



Not Reportable

**IN THE HIGH COURT GAUTENG DIVISION, PRETORIA
REPUBLIC OF SOUTH AFRICA**

6/3/15

CASE NO: 11690/11

28-01-2015

In the matter between:-

MAKGADO ROYLANE MAATLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

Ismail J:

[1] In this matter the parties agreed to a stated case and listed the following issues, agreed between them.

- (1) It is common cause that the plaintiff was a driver of a motor vehicle bearing registration number and letters VRF 633 GP on the 11th February 2008, when he was involved in a motor vehicle collision;
- (2) that the vehicle that the plaintiff was driving at the time, belonged to his employer Maxi Security(Pty) Ltd, whilst he was carrying out his duties as a patrol security guard;
- (3) the plaintiff's case is that the collision occurred as a result of a defect that existed in the steering of the vehicle, which defect had been repeatedly reported to the employer, but was not remedied.

That therefore (sic) the collision resulted from the negligence of

the employer in that, it failed to keep the vehicle in a roadworthy condition or in a proper state of maintenance;

- (4) That the Plaintiff submitted a valid claim to the Defendant, which claim was repudiated by the Defendant, hence this action;
- (5) That the employer was negligent in not keeping the vehicle in a proper state of repair. That such negligence was the cause of the collision;
- (6) The defendant's defense is that the said negligence does not give rise to a claim against the Defendant and the action should rather have been instituted against the employer;
- (7) The Court is required to decide whether the Plaintiff is entitled to a claim against the Defendant in a case where he was the driver of the of a motor vehicle which was involved in a collision, relying on

his employer's negligence.

- (8) The issue of quantum (sic) to be separated (sic) in terms of Rule 33 and postponed *sine die*.

Dated at Pretoria on this 28 January 2015

(sgd) Plaintiff

(Sgd) Defendant

[2] In the light of the aforementioned facts, as agreed between the parties, the Court is called upon to determine the issue of liability and whether the defendant was enjoined in terms of the Compulsory Motor Vehicle Act to compensate the Plaintiff for the injuries sustained as a consequence of a collision.

[3] Mr Mampuru, acting for the plaintiff, submitted that section 17 of the Act stipulated under what circumstances the Road accident Fund (RAF) would be liable to compensate a person for bodily injuries arising out of a motor collision.

[4] Section 17 of the Act stipulates:

“ Liability of Fund and agents – (1) The fund or an agent shall-

- (a) Subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) Subject to the regulations made under section 26 , in the case of a claim for compensation under the section arising from the driving of a motor vehicle where the identity of neither the owner or the driver thereof has been established ,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of any bodily injury to another person, caused by or arising from the driving of a motor vehicle by any person at any place in the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of a motor vehicle or of his or her employee in the performance of the duties as employee: Provided that the

obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

(1A)....

[5] It is clear from the facts, presented to me, that the plaintiff was a driver of a vehicle involved in a collision wherein he sustained bodily injuries arising out of the collision. The defendant's view is that he knew that the vehicle was not in a road worthy condition and despite such knowledge continued to drive the vehicle, albeit that he informed his employer of the condition of the vehicle.

The defendant suggested that the plaintiff who was armed with the knowledge of the vehicle's condition or state, ought not to have driven the vehicle as it was inevitable that the vehicle would be involved in a collision.

This would obviously depend upon the defect that the vehicle had at the time. If the brakes were not working that might be true so too if the vehicle switched off or lost power due to a starter or electrical defect. The situation would be entirely different if the headlights were not working and it was merely driven during the day. The vehicle may not technically be in a road

worthy condition but if it was driven during day light hours the probability that it would result in an accident for that reason would be minimal.

[6] The court was informed that the owner was told that there was a steering problem with the vehicle. The Court is not privy to the actual problem, namely whether the steering was vibrating as a result of the tyres not being properly aligned or whether it was a problem relating to the mechanical operation thereof.

[7] Mr Makuyu, acting for the defendant, submitted that section 17 of the Act should not be read in isolation, and that it should be read conjunctively with section 19 and 21 thereof. According to him sections 19 and 21 limits the liability of the Road Accident Fund.

