

MANU/SASC/0151/2007

Equivalent/Neutral Citation: [2007] ZASCA 83

SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case No. 121/06

Decided On: 01.06.2007

Bell **Vs.** Road Accident Fund

Hon'ble Judges/Coram:

STREICHER, CAMERON, JAFTA JJA, et SNYDERS, THERON AJJA

JUDGMENT

THERON AJA

[1] The appellant was employed as a baggage controller by a company based at Cape Town International Airport, transferring luggage containers to and from aircraft. On 18 November 1994 he was involved in a collision with a flatbed transporter inside the operational area of the airport. In consequence he sustained certain bodily injuries. He instituted an action for damages against the Road Accident Fund ('the Fund') in the Cape High Court on the basis that the collision was caused by the negligence of the driver of the flatbed transporter. The Fund, in a special plea, alleged that the appellant's claim should be dismissed as the flatbed transporter was not a motor vehicle as defined in s 1 of the Road Accident Fund Act 56 of 1996.^[1]

[2] In the court *a quo*, the parties agreed that the issue raised in the special plea be adjudicated as a stated case in terms of Rule 33 of the Rules of the High Court. The court (HJ Erasmus J) upheld the special plea, finding that the flatbed transporter did not fall within the statutory definition of a motor vehicle. It is against that finding that the appellant appeals, with the leave of the court *a quo*.

[3] This appeal raises the question whether the flatbed transporter is a motor vehicle as defined in Articles 1 and 40 of the Agreement Establishing the Multilateral Motor Vehicle Accidents Fund ('the Agreement') which Agreement was entered into pursuant to the provisions of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989.

In Article 1 of the Agreement it is stated that a:

' "motor vehicle" means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel or electricity and includes a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle.'

This definition is substantially similar to that in the Road Accident Fund Act 56 of 1996.

Article 40 of the Agreement provides that:

'The MMF or its appointed agent, as the case may be, shall subject to the provisions of this Agreement be obliged to compensate any person whomsoever (in this Agreement called the third party) for any loss or damage which the third party has suffered as a result of-

(a) any bodily injury to himself;

(b) the death of or any bodily injury to any person,

in either case caused by or arising out of the driving of a motor vehicle by any person whomsoever at any place within the area of jurisdiction of the members of the MMF...'

[4] The vehicle in question is a Transporter 7750A made in Switzerland. It is powered by a diesel engine and has a hydraulic transmission similar to that of a standard vehicle with an automatic transmission; a drive lever is fitted to the left of the driver's seat with the positions R-N-L-D. The vehicle can reverse and go forward. The accelerator pedal and foot brake are on the floor and according to the manufacturer's specifications it has a speed range of up to 30km/h in drive and 15km/h in reverse. It was however agreed by the parties that the vehicle can attain a speed of approximately 50km/h. The vehicle does not have a rearview mirror, side mirrors or seat belts.

[5] The vehicle is fitted with a raised seat for the driver which is not enclosed. It is equipped with a power steering, a footbrake on all four wheels and a separate handbrake. It has four large heavy duty pneumatic tyres. The drive controls are on a panel to the left of the steering wheel and include a starter and light switch, fuel gauge, thermometer, oil pressure gauge and blinker switch with hooter. The vehicle is fitted with headlights which may be dimmed or brightened, a beacon light, indicator lights and parking lights on all four corners, brake lights and reflectors at the rear. Its lighting system allows it to be operated twenty four hours a day. The basic weight of the vehicle is 4000kg and it has a carrying capacity of up to 6800kg.

[6] According to the manufacturer's brochure admitted in evidence, it is a self-propelled vehicle designed for the transportation of baggage and cargo. It is used at airports to transport baggage and cargo from its place of origin within the confines of the terminal, to next to an aircraft on the airside of an airport (the tarmac and runway area where planes arrive and take off). The flatbed transporter operates only within the confines of the airport.

