the decision had all the attributes of a final order. Hence the decision was appealable.

In Tropical (Commercial and Industrial) Ltd v Plywood Products Ltd 1956 (1) SA 339 (A) at p 343 CENTLIVRES CJ said:

/ "In.....

"In Shacklock v Shacklock, 1949 (1) SA 91 (AD), Dickinson's case and the cases following it were distinguished in that in Shacklock's case an order of Court had been issued declaring the rights of the parties and the part of the order appealed against had all the attributes of a final order. Vide p 98."

This Court in Smit v Oosthuizen 1979 (3) SA 1079 (A) entertained an appeal in which a defendant had in the trial court filed a special plea of prescription. The special plea was dismissed and the main trial was postponed for adjudication on the merits. In the appeal to this Court the plaintiff (respondent in the appeal) contended in limine that the judgment on the special plea was not appealable. DIEMONT JA who delivered the judgment of the Court after quoting a passage from Labuschagne v Labuschagne; Labuschagne v Minister van Justisie 1967 (2) SA 575 (A) went on to say at p 1089:

/ "Die.....

"Die appellant in hierdie saak het ook in sy spesiale pleit 'n afdoende verweer geopper — hy het aangevoer dat die eis deur verjaring uitgewis is en, op grond daarvan, het hy regshulp aangevra, nl 'dat eiser se eis met koste van die hand gewys word'. Die Regter a quo besluit dat die verjaringspleit nie kan slaag en vir redes wat hy in sy uitspraak meld, weier hy om die verligting wat deur een van die partye aangevra is, toe te staan. Weliswaar is die saak nog nie afgehandel nie maar die geskilpunt wat in die spesiale pleit geopper is, is finaal besleg en regshulp geweier.

As die toets wat INNES WN HR soveel jare gelede gestel het - 'there must be a distinct application by one of the parties for relief' - in hierdie saak toegepas word, is ek die mening toegedaan dat die uitspraak wat LE ROUX R op 7 April 1978 gelewer het, wel 'n uitspraak of bevel is soos bedoel in art 20(1) van die Wet, en dat dit derhalwe appelleerbaar is. Ek meen dus dat die beswaar in limine afgewys moet word."

/ The.....

The defendant in the present case, "het in sy spesiale pleit 'n afdoende verweer geopper", and asked for the appropriate relief, viz, that plaintiff's claim be dismissed with costs. As set out earlier, the minute referred to the agreed facts in the Stated Case and to the pleadings. Paras. (iii) and (iv) of the minute and para. 8 of the Stated Case can only mean that the defendant was asking that the plaintiff's claim be dismissed and that plaintiff was asking that the special plea be dismissed and that only the "main action" continue. No other interpretation is possible. It follows that in the present case, just as in the Smit case, supra (and in the Labuschagne case, supra, see p 583 thereof) the defendant asked for separate and distinct relief. KROON AJ's judgment is a rejection of the relief sought by defendant. Its effect is a dismissal of the special plea and an order that the "main action" only proceeds. His decision, as far as the trial

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was concerned was final and not interlocutory. To now hold that his failure to end his judgment with the words "The special plea is dismissed" means that there is no judgment or order and therefore his decision is not appealable, would in my view be indefensible.

I turn now to another aspect. At the outset of the appeal counsel for the defendant was asked whether the issues in the Stated Case had not been too narrowly stated and whether, due regard being had to defendant's conduct as reflected in defendant's pleadings, this Court was free to consider whether defendant had by its conduct waived its right to rely on the incorrect statements in the form. Counsel, although with some hesitation, conceded that if the admitted facts justified such a finding this Court could, in the interests of justice, make such a finding. (See also in this regard rule 33(3) of the Rules.) He did however urge that such a finding could not be made on the

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papers before this Court.

I summarize the relevant facts. In answer to defendant's request plaintiff on 11 February 1983 furnished further particulars. In these he set out inter alia full details of his employment. He also attached a medical report which contained a paragraph to the effect that during the period he was off work he would have received compensation from the Workmen's Compensation Commissioner ("WCC"). In its plea dated 22 February defendant denied all liability but, as we have seen, admitted in par. 5 thereof that plaintiff had complied with sec. 25(1) of the Act. Defendant on 24 May 1983 gave notice of its intention to apply to amend its plea. In this notice it alleged that plaintiff at the time of the collision was a "workman"; that the collision was an "accident" as defined in the Workman's Compensation Act 30 of 1941; that the WCC had paid to the plaintifff R2 150,34 as compensation. There

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was no objection to this notice. Defendant accordingly (see rule 28(2) and (3)) on 16 June filed the appropriate amendment to its plea. The admission in its para. 5 was not withdrawn. Thereafter on 27 October 1983, ie, a few weeks before the trial date, defendant gave notice of its intention to apply to amend its plea. There was no objection from plaintiff and defendant on 21 November filed the special plea and withdrew the admission in its para. 5.

