SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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Road Accident Fund v Abrahams (276/2017) [2018] ZASCA 49 (29 March 2018)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal brought by the appellant, the Road Accident Fund, against a judgment of the Western Cape Division of the High Court, Cape Town. The issue on appeal concerned the question whether a driver involved in a single motor vehicle accident, and who was not an employee of the owner of the insured vehicle, is entitled to claim compensation from the appellant, in terms of the Road Accident Fund Act 56 of 1996 (the Act).

The respondent, Mr Mogamat Ridaa Abrahams was involved in an accident wherein the tyre of the vehicle burst and as a result, the vehicle rolled-over. He sustained certain bodily injuries. The vehicle he was driving (the insured vehicle) belonged to and was owned by his father's employer, Suceco Food Manufactures (the insured owner). The respondent then launched proceedings in the court a quo for a claim of damages, alleging that the accident occurred as a result of the insured owner failing to maintain the tyres of the insured vehicle in a safe and roadworthy condition. Initially the appellant filed a plea to the respondent's particulars of claim, but it subsequently added a special plea. The special plea comprised of a main and an alternative plea. In the main, the appellant based his claim on three grounds: first that the respondent did not have an employee-employer relationship with the insured owner, second that the respondent's use of the insured motor vehicle was fortuitous and unauthorized and third that no legal duty could be ascribed to the insured owner in relation to the respondent and other road users. In the alternative plea, the appellants alleged that the respondent was solely and entirely negligent in causing the accident and denied liability on the basis that the collision was a single motor vehicle accident.

The court a quo took the decision to adjudicate over the special plea only, and the rest of the matters to be determined later.

The special plea was heard by the court a quo in which the respondent led the evidence of his father. The crux of his fathers' evidence was that as an employee of Suceco Food Manufactures, his duties were to deliver baked goods to various retailers and he had a long standing agreement with the insured owner that when he is unable to make the deliveries, the respondent will assist. Therefore, on the day of the accident, the respondent was making deliveries using the insured vehicle with the insured owners consent. This evidence was not contested and no other witnesses were called.

The court a quo subsequently dismissed the appellant's special plea with costs. This conclusion rested mainly on the court a quo's finding that the respondent's driving of the insured vehicle was with the consent of the insured owner, and in the capacity of a sub-contractor. This, according to the court a quo, established the necessary nexus between the respondent and the insured owner.

On appeal, the SCA made a determination giving due regard to ss 17, 18(2) and 19 the Act. Counsel for the appellants submitted that the only way the respondent would be covered by the Act, as a single motor vehicle accident driver is under s 18(2), and this fell away because the respondent is not an employee of the insured owner. It was further submitted that the respondent does not qualify as a third party for purposes of the Act and that his claim should be under common law and as such not excluded by s 21 of the Act.

The Court held that the respondents claim does not fall within the ambit of s 18(2) because indeed so, the respondent at the time of the collision was not conveyed in or on the insured vehicle as an employee of the driver or owner of the vehicle. The Court further held, in regards to counsel's submission that respondent is not a third party, that s 17 defines a third party as being 'any person'. This definition, it held, is wide enough to include a driver involved in a single motor vehicle accident, such as the respondent, provided the injury arises from the negligence or wrongfulness of the owner, among others.

The Court also considered whether the respondent's injuries were caused by or arose from the 'driving' of a motor vehicle, as required in s 17. It held that, at the time of the accident, the insured motor vehicle was being driven and the tyre burst was dependent on this fact. As a result, the causal connection between the injuries suffered by the respondent and the driving is sufficiently real.

In the circumstances, the Court (per Makgoka AJA with Navsa, Lewis and Willis JJA and Hughes AJA concurring) dismissed the appeal with costs, including costs attendant upon the employment of two counsel