[7] The airside of the airport has a road system which functions similarly to that of public roads, except that the general public does not have access to these roads. The roads are two way with a demarcated middle line. There are standard traffic control signs such as stop, yield and speed signs. No vehicle may drive anywhere else on the airside, except on the demarcated roads. The roads on the airside are utilized by standard licensed vehicles, including bakkies, trucks, tractors, various types of transporters, and passenger busses, as well as by pedestrians (personnel and passengers) who cross at designated pedestrian crossings.

[8] This court has on a number of occasions considered and pronounced upon the correct interpretation to be given to the phrase 'designed for propulsion on a road' as envisaged in the definition of a motor vehicle. While the third party insurance legislation has been amended over time, the definition of a 'motor vehicle' has remained fairly constant. The test to determine whether a vehicle was designed for propulsion on a road is objective.^[2] In *Chauke v. Santam*,^[3] Olivier JA stated that 'designed for' connotes 'the general idea of its purpose' and added that the phrase must be given an objective common sense meaning. The learned judge explained that the word 'design':

'conveys the notion of the ordinary, everyday and general purpose for which the

vehicle was conceived and constructed and how the reasonable person would see its ordinary, and not some fanciful, use on a road.^[4]

Streicher JA in *Road Accident Fund v. Van Den Berg*^[5] endorsed this reasoning and described the test as being 'the general purpose for which the vehicle, *objectively determined*, was conceived and constructed'.

[9] It was common cause that the flatbed transporter was designed for propulsion on an airport road. The question then is whether the definition of a 'motor vehicle' requires that it be designed for propulsion on a *public* road. On appeal, counsel for the Fund contended that the definition does so require. This question was authoritatively answered in *Road Accident Fund v. Mbendera*^[6] where Lewis JA held that 'road' in the definition should not be narrowly interpreted to mean 'public road'. Lewis JA reasoned that the Road Accident Act 56 of 1996 (like the Agreement) 'applies throughout the Republic and not just to vehicles used on public roads'.^[7] I respectfully agree with and adopt the reasoning of Lewis JA. In my view, the words 'at any place within the area of jurisdiction of the members of the MMF' as contained in Article 40 of the Agreement, supports the broader interpretation of 'road'.

[10] It was clearly not the intention of the legislature to limit 'road' to a 'public road'. There is no reason why 'road' should not be given its ordinary meaning, namely, 'a line of communication, especially a specially prepared track between places for use by pedestrians, riders and vehicles'.^[8] If it was the legislature's intention to limit 'road' to a 'public road', it would, in my view, have said so. If a passenger bus or any other standard vehicle were to collide with a pedestrian (third party) within the operational area of the airport, and injure such third party, the latter would be able to claim compensation from the Fund for any injury sustained as a result of the collision. It would be anomalous, as found in *Mbendera*, to hold that where the injuries were caused as a result of the negligence of the driver of a vehicle such as the flatbed transporter, which is designed for propulsion on a road, the third party would have no claim against the Fund.

[11] For these reasons I find that the flatbed transporter is a motor vehicle as contemplated in the Agreement. The appeal is upheld with costs. The order of the court *a quo* upholding the special plea is set aside and substituted with an order dismissing the special plea with costs.

[1]The parties were agreed that since the collision occurred in 1994, the applicable legislation was the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989.

[2]*Chauke v. Santam* [1996] ZASCA 120; 1997 (1) SA 178 (A) at 183A-C; *Road Accident Fund v. Van Den Berg* 2006 (2) SA 250 (SCA) paras 6-7.

[3][1996] ZASCA 120; 1997 (1) SA 178 (A).

[4]At 183A-B.

[5] 2006 (2) SA 250 (SCA) para 7.

[6] [2004] 4 All SA 25 (SCA).

[7] At para 13.

[8] *per* Olivier JA in *Chauke v. Santam Ltd* [1996] ZASCA 120; 1997 (1) SA 178 at 181F-G.

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