LL

Case No. 434/1983

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

SANTAM INSURANCE LIMITED Appellant

and

REGINALD ALAN TAYLOR Respondent

CORAM: JANSEN, KOTZÉ, BOTHA JJA,
WESSELS et VIVIER AJJA

HEARD: 1 NOVEMBER 1984

DELIVERED: 23 NOVEMBER 1984

JUDGMENT

/BOTHA JA ...

BOTHA JA:-

This is an appeal against a judgment upholding an exception taken by the respondent (as plaintiff) against a special plea filed by the appellant (as defendant) in an action instituted by the former against the latter in the Witwatersrand Local Division. The action was brought by the respondent in his personal capacity and in his capacity as father and natural guardian of his minor daughter, Nicola Taylor. He claimed damages from the appellant arising out of bodily injuries sustained by his daughter on 17 April 1982, when a motor vehicle in which she was a passenger left the road on which it was being driven and overturned. It was alleged that the accident was caused by the negligence of the driver of the vehicle and that the vehicle was at the time insured in terms of the Compulsory Motor Vehicle Insurance Act 56 of 1972 with the

/appellant ...

appellant, which is an authorized insurer in terms of the Act. In regard to the damages claimed the respondent's particulars of claim contained the following allegations:

"8. As a result of the said injuries, the Plaintiff has suffered the following damages:-

(a) In his personal capacity:

(i)	Hospital expenses (Provincial hospitals)	R35,00
(ii)	Hospital expenses (other hospitals)	1 247,78
(iii)	Medical expenses	2 338,00
	TOTAL	R3 620,78

(b) In his capacity as father and natural guardian of Nicola Taylor:

(i)	Estimated future medical expenses	R15 000,00
(ii)	Estimated loss of earning capacity	20 000,00
(iii)	General damages for pain and suffering, disfigurement, loss of amenities of life and disability	35 000,00
	TOTAL	R70 000,00

/9. ...

9. In terms of Section 22 of Act No. 56 of 1972, the Plaintiff hereby reduces its (sic) claim in respect of 8 (a) and 8 (b) (i) and (ii) to a total amount of R12 000.00 being made up of the amount of R3 620.78 claimed in respect of 8 (a) and R8 379.22 in respect of 8 (b) (i) and (ii)."

Consequently the respondent claimed, in his personal capacity, payment of the sum of R3 620,78, and in his capacity as father and natural guardian of Nicola Taylor, payment of the sum of R43 379,22.

The appellant's special plea was directed at the respondent's claim in his representative capacity for payment of general damages in the sum of R35 000, as set forth in para 8 (b) (ii) of the particulars of claim. The relevant paragraphs of the special plea read as follows:

"3. Die minderjarige was 'n passasier binne die versekerde voertuig.

4. (a) Die eiser maak geen bewerings dat die minderjarige 'n passasier binne die versekerde voertuig was soos na verwys in artikel 22 (1) (a), (b) of (c) van die Wet nie.

(b) Die minderjarige was 'n passasier binne die versekerde voertuig soos na verwys in artikel 22 (1) (d) van die Wet.

5. Volgens artikel 22 (1) (d) gelees met artikel 22 (1) (bb) van die Wet is 'n eis om algemene skadevergoeding uitgesluit.

6. In die vooropstelling is die eiser in sy verteenwoordigende hoedanigheid nie geregtig op algemene skadevergoeding van R35 000,00 soos geëis of geensins nie."

The special plea concluded with a prayer that the respondent's claim in his representative capacity for general damages in the sum of R35 000 be dismissed with costs.

The respondent's exception to the special plea

/was ...

was based on the ground that it lacked averments necessary to sustain a defence, inasmuch as it was "assumed" in para 5 thereof that section 22 (1) (d) read with section 22 (1) (bb) of the Act prohibited a claim in respect of general damages,

> "whereas no such prohibition in respect of general damages is contained in the said sections."

The matter came before HEYNS J, who allowed the exception and dismissed the special plea with costs. It is against that order that the appellant appeals to this Court, leave to do so having been granted by the learned Judge in the Court a quo.

