



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Bisschoff N O obo Denzil John Reyners v Passenger Rail Agency of South Africa
[2023] ZASCA 160 (28 November 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Western Cape Division of the High Court, Cape Town (high court). The order of the high court was set aside and replaced with one dismissing the appeal. The appeal revolved around the question whether the appellant's claim against the respondent became time-barred three years after an incident when the appellant's client sustained severe injuries after falling from a moving train, or whether the prescription period had extended until one year after the impediment that prevented the claim from proceeding had ceased to exist.

The appellant acted as curator *ad litem* on behalf of his client who sued the Passenger Rail Agency of South Africa (PRASA) for damages resulting from the injuries sustained from the fall. During proceedings in the high court, the respondent raised a special plea of prescription, claiming that the matter had prescribed in terms of s 12 of the Prescription Act 68 of 1968 (the Act). The appellant, however, indicated that s 12 was not applicable as the mental defects sustained by his client prevented him from having knowledge of the debtor's identity and that the injuries sustained rendered him of unsound mind. Prescription could, therefore, only have started once he was placed under curatorship.

Section 13 of the Act provided that prescription would be delayed in certain circumstances, *inter alia* when a person is placed under curatorship. In *casu*, this Court determined that the crucial question was whether, at the time of him being discharged from the hospital after the injury, the appellant's client had knowledge of the debtor's identity, or could have reasonably obtained knowledge of such the debtor's identity. The SCA determined that the high court erred when it assumed that the appellant's client had the same cognitive capabilities as a person without brain damage or a disability. It failed to acknowledge that, while he had some residual capacity to engage with society, his complex attention and memory deficits made it difficult for him to have utilised his intellectual abilities effectively, regardless of his post-incident lifestyle.

The SCA determined that, on a conspectus of the evidence, it was clear that the appellant's client had been under an impediment since the injury and required the appointment of a curator to act on his behalf. In the result, the appeal was upheld and the order of the high court replaced with one dismissing the appeal.

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