The defendant is an insurance company and one must assume that it was at all times aware of its rights and more particularly of the provisions of sec. 25 and the importance of the form. These matters have frequently been raised before the Courts by various insurance companies. Despite this knowledge and the statement about the compensation from the WCC in the medical report, defendant nevertheless made the admission in para. 5 of its plea. That was in February. In May it gave notice of its intention to amend and in June

/ did.....

did amend its plea to include the allegations set out above, but did not withdraw the admission in para. 5. There is nothing to indicate what investigations the defendant made, if any, after its receipt of the form or what information it had before the summons was issued. What is clear is that it knew in February, in May and in June that the answers to para. 10 in the form were incorrect and did not raise any objection until October. In fact, until that date it allowed the admission in para. 5 to remain. On the face of it this conduct suggests that defendant had decided not to repudiate the claim because of the incorrect information in the form. In order to establish waiver it must be shown that a party to a suit, with full knowledge of his right, decided to abandon it whether expressly or by conduct plainly inconsistent with an intention to enforce it. See Hepner v Roodepoort-Maraisburg Town Council 1962 (4) SA 772 (A) at p 778 and the cases there cited.

/ I am.....

I am of the view, as stated above, that prima facie defendant's conduct is inconsistent with an intention to enforce its rights. Nevertheless I have grave doubts, despite counsel's concession, as to whether this Court is free to consider the waiver issue and if so whether we would, on the facts, be justified in considering whether, or deciding that, defendant had, by its conduct, waived its rights. These doubts arise from the following factors. Firstly, no objection was made to the withdrawal by the defendant of the admission in para. 5 of its plea; waiver was not pleaded; waiver was not raised in the Stated Case; waiver was not raised in either of the Courts below; para. (ii) of the minute stressed that "the only matter to be determined" by the trial Court was whether plaintiff had complied with sec. 25(1). In view of the above it may well be that it is not open to this Court to consider the issue. See Collen v Rietfontein Engineering Works 1948 (1) SA 413 (A) at p 436. Secondly, although it must be accepted that defendant

/ was.....

was at all times fully aware of its rights it may well be that at the time when it filed its plea in February and again when it filed its amended plea in June, it did not realise that it had the right to repudiate the claim on the ground that the form did not comply with sec. 25(1). This is an aspect which would have been investigated if the issue of waiver had been raised in the pleadings or Stated Case. In these circumstances it cannot be said, on the papers before the Court, that the defendant, despite its knowledge of its rights, "decided to abandon" its right to rely on the inaccuracies in the form.

I turn now to consider the issue raised in paras. 6 and 7 of the Stated Case as read with para. (i) of the minute and the special plea, viz, whether plaintiff, notwithstanding the inaccuracies in the form, had substantially complied with the provisions of sec. 25(1) of the Act.

/ As.....

As stated by KROON AJ, see the Nohamba case, 1984 (2) SA at p 794 and the cases there cited, the requirement that a prospective claimant should submit the form is peremptory but that does not mean that it was the intention of the Legislature that any inaccuracy therein would necessarily have the effect of vitiating the form and so non-suiting the claimant. It is sufficient if the requirements of the form are substantially complied with. The provisions of the Act with which we are concerned are similar to those in sec. 11(bis) in its predecessor, the Motor Vehicle Insurance Act 29 of 1942. When dealing with the latter statute HOLMES JA, in Commercial Union Assurance Co Ltd v Clarke 1972 (3) SA 508 (A) at p 517 E said:

> "..... 'the intention of the Legislature as revealed in the Act read as a whole and as expressed in sec. 11(1) in particular was to give the greatest possible protection to third parties'

— per RAMSBOTTOM, J.A., in Aetna Insurance

/ Co .....

Co v Minister of Justice, 1960 (3) SA 273 (AD) at p 286E. (My italics.) Sec. 11 bis introduced later, was in the main, for the benefit of insurance companies, to give them time to enquire into a claim before becoming involved in the expense of litigation; ....."

The general effect of the Act and the purpose of sec. 25 are the same as those of the 1942 Act. See Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 at 434 E and 435 E.

In A A Mutual Insurance Association Ltd v Gcanga 1980 (1) SA 858 (A) at p 864 (H) TROLLIP JA stresses that the concluding attestation that a claimant is required to sign at the foot of the form —

"..... is certainly not a warranty of the truth and correctness of the information contained in the form.

.....

The declaration is rather a verification

/ that.....

that the claim is an honest one, containing such information as the signatory believes is true and correct according to his own knowledge..... "

The learned Judge then goes on at p 865 to say:

"Nevertheless, a degree of accuracy in the information given in the MVA 13, at least in regard to the accident, is obviously required if it is to serve its statutory purpose. The purpose of its having to be completed and submitted to the insurer before litigation is commenced has been stated in several decisions to be this. It is —

> ' to ensure that, before being sued for compensation, an authorized insurer will be informed of sufficient particulars about the claim and will be given sufficient time so as to be able to consider and decide whether to resist the claim or to settle or compromise it before any costs of litigation are incurred'.

