



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)**

Case number: 6238/2010

Date: 29 September 2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
29/9/2011	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

LAAS, J.A.

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PRETORIUS J.

Mr JA Laas, a cash in transit security officer, is claiming damages from the Road Accident Fund, the defendant, as a result of injuries he had sustained driving his employers' vehicle. At the outset the court was requested to

separate the issue of merits and quantum in terms of Rule 33(4). It was so ordered and the court has to decide the issues of liability and causation. The facts in this matter are common cause and the plaintiff was the only witness. The defendant closed its' case without leading evidence. At the end of argument by both counsel, Ms Schreuder for the defendant, requested the court to amend the defendant's plea to allege contributory negligence. This amendment was not opposed by the plaintiff and it was so amended.

It is common cause that the plaintiff was employed as a security guard by Fidelity Guards and was the driver of an armoured security vehicle on 7 June 2007. At 7h20 on 7 June 2007 he and his colleague were delivering pension money to the Ekangala Post Office. He was seated in his vehicle, waiting for his colleague who had taken the money into the post office, when his vehicle was boxed in by a Land Rover and a Honda motorcar. A number of men, armed with fire-arms, approached him after alighting from these vehicles.

One of the robbers attempted to gain access to the plaintiff by breaking the outside glass on the passenger's side, but did not succeed as the inside window was an armoured window, where after a number of shots was fired at the plaintiff and the armoured vehicle.

The plaintiff responded by pushing the vehicles out of the way with the armoured vehicle and proceeded at a high speed to the police station. He was pursued by the armed men in the Honda vehicle. The Honda was approximately 30 metre behind him and the robbers were continuously

shooting at his vehicle. He was travelling at 100-110 km hour. In the process of driving away he traversed several speed bumps on the main road at a high speed. This caused injuries to his cervical spine. The Honda followed him at the same speed.

Mr de Waal, for the plaintiff, argued that the liability of the defendant arose from the provisions of section 17(1) of the Act. This provision provides that:

"17 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) ...

*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 or any bodily injury to any other person, **caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle** or of his or her employee in the performance of the employee's duties as employee"*

(Court's emphasis)

The court has to decide whether the injuries suffered by the plaintiff were injuries caused by or arising from the driving of the motor vehicles driven by the insured drivers and were due to a wrongful act of the drivers of the motor vehicles. According to the plaintiff the injuries he suffered were as a result of the negligence or wrongful act by the insured drivers. It is set out in the particulars of claim regarding the collision that had taken place:

*"In terms of Section 17(1) of the Act the Defendant is obliged to compensate the Plaintiff for loss or damage which the Plaintiff suffered as a result of a motor vehicle collision on 7 June 2007 and for which the Plaintiff submitted a claim in terms of Section 17, **which claim arose from the driving of a motor vehicle where the identity of the owner or the driver has been established.**"* (Court's emphasis)

The court was referred to several decisions to persuade the court that the injuries the plaintiff sustained were arising from the driving of a motor vehicle and a wrongful act as provided in section 17(1)(b).

HB Klopper, The Law of Third Party Compensation, second edition in para 5.2.4.1 sets out:

*"This means that the unlawful conduct referred to in section 17(1) must be interpreted restrictively in order that the conduct concerns a motor vehicle and/or the driving thereof in accordance with the nature of the preceding conduct specified by the legislator and the object of the Act, **being the compensation of victims for damage from the negligent and unlawful driving of a motor vehicle.**"* (Court's emphasis)

An "other unlawful act" will consequently become relevant when a third party is injured or his or her breadwinner is killed by conduct closely related to a vehicle and driving but where the damage suffered by the third party did not arise from any negligent driving of motor vehicle"

In **Wells and Another v Shield Insurance Co Ltd and Others 1965 (2) SA 865 (C) Corbett J** (as he then was) found at 870 D-H:

*"The death or bodily injury for which compensation is claimed must be causally related to this negligent or otherwise unlawful act and also to the driving of the vehicle. Where the direct cause from the point of culpability is the same act or omission on the part of the driver in the actual driving of the vehicle then it would generally be found that the death or injury was 'caused by' the driving. Where the direct cause is some antecedent or ancillary act, then it could not normally be said that the death or injury was 'caused by' the driving; **but it might be found to arise out of the driving. Whether this would be found would depend upon the particular facts of the case and whether, applying ordinary, common-sense standards, it could be said that the causal connection between the death or injury and the driving was sufficiently real and close to enable the Court to say that the death or injury did arise out of the driving.** I do not think that it is either possible or advisable to state the position more precisely than this, save to emphasise that, generally speaking, the mere fact that the motor vehicle in question was being driven at the time death was*

caused or the injury inflicted or that it had been driven shortly prior to this would not, of itself, provide sufficient causal connection. Thus the injury suffered by a passenger aboard a bus as a result of being assaulted by a bus conductor could not be said to arise from the driving of the bus, even though the bus was being driven at the precise moment when the assault was committed. Similarly, in the illustration already given of X who stepped off the bus into a hole in the pavement, it could not be said that the injury arose out of the driving merely because driving (in the ordinary sense) had taken place immediately prior to this." (Court's emphasis)

