



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 12070/2020

In the matter between:

PATRICK ANDREW DARVEL

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: NUKU J

Heard on: 24 April and 30 May 2024

Delivered on: 01 August 2024

JUDGMENT

NUKU, J

[1] The question whether a particular forklift is a 'motor vehicle' as defined in section 1 of the Road Accident Fund Act 56 of 1996 (**the RAF Act**) has received some considerable attention by the Courts. This section defines a motor vehicle as:

‘any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle.’

[2] The forklift in question in this matter is a Toyota 8 series 8FD25 (**the insured vehicle**) which collided with the plaintiff on 19 September 2019 along Lonedown Road, Hanover Park, Western Cape (**the collision**). At the time of the collision, the insured vehicle was being driven by Mr Meiring (**the insured driver**).

[3] The plaintiff has instituted this action claiming compensation for damages that he suffered because of the aforesaid collision. The defendant has denied liability pleading that (a) the plaintiff’s claim is not competent because the insured vehicle is not a motor vehicle as defined in section 1 of the RAF Act, and (b) the collision was not caused by the negligence of the insured driver. The parties have agreed that these are the only two issues for determination at this stage and that the quantum of the plaintiff’s claim stands over for determination at a later stage.

[4] In dealing with the definition of a motor vehicle as contemplated in section 1 of the RAF Act, the Supreme Court of Appeal in *Nemangwela*¹ stated that:

‘There are three requirements to be met for a vehicle to qualify as a “motor vehicle” under the RAF Act. The vehicle must: (a) be propelled by fuel, gas or electricity; (b) be designed for propulsion; and (c) on a road.’

[5] The first and the third requirements are not controversial in the present matter as the defendant conceded that the insured vehicle is propelled by diesel. The parties are also in agreement about the meaning of the road as not limited to a public road. The dispute is whether the insured vehicle was designed for propulsion on a road.

¹ *Nemangwela v Road Accident Fund* 2024 (2) SA 316 (SCA) at para [7]

[6] In **Chauke**² the Appellate Division dealing with an interpretation of section 1 of the Motor Vehicle Accidents Act 84 of 1986 which was couched in similar terms as section 1 of the RAF Act stated:

‘The correct approach to the interpretation of the legislative phrase quoted above is to take it as a whole and to apply to it an objective common-sense meaning. The word ‘designed’ in the present context conveys the notion of the ordinary, everyday and general purpose for which the vehicle in question was conceived and constructed and how the reasonable person would see its ordinary, and not some fanciful, use on a road. If the ordinary, reasonable person would perceive that the driving of the vehicle in question on a road used by pedestrians and other vehicles would be extraordinarily difficult and hazardous unless special precautions or adaptations were effected, the vehicle would not be regarded as a ‘motor vehicle’ for the purposes of the Act....”

[7] The forklift in **Chauke** had several features which led the court to conclude that it would be hazardous to operate it on a road used by pedestrians and other vehicles. These included the fact that it had no lights, indicators or speedometer as well as break lights. The court also considered the speed of the forklift as well as the fact that the hoist obstructed the view of the driver to a substantial degree. There had also been evidence that the drivers of the forklift in question were prohibited from driving it on a road. The result was that the court held that that forklift was not a ‘motor vehicle’ as defined. The Court, however, stated that the fact that a forklift may be used on a road does not mean that it was suitable for such use and that the *‘the appropriate test is whether a general use on the road is contemplated’*.

[8] The same question was again considered in **Mutual and Federal**³ where the Supreme Court of Appeal concluded that the forklift in question was not a ‘motor vehicle’ as defined in section 1 of the Motor Vehicle Accidents Fund Act 93 of 1989,

² Chauke v Santam Ltd 1997 (1) SA 178 (A)

³ Mutual and Federal Insurance Co Ltd v Day 2001 (3) SA 775 (SCA)

which was also couched in terms similar to section 1 of the RAF Act. This was after it had had regard to some of the features of the forklift in question whose design features were superior to the forklift in **Chauke**. My reading of this judgment is that the court relied heavily on the evidence of Mr Barry Grobbelaar who had testified that it would be hazardous to operate that forklift on a road because of the rear-wheel steering system. In this regard the court stated:

‘[11] ... Like the forklift in the **Chauke** case, the Komatsu has a rear-wheel steering system. This, according to Grobbelaar, makes steering it a difficult task. ... Rear-wheel steering has the effect of swinging the rear of the vehicle outwards in a direction opposite to the one in which it is being steered. This is a phenomenon known as over-steering. Grobbelaar was adamant that sudden steering movements could lead to a loss of control with the probability that the Komatsu could capsize. He stated that this could occur even at a speed of 20 km/h. Grobbelaar testified that in the event of a sudden steering movement on a public road to avoid other vehicles, or pedestrians the counterweight added to the risk of the vehicle capsizing. He repeatedly stated that a skilled driver could not necessarily avoid such a consequence....’

[9] At para [18] of the judgment in **Mutual and Federal**, Navsa JA further commented that *‘It is, however, conceivable that in a particular case a forklift owner, designer or manufacturer may be able to persuade a Court that the kind of steering problem described by Grobbelaar has been overcome.’*

[