It will be convenient to quote the whole of section 22 (1) of the Act, as substituted by section 2 (a) of Act 23 of 1980, but I preface the quotation with a brief reference to the provisions of section

21 (1) of the Act. In terms of the last-mentioned section, in so far as it may be relevant in the present case, an authorized insurer which has insured a motor vehicle is obliged to compensate any person whatsoever (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or the death of or any bodily injury to any person caused by or arising out of the driving of the insured motor vehicle by any person during the period over which the insurance extends, if the injury or death is due to the negligence of the driver of the motor vehicle. Section 22 (1), as substituted by the amending Act of 1980, reads as follows (the reader is advised to take a deep breath):

> "The liability of an authorized insurer in connection with any one occurrence to compensate a third party for any loss or damage contemplated in section 21 which is the result of any bodily injury to or the death

/of ...

of any person who, at the time of the occurrence which caused that injury or death -

(a) was being conveyed in the motor vehicle in question -

(i) for reward; or

(ii) in the course of the business of the owner of that motor vehicle; or

(iii) in the case of an employee of the driver or owner of that motor vehicle, in respect of whom subsection (2) does not apply, in the course of his employment; or

(iv) for the purposes of a lift club where that motor vehicle is a motor car insured in the prescribed manner in terms of this Act for those purposes; or

(b) was in the act of entering or mounting the motor vehicle in question for the purpose of being conveyed as referred to in paragraph (a); or

(c) was in the act of alighting from the motor vehicle in question after having been conveyed as referred to in paragraph (a); or

(d) was being conveyed in the motor vehicle in question under circumstances other than the circumstances referred to in paragraph (a) or was in the act of entering or

/mounting ...

mounting the motor vehicle in question for the purpose of being so conveyed or was in the act of alighting from the motor vehicle in question after having been so conveyed,

shall be limited, except where the person concerned was being conveyed in the motor vehicle in question whilst proceeding on authorized leave or returning to his base from such leave during the period in which he renders military service or undergoes military training in terms of the Defence Act, 1957 (Act No. 44 of 1957), or was in the act of entering or mounting the motor vehicle in question for the purpose of being so conveyed or was in the act of alighting from the motor vehicle in question after having been so conveyed -

(aa) in any case referred to in paragraph (a), (b) or (c), to the sum of twelve thousand rand in respect of any bodily injury to or the death of any one such person;

(bb) in any case referred to in paragraph (d), to the sum of twelve thousand rand in respect of loss of income or of support and the costs of accommodation in a hospital or nursing home, treatment, the rendering of a service and the

/supplying ...

> supplying of goods resulting from the death of or bodily injury to any one such person, excluding the payment of compensation in respect of any other loss or damage,
>
> but exclusive of the cost of recovering the said compensation."

In an attempt to escape from the prolixity which disgraces this piece of legislation I shall take a number of short cuts when referring to its provisions. I shall refer to persons who are conveyed in a motor vehicle as "passengers". To a person who, in the words of paragraph (d),

> "was being conveyed in the motor vehicle in question under circumstances other than the circumstances referred to in paragraph (a)"

I shall refer as "an ordinary passenger", in contradistinction to the other kinds of passenger mentioned in sub-paragraphs (i), (ii), (iii) and (iv) of paragraph (a) and

/the ...

the persons rendering military service or undergoing military training referred to in the portion of the section following upon the word "except", between paragraphs (d) and (aa). I shall omit any reference to persons entering or mounting or alighting from a motor vehicle. I shall refer to the words in paragraph (bb),

> "loss of income or of support and the costs of accommodation in a hospital or nursing home, treatment, the rendering of a service and the supplying of goods"

as "the items of special damage mentioned", and to compensation in respect thereof as "special damages". To the expression at the end of paragraph (bb),

> "compensation in respect of any other loss or damage"

I shall refer as "general damages". I should make it

/clear ...

clear that I use these terms solely for the sake of ease of reference and without suggesting that they are legally or notionally accurate descriptions of the concepts involved. Finally, I shall refer to the concluding words of paragraph (bb),

> "excluding the payment of compensation in respect of any other loss or damage"

as "the exclusionary phrase".