In **Kemp v Santam Insurance 1975(2) SA 329 W** at 331 A-C Diemont J held:

*"As was pointed out by CORBETT, J., in Wells and Another v Shield Insurance Co. Ltd. and Others, 1965 (2) SA 865 (C) at p. 867, 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 vehicle"* (Court's emphasis)

In **General Accident Insurance v Xhego 1992 (1) SA 580 (A)** the distinction between negligent driving and an “other unlawful act” connected or concerning a motor vehicle was recognised by the Appellate Division where despite being warned, the owner of the bus negligently directed the bus to follow a certain route which resulted in a petrol bomb being thrown at the bus and the plaintiff was injured. The Appellate Division held that this injury arose from the driving of a bus.

In **Road Accident Fund v Russell 2001 (2) SA 34 SCA** Chetty AJA found at paragraph 26:

*“[26] As far as foreseeability is concerned it is not necessary for the wrongdoer to have foreseen the details of any, possibly subtle, connection between the injuries caused to the deceased and his subsequent suicide. **Finally, in applying the flexible approach which this Court enjoins one to employ in determining the question of legal causation, it would be eminently reasonable, fair and just to hold that the evidence established the requirements for the existence of such causation. Consequently the appellant is liable to compensate the respondent for such damage as she may prove.**” (Court’s emphasis)*

HB Klopper, **The Law of Third Party Compensation, second edition** set outs at p 59:

“In the latter instance, the legislator never intended that the liability of the statutorily created fund should be extended to include all claims,

including those which only remotely involve a motor vehicle."

Only conduct as provided for in section 17(1) will render the defendant liable. According to Diemont J in **Kemp v Santam Insurance (supra)**, with whom I agree, the primary conduct required is the negligent driving of a motor vehicle by the insured driver. The plaintiff was chased by the driver of the Honda at high speed whilst he was continuously under fire from the occupants of the Honda. The way the plaintiff drove caused his injuries as a result of the car following him and the occupants shooting at his vehicle. The plaintiff's evidence was that he was driving more reckless and faster as he proceeded to evade the Honda and to reach the police station as soon as possible as the occupants of the Honda were continuously shooting at him.

There is no evidence that the driver of the Honda was shooting at the plaintiff's vehicle but, his driving and chasing the plaintiff's vehicle with the Honda enabled the occupants of the Honda to keep on shooting at the plaintiff's vehicle. If the driver of the Honda had not driven in the manner he had and enabling the occupants to shoot at the plaintiff's vehicle the plaintiff would not have sustained injuries.

It was decided by Diemont J in **Kemp v Santam Versekerings Maatskappy (supra)** at 332C:

"The casual relationship between the injury and the driving is a close one."

In **Khumalo v Multilateral Motor Vehicle Accidents Fund 1997 (4) SA 384**

(NPD) Broome DJP found at p 388 G - I:

“Reverting to the present case, the Cressida had to be driven behind and alongside the taxi to enable the gunmen to fire into it and at its occupants. The chase and the shooting took place over a substantial distance and lasted an appreciable time. On any reckoning there was a causal connection between the driving of the Cressida and the injury to the taxi driver. Furthermore, the driver was acting in concert with and deliberately facilitating the gunmen's objective. I am satisfied that the injury to the taxi driver and the subsequent injuries to the plaintiff arose out of the driving of the Cressida and were due to the negligence or unlawful act of its driver.”

The court finds that the causal relationship between the driving of the Honda enabling the occupants to shoot at the vehicle of the plaintiff and the injuries sustained by the plaintiff was so real and close that it was caused by unlawful act as contemplated by the provisions of section 17(1).

The defendant did not present any evidence at all. In the circumstances the court cannot find that the plaintiff was negligent and contributed to his injuries. The consequence is that the court finds that the defendant is liable to compensate the respondent for such damages as he may prove.

The following order is made:

1. It is declared that the defendant is liable to compensate the plaintiff for 100% (One Hundred Percent) of his proven or agreed damages flowing from the collisions and ensuing incident which occurred on 7 June 2007 when the plaintiff traversed speed bumps in the process of escaping an attack on him and/or the vehicle which he was driving.
2. The defendant is ordered to pay the plaintiff's party and party costs on the High Court scale, such costs to include the costs consequent upon the employment of senior counsel;
3. The defendant is ordered to pay interest on the costs *a tempore morae* at the prescribed statutory rate of 15,5% per annum calculated from the date of the taxing master's allocatur, alternatively date of agreement in respect of costs, to date of payment;
4. The issue of the *quantum* of the plaintiff's damages is postponed sine die.



Judge Pretorius

Case number	: 6238/2010
Heard on	: 14 September 2011
For the Applicant / Plaintiff	: Adv De Waal SC

Instructed by	: Adams & Adams
For the Defendant	: Adv Schreuder
Instructed by	: Maponya Inc
Date of Judgment	: 29 September 2011