[8] For a proper understanding of the conclusion I arrive at in the course of this judgment, it would be prudent for me to refer to these two sections hereunder.

[9] Section 19 of the act stipulates and reads as follows:

“ 19 Liability excluded in certain cases.- The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage-

- (a) For which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21; or
- (b) ...[para (b) deleted by s.8 (a) of act No . 19 of 2005]
- (c) if the claim concerned has not been instituted and prosecuted by the third party, or on behalf of the third party by-
 - (i) any person entitled to practice as an attorney within the republic; or
 - (ii) any person who is in the service, or who is a representative of the state or Government or a provincial, territorial or local authority; or
- (c) where the third party has entered into an agreement with any person other than the one referred to in paragraph (c) ((i) in accordance with which the third party has undertaken to pay such person after settlement of the claim-
 - (i) a portion of the compensation in respect of the claim; or
 - (ii) any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in paragraph (c) (i) or (ii); or

(e)

- (g) suffered as a result of an emotional shock sustained by that person when that person witnessed or observed or was informed of the bodily injury or death of another person as a result of the driving of a motor vehicle.

[10] Section 21 of the Act reads as follows:

“ Abolition of certain common law claims.- (1) No claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie –

- (a) against the owner or driver of a motor vehicle; or
 - (b) against the employer of the driver;
- (2) Subsection (1) does not apply-
- (a) if the Fund or agent is unable to pay any compensation; or
 - (b) to an action for compensation in respect of loss or damage resulting from emotional shock sustained by a person, other than a third party, when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.

[11] Plaintiff's counsel, submitted that the matters of *Kemp v Santam Insurance Co Ltd and Another* 1975 (2) SA 329 (C) and *Ngedele v Martine and Trade Insurance Co Ltd* 1969 (4) SA 19 (W) supported the view that the Fund would be liable.

[12] In *Ngedele* matter, several people who were seated at the back of a vehicle sustained injuries arising out of a fire caused by some perspex sheeting.

The court stated:

" The only issue to be determined are, firstly whether the injuries arose out of the driving of the vehicle, and whether either the driver or the owner was negligent."

The court held that the injuries arose out of the driving of the motor vehicle and also held that the owner was negligent in not providing adequate fire-fighting facilities.

[13] In the *Kemp* matter, a wheel had fallen off a motor vehicle resulting in a collision with a vehicle wherein the plaintiff sustained injuries.

The sole question was whether the defendant company could be held liable

in terms of the Motor Vehicle Insurance Act.

Diemont J referred to the matter of *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 867 where Corbett J stated:

“ The section lays down two prerequisites of liability upon the part of a registered insurance company for damages suffered by a third party as a result of bodily injury. These are (i) that the injury was caused by or arose out of the driving of the insured motor vehicle and (ii) that the injury was due to the negligence or other unlawful act of the driver of the insured vehicle, or the owner or his servant. There are thus two separate enquiries, a fact which is sometimes lost sight of because in most cases the injury is caused by the negligent driving of the insured driving vehicle.”

[14] In the stated case the Court is called upon to determine whether the driver of a vehicle may claim damages arising out of bodily injuries sustained out of a collision where the employer was negligent.[see para [1] point (7)]

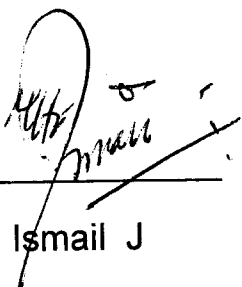
[15] The twofold enquiry referred to in the *Well's* matter, *supra*, needs to be answered. The answer to both these questions are in the affirmative, namely that the injuries arose out of a motor vehicle collision and secondly the owner of the vehicle in terms of the common cause facts was negligent.

Furthermore there is no evidence that the cause of the accident was directly attributable to the steering mechanism.

[16] Accordingly I am of the view that the Fund should be held accountable for the injuries sustained by the plaintiff.

[17] In the circumstances I make the following order:

Defendant is liable to compensate the plaintiff for 100% of the plaintiff's proved damages arising out of the collision.



Ismail J