The fate of the exception to the special plea falls to be decided upon the footing that the respondent's minor daughter was an ordinary passenger in the insured vehicle and that the claim in issue for payment of the sum of R35 000 is a claim for general damages. The vital question is whether that claim is allowed or disallowed by virtue of the exclusionary phrase in section 22 (1) (bb). HEYNS J answered the

question in favour of the respondent because he found that "the plain meaning" of the words in the exclusionary phrase was that a claim for general damages was "specially excluded" from the limitation placed on a claim for special damages. The gist of his judgment is summarised in the DIGEST OF CASES ON APPEAL appearing in 1984 (2) SA at 929, and portions of his judgment are quoted in Mali v Shield Insurance Co Ltd 1984 (2) SA 798 (SECLD) at 807 E - 808 B. In the latter case KROON AJ disagreed with HEYNS J's interpretation of section 22 (1) (bb) and decided that "the plain meaning" of the words used in the section was exactly the opposite of that postulated by HEYNS J. The conflicting judicial views appear from the following passage in the judgment of KROON AJ in Mali's case at 808 B-D:

> "As appears from the above extract HEYNS J

/interpreted ...

> interpreted s 22 (1) (bb) as according to a claimant falling within the ambit of s 22 (1) (d) the right to claim in respect of all damage suffered by him whatever the nature thereof subject to the qualification that insofar as the claim relates to the items of patrimonial loss specifically mentioned in the section referred to by HEYNS J as 'special damages', that portion of the claim is limited to a maximum of R12 000. With respect, I am unable to agree with this reasoning. In my view the plain meaning of the words used in s 22 (1) (bb) is that they accord to a claimant falling within the purview of s 22 (1) (d) the right to claim only in respect of certain specified items of damage, i e the items of pecuniary loss specifically mentioned in s 22 (1) (bb), and subject to a maximum of R12 000, but that they deny the claimant the right to claim in respect of any other damage."

Searching for the intention of the Legislature on the question at issue merely by studying the words used in the section is to my mind an unrewarding, unedifying and finally abortive exercise. This is so because the section as a whole is so convoluted and the syntax so clumsy that the setting in which the

exclusionary phrase of paragraph (bb) appears renders it impossible to ascertain with any degree of certainty to what part of the preceding provisions the exclusionary phrase was intended to be related. One is left with the impression that when the draftsman came to write the exclusionary phrase he had lost his way in the maze of verbiage, with the result that a scrutiny of the language he used fails to reveal his intention.

It would serve no useful purpose to enter upon a detailed discussion of the linguistic and grammatical analyses to which the section was subjected in the arguments of counsel for the appellant and counsel for the respondent, for the solution to the problem is not to be found in that direction; in my opinion when all is said and done upon that score the conclusion is unavoidable that the exclusionary phrase is linguistically and grammatically susceptible of bearing both

/the ...

the meaning contended for on behalf of the appellant (in support of the decision of KROON AJ in Mali's case supra) and the meaning contended for on behalf of the respondent (in support of the decision of HEYNS J in the present case). A brief reference to the main points of the arguments will suffice to explain that conclusion.

Both counsel referred us to dictionary definitions of the meaning of the verb "exclude". In my view this line of enquiry is not helpful. The difficulty of interpretation in this case does not arise out of any doubt as to the meaning of the word "exclude" as such. The source of uncertainty is the failure of the Legislature to specify the link between the concept of that which is to be excluded, i e the payment of general damages, and the concept of that from which such payment is to be excluded,

/which ...

which could be either the liability of the insurer to compensate referred to in the opening part of the section, or the limitation on such liability in respect of the items of special damage mentioned in paragraph (bb). It is the choice between the latter two possibilities that causes the difficulty of interpretation.

Counsel for the appellant argued that the interpretation contended for on behalf of the respondent could not readily be made to fit the syntax of the section. With reference to the submission in the written heads of argument of the respondent's counsel that the word "excluding" was a participial adjective qualifying the noun "twelve thousand rand", the appellant's counsel argued that the alleged adjective did not follow directly on the noun and that this construction was accordingly too cumbersome to be acceptable. I agree that such a counstruction is clumsy, but it

/seems ...

seems to me that it is no more clumsy than the construction which is required in respect of the interpretation contended for on the appellant's behalf: on that interpretation "excluding" must be understood in an adverbial sense, qualifying the verb "shall be limited", which is positioned even further away from "excluding" than "twelve thousand rand". The respondent's submission in regard to the adjectival quality of "excluding" seems to derive some support from the use of the corresponding expression "exclusive of" in the final part of the section, following upon paragraph (bb), which I consider to be adjectivally connected with "twelve thousand rand" in both paragraphs (aa) and (bb). In this regard counsel for the appellant pointed to the word "but", which conjoins paragraph (bb) and the final part of the section, and contended that that showed that "exclusive of" was intended to be used in a sense

/different ...

different from "excluding", with the consequence that while the costs of recovering the compensation were recoverable, general damages were not. That argument, however, seems to me to be largely neutralised by the fact that the word "but" appears to be merely an historical relic retained from the section in its original, relatively simple, form, before the introduction of various amendments, and by the fact that it refers back to both paragraph (aa) and paragraph (bb), so that I do not think that one can confidently draw inferences as to the Legislature's intention from the presence of the word "but". I should add that in the course of his argument before this Court counsel for the respondent jettisoned his submission regarding the adjectival use of "excluding" in relation to "twelve thousand rand" in favour of a contention that "excluding" referred to the whole of the preceding limitation

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in respect of special damages. This merely underscores the difficulties of interpretation which the Legislature has caused by this inept piece of draftsmanship.

Counsel for the appellant relied on the Afrikaans text of the section, contending that the meaning of the Afrikaans wording was so clear and unambiguous that the English text, which is the signed text of the Act, had to be given a corresponding meaning (which it was capable of bearing) in accordance with the principle discussed in cases such as S v Moroney 1978 (4) SA 389 (A) at 407 F - 408 G. The Afrikaans wording is:

> "Die aanspreeklikheid van 'n bevoegde versekeraar .....
> is, ... beperk .....
> ..... tot die som van twaalfduisend rand ten opsigte van verlies aan inkomste ....."(and the other items of special damage mentioned)" ....,

/sonder ...

sonder betaling van vergoeding ten opsigte van enige ander verlies of skade,

.....".

Although I am of the view that on the Afrikaans wording the meaning contended for by the appellant is the more natural interpretation of the language used, I do not consider that the position is so clear and unambiguous as counsel for the appellant would have it. It seems to me that the Afrikaans version is also fairly capable of bearing the meaning contended for by the respondent, as the English version would be if the word "without" were to be substituted for the word "excluding". Accordingly I do not think that the problem of interpretation can be resolved by invoking the principle relied on by counsel for the appellant.

Counsel for the respondent on the other hand argued that the English wording of the section was

/incapable ...

incapable of bearing the meaning contended for by the appellant. He submitted that the exclusionary phrase could not be interpreted in the sense of disallowing a claim for general damages without changing the words used. I do not agree. The word "excluding" can be read as being connected with "shall be limited", in the sense contended for by the appellant. Such a construction no doubt involves a degree of clumsiness, but to postulate the reverse of what I have said above: such a construction seems to be no more clumsy than that which is required on the interpretation contended for on behalf of the respondent. Moreover, the words "the payment of", following upon "excluding", tend, I think, in some small measure to favour the appellant's construction rather than the respondent's.

Counsel for the respondent gave us a number

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of examples in which "excluding" in everyday speech was used in a sense corresponding to that in which he urged the word was used in the section. I do not consider such examples to be helpful. They show no more than that in ordinary parlance the word can be used in the sense contended for by him. It does not follow that the Legislature used it in that sense in this section. Counsel referred also to the criterion of "ordinary colloquial speech" mentioned in Association of Amusement and Novelty Machine Operators and Another v Minister of Justice and Another 1980 (2) SA 636 (A) at 660 F, and, as I understood him, argued that "the man in the street" would have no hesitation in giving to the language of the Legislature the meaning contended for by the respondent. In my opinion the man in the street would be at least as perplexed by the language used by the Legislature as is the man on

/the ...

the Bench who is writing this judgment.

Finally, on this aspect of the matter, the question was debated during argument whether or not the exclusionary phrase would be superfluous if the intention of the Legislature was to disallow a claim for general damages. I agree with the argument of counsel for the appellant that on the meaning contended for by him there is no superfluity: had paragraph (bb) merely imposed the limitation on the amount recoverable in respect of the items of special damage mentioned, without more, it might well have been thought that a claim for general damages was maintainable by virtue of section 21 (1) of the Act, to which I referred earlier, and which provides in wide terms for the liability of an authorized insurer to pay compensation for "any loss or damage" suffered by a third party. Accordingly, if it wished to disallow such

/a ...

a claim, it was necessary for the Legislature to add some kind of exclusionary provision to that effect.