(See Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 (A) at 434 F-G and

/authorities.....

authorities there cited.) Obviously, in order to consider the claim properly the insurer may also have to investigate it. The MVA 13 is also designed to invite, guide and facilitate such investigations (see Rondalia Versekeringskorporasie van Suid-Afrika Bpk v Lemmer 1966 (2) SA 245 (A) at 256 A, 257 H, 258 C-H; Landsberg v New India Assurance Co (Pty) Ltd and Another 1969 (1) SA 110 (D) at 116 F-G; Viljoen v AA Onderlinge Assuransie Assosiasie Bpk 1973 (2) SA 673 (T) at 678 D). On the other hand, the general object of the Act is to afford to third parties the widest possible protection by way of compensation for any loss sustained by them for bodily injuries or the death of others resulting from the negligent or unlawful driving of motor vehicles (see Nkisimane's case at 434 E-F). In Lemmer's and Nkisimane's cases this Court, after balancing those two purposes, held that the statutory requirements concerning the contents of the MVA 13 need be complied with only substantially and not exactly or precisely.....

Hence, when any inaccuracy in such information is relied on by the insurer and it is admitted

/ or.....

> or proved, normally the test to apply is, was the information that was furnished nevertheless substantially or reasonably accurate, or (putting it another way) having regard to the information furnished, was the inaccuracy material? In applying that test one must bear in mind the aforementioned purpose of the completed MVA 13, namely to enable the insurer to investigate and consider the claim and decide on its attitude thereto before litigation commences. The test should be applied objectively (see Nkisimane's case supra at 437 E; Booysen's case supra at 960 A), ie, by looking at the MVA 13 itself to see whether or not, on all the information it contains relating to the accident, the reasonable insurer would be prevented by the inaccuracy therein from properly investigating the claim and determining its attitude towards it."

(The italics above are my own.)

TROLLIP JA in the above quotation refers to the degree of accuracy required "at least in regard to the accident". It should therefore be mentioned that the degree

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of accuracy required relates also to other matters including the injuries and the loss caused thereby (see Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A) at p 831).

As we have seen from the Commercial Union case supra at p 517 and the Geanga case supra at p 865 the purpose of the form is to enable the insurance company to "enquire into a claim" and to investigate it. It is designed to "invite, guide and facilitate such investigation". It follows, in my view, that if an insurance company is given sufficient information to enable it to make the necessary inquiries in order to decide whether "to resist the claim or to settle or to compromise it before any costs of litigation are incurred", it should not thereafter be allowed to rely on its failure to make the inquiries. Cf. in this regard the dicta in Viljoen v A A Onderlinge Assuransie 1973 (2) SA 673 (T) at p 678 D and Davids v Protea Assurance Co Ltd 1980 (4) SA 340 (C) at p 344 C.

/ According.....

According to the Stated Case, see para. 4 thereof, plaintiff's employer had reported the "accident" to the WCC before plaintiff had signed and delivered the form in March 1982; the WCC had paid R190,79 to the plaintiff and R562,50 to his employer; the WCC had during November 1981 made several payments to doctors and chemists.

As shown earlier the form is essentially a questionaire containing 10 main questions each with several subsections. Only the last page of the form containing para. 10 was attached to the Stated Case. The only objection raised by the defendant was to the answers to para. 10. It must therefore be accepted that the other questions were correctly answered. It follows (see paras. 6 and 9 of the form) that defendant was given details of the nature of plaintiff's employment, the name and address of his employer, the time he was off work, his loss of earnings, his estimated future loss of earnings, the names and

/ addresses.....

addresses of medical practioners who attended to him, the hospitals in which he received treatment, his medical expenses and estimated future medical expenses. There can be no doubt that had the defendant made the most elementary investigations, as it would have had to do to ascertain plaintiff's injuries, his loss of earnings and future earnings and who had paid the doctors, chemists and hospitals, it must have learned that he was a "workman" who had received compensation from the WCC. If in fact it failed to make any investigation it cannot complain. In short, the form gave defendant all the information it required in order to decide whether "to resist the claim or to settle or to compromise it before any costs of litigation were incurred".

In the report of the judgment of the Full Court, 1984 (4) SA, at p 427, it is said that it is very probable that the plaintiff did not appreciate that the aforementioned

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amount of R190,79 did not emanate from his employer. This statement was probably made because, as stated earlier, it was not suggested that plaintiff was mala fide. It may or may not be justified but be that as it may the case has to be dealt with on the basis that when plaintiff signed the form he did so to the best of his knowledge and belief.

The answers given to para. 10 were inaccurate. There can be no doubt that they were material in the sense that they related to the question of the compensation payable to plaintiff. However that may be, as stated in the Gcanga case, supra, at p 865, one must bear in mind the purpose of the form, namely, to enable the insurer to investigate and consider the claim and decide on its attitude. The form must be read as a whole. The inaccuracies did not prevent the defendant nor would they have prevented a reasonable insurer from properly investigating the plaintiff's claim and determining its attitude towards it.

/ It .....

It follows that I am of the view that the information in the form amounted to substantial compliance with the provisions of sec. 25(1) of the Act.

In the result the appeal is dismissed with costs, which costs are to include the costs occasioned by defendant's application for leave to appeal.

O. Galgut.

O GALCUT.

CORBETT, JA)
JOUBERT, JA) concur.
BOSHOFF, JA)