Having now concluded my survey of counsel's arguments regarding the wording of the section, and coming out by the same door as in I went, I proceed to the next stage of the enquiry, which arises out of a second string that counsel for the appellant had to his bow. He argued that at best for the respondent the language of the section was ambiguous, at least to the extent of leaving the intention of the Legislature uncertain, and that it was permissible to have regard to the historical background of this legislation "as part of the contextual scene in which the provisions in question fall to be interpreted" (I quote from the written heads of argument), and in this regard he referred to Jaga v Dönges N O and Another 1950 (4) SA 653 (A) at 662 G - 664 H and R v Shole 1960

(4) SA 781 (A) at 785 C - D. I agree with this argument. Indeed, in a case such as the present, where the uncertainty of the Legislature's intention relates to a recent amendment of an enactment which has been on the statute book for many years and which has been amended on a number of previous occasions, the historical perspective can be of great assistance in resolving problems of interpretation. And that is certainly the position in the present instance: while the wording of section 22 (1) (bb) leaves the intention of the Legislature shrouded in obscurity, an examination of the historical background of the section leaves no doubt as to what was intended.

Compulsory third party insurance was first introduced in this country by means of Act 29 of 1942. The first part of section 11 (1) of the 1942 Act contained provisions substantially similar to those now

/appearing ...

appearing in section 21 (1) of Act 56 of 1972. Section 11 (1) of the 1942 Act contained a proviso, paragraphs (iii) and (iv) of which were the predecessors of sections 22 (1) and 23 (b) of the 1972 Act in their original form. Paragraph (iii) of section 11 (1) of the 1942 Act provided that an insurance company (then called a registered company, now called an authorized insurer) was not liable to compensate any person for loss or damage suffered as a result of bodily injury to or the death of any person who at the time of the relevant occurrence was being conveyed in an insured motor vehicle otherwise than for reward and otherwise than in the course of the business of the driver or owner of the motor vehicle in question and otherwise than in the course of his employment as servant of the driver or owner of the vehicle. (Again I omit any reference to persons entering, mounting or

/alighting ...

alighting from an insured vehicle). Paragraph (iv) limited the liability of a company in connection with any one occurrence to pay compensation to a third party for any loss or damage resulting from bodily injury to or the death of any person who at the time of the relevant occurrence was being conveyed for reward or in the course of the business of the driver or owner of the motor vehicle in question, to the sum of two thousand pounds in respect of injury to or the death of any one such person or to a sum of ten thousand pounds in all in respect of injury to or the death of any number of such persons (but in either case exclusive of the costs of recovering the compensation). For the sake of completeness I should mention that in terms of paragraph (ii) a company was not liable to compensate an employee of the driver or owner of the motor vehicle in question or a dependant of such

/employee ...

employee for any loss or damage for which the employee or dependant was entitled to compensation under the workmen's compensation legislation.

These provisions reveal that from the beginning the Legislature had a clear policy in regard to the liability of third party insurance companies to pay compensation in respect of loss or damage resulting from bodily injury to or the death of passengers being conveyed in insured motor vehicles: while (generally speaking) compensation in terms of the Act could be claimed in respect of all persons outside an insured vehicle, the insurance companies were not liable to pay compensation in respect of passengers being conveyed in an insured vehicle, except in the case of a limited number of specifically defined categories of passengers. At the outset these were passengers who were being conveyed (a) for reward, or (b) in the

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course of the business of the driver or owner of the insured vehicle, or (c) in the course of their employment as servants of the driver or owner of the insured vehicle. In regard to (a) and (b) the liability of insurance companies was limited to specific maximum amounts of compensation in the manner I have indicated. These maximum amounts were fixed without reference to any particular kinds of damage or damages.

Section 11 (1) of the 1942 Act was amended on a number of occasions. Inter alia the liability of an insurance company in respect of an employee of the driver or owner of an insured motor vehicle who was entitled to compensation under the Workmen's Compensation Act 30 of 1941 was more comprehensively circumscribed in paragraph (ii) of the proviso and paragraph (iv) was amended to include within the ambit of the limitation on the extent of a company's

/liability ...

liability a reference to an employee of the driver or owner in respect of whom paragraph (ii) did not apply. Paragraph (iv) was also amended to increase the maximum amounts of compensation payable, with the result that before the repeal of the 1942 Act these amounts were R8 000 in respect of any one of the persons mentioned and R40 000 in respect of any number of such persons. Paragraph (iii) remained unchanged. It is not necessary to enter upon the details of the amendments that I have mentioned. They reveal that in all its fundamental aspects the policy of the Legislature regarding the payment of compensation in relation to passengers being conveyed in an insured motor vehicle, as stated above, remained unchanged.

The policy of the Legislature was reaffirmed when the 1942 Act was repealed and replaced by Act 56 of 1972. Paragraphs (iii) and (iv) (the latter as

/amended ...

amended) of section 11 (1) of the 1942 Act were in substance re-enacted in sections 23 (b) and 22 (1) respectively of the 1972 Act, while provisions substantially similar to those in paragraph (ii) of section 11 (1) of the earlier Act found their way into section 22 (2) of the new Act. The three previously existing categories of passengers in respect of whom alone compensation could be claimed were now specifically mentioned in sub-paragraphs (i), (ii) and (iii) of section 22 (1) (a), read with sub-paragraphs (i), (ii) and (iii) of section 23 (b). The maximum amounts of compensation payable in respect of such passengers were increased to R12 000 in respect of one person and R60 000 in all in respect of any number of such persons.

Act 69 of 1978 amended Act 56 of 1972 in many respects, but for present purposes only those amendments

/are ...

are relevant which related to an authorized insurer's liability to pay compensation in respect of passengers in an insured vehicle. In that regard liability was narrowed in one respect and widened in another. It was narrowed by removing from the second category of passengers in respect of whom compensation (to the limited extent laid down) could be claimed persons who were being conveyed in the course of the business of the driver of an insured vehicle; accordingly those who remained in that category were persons conveyed in the course of the business of the owner of the vehicle. Liability was widened by the addition to the three favoured categories of passengers specified in section 22 (1) (a) of a fourth category: persons who were conveyed in an insured vehicle in prescribed circumstances while liable to render service or undergo military training in terms of the Defence Act 44 of 1957

/during ...

during their first period of service of not less than 12 months. These changes were brought about by the amendments of sections 22 (1) (a) and 23 (b) of the 1972 Act which were contained in sections 9 (a), (b) and (c) and 10 (1) (a), (b) and (c) of the 1978 amending Act. Apart from those changes, the policy of the Legislature in connection with the liability of an authorized insurer to pay compensation in respect of passengers in an insured vehicle remained the same.

In 1980, by section 2 (a) of Act 23 of 1980, section 22 (1) of Act 56 of 1972 was replaced by the section with which this judgment is concerned and which I quoted earlier. The changes brought about by the amendments incorporated in the new section now substituted for the former section 22 (1) as amended reflect wide-ranging changes in the policy of the Legislature concerning an authorized insurer's liability

/to ...

to pay compensation in respect of passengers in an insured vehicle. The four categories of favoured passengers previously specified in paragraph (a) were altered by taking out one and adding another. The one taken out was elevated to a specially favoured category of its own: persons rendering military service or undergoing military training. By virtue of that part of the section which appears after the word "except" between paragraphs (d) and (aa) (read with sections 21 (1) and 23 (b), to the latter of which I shall refer presently) unlimited compensation is recoverable in respect of such passengers in the circumstances mentioned in the section. (It may be noted in passing that the wording of this part of the section was amended by section 1 of Act 4 of 1983, but nothing turns on that for present purposes). The category which was added is that which is contained in

/sub-paragraph ...

sub-paragraph (iv) of paragraph (a): passengers being conveyed for the purposes of a lift club where the motor vehicle concerned is insured in the manner prescribed in terms of the Act for those purposes. Liability in respect of the four categories of passengers specified in paragraph (a) is still limited, in terms of paragraph (aa), to R12 000 in respect of injury to or the death of any one such person, but the previously existing further limitation on the maximum amount recoverable in all in respect of any number of such persons (R60 000) was done away with. Paragraph (aa), in conformity with the previously existing legislation, does not differentiate between various kinds of damage or damages. The most fundamental change in policy, however, is reflected in paragraphs (d) and (bb). By virtue of paragraph (d) liability was extended to allow a claim in respect of an ordinary

passenger. At the same time such liability was limited by virtue of paragraph (bb), which links the maximum amount recoverable in respect of one such person (R12 000) to the items of special damage mentioned, "excluding" the payment of general damages. Finally, the only categories of passengers in respect of whom no compensation at all is now payable are those mentioned in section 23 (b), as introduced by section 3 of Act 23 of 1980: passengers conveyed for reward on a motor cycle and passengers who are members of the household, or responsible in law for the maintenance, of the driver of an insured vehicle.

The above survey of the history of section 22 (1) provide a number of clear clues to the intention of the Legislature on the question at issue in this case. In the 1980 amendments the liability of an authorized insurer was extended for the first time

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in 38 years to cover a claim for compensation in respect of bodily injury to or the death of an ordinary passenger. This change in the policy of the Legislature was obviously one with far-reaching consequences. Before 1980 claims in respect of passengers were always restricted to a limited number of specified categories of passengers. In respect of one particular category which was added to the number in 1980, viz passengers conveyed for the purposes of a lift club, it was required that the motor vehicle concerned should be insured in a particular manner, as prescribed in terms of the Act. In respect of all the special categories, other than ordinary passengers, liability was always limited to a specific amount, irrespective of the nature of the loss or damage suffered or the damages claimed, and this principle remained unchanged in 1980 (except for the falling away of the R60 000 limitation in respect of any number of such persons, which does not

/affect ...

affect the fundamental principle). It must obviously have been in the contemplation of the Legislature that the extension of liability to cover claims in respect of ordinary passengers would impose a substantially increased financial burden on authorized insurers. In all these circumstances it is in the highest degree unlikely that the Legislature would have intended to allow claims for general damages in respect of ordinary passengers without placing any limitation at all on the amount of compensation recoverable in respect thereof. In this regard I agree with the remarks of KROON AJ in Mali's case supra at 809 G - H, but I go even further. The 1980 amendments introduced into this area of legislation a novel distinction between various kinds of loss or damage: in paragraph (bb) the limitation on an authorized insurer's liability to the sum of R12 000 was specifically linked to the items

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of special damage mentioned, in contradistinction to the payment of general damages. Clearly the Legislature intended to differentiate between the limitation on liability laid down in respect of the specified categories of passengers referred to in paragraph (aa) and that laid down in respect of ordinary passengers referred to in paragraph (bb). But I find it inconceivable that the Legislature could have intended to do so by retaining the limitation on the claims in respect of the former to R12 000 in respect of all loss or damage and by limiting claims in respect of the latter to R12 000 in respect of the items of special damage mentioned only, leaving room for unlimited claims in respect of general damages. Such a situation would be patently illogical and incongruous. It is far more likely that the Legislature intended to place a greater, rather than a lesser, limitation

/on ...

on the liability of an authorised insurer to pay compensation in respect of ordinary passengers, and that it intended to do so by limiting liability to R12 000 in respect of the items of special damage mentioned, while excluding any liability at all in respect of general damages.

For the above reasons my conclusion can be stated as follows, discarding now the short cut terminology used in this judgment and reverting to the language used by the Legislature: the liability of an authorized insurer to compensate a third party for loss or damage resulting from bodily injury to or the death of a person who was being conveyed in an insured motor vehicle and who falls within the ambit of section 22 (1) (d) of Act 56 of 1972 as amended is limited to the sum of R12 000 in respect of the items of loss or damage specifically mentioned in section 22 (1) (bb)

/of ...

of the Act as amended (viz loss of income or of support and the costs of accommodation in a hospital or nursing home, treatment, the rendering of a service and the supplying of goods resulting from the death of or bodily injury to any one such person), in such a manner that liability for the payment of compensation in respect of any other loss or damage is excluded.

It follows that the decision of HEYNS J was wrong and that the appeal must succeed.

In regard to the costs of the appeal counsel for the respondent argued that even if successful the appellant should be ordered to pay the respondent's costs, on the grounds that this was a test case of great significance to the appellant and the Motor Vehicle Insurance Fund, which would have a great bearing on numerous cases in which they would be involved in the future, that the issue to be determined was a

/matter ...

matter of public importance, and that the respondent's interest in the appeal related only to the single claim which he had brought in respect of general damages on behalf of his minor daughter. In my opinion, however, these considerations relied upon by the respondent's counsel do not afford a valid ground for departing from the ordinary rule as to costs and for depriving the successful appellant of its right to be awarded the costs of the appeal.

The appeal is allowed with costs, including the costs of two counsel. The order of the Court a quo is set aside and there is substituted therefor the following order:

"The exception is dismissed with costs, including the costs of two counsel."

A.S. BOTHA JA

JANSEN JA
KOTZÉ JA
WESSELS AJA
VIVIER AJA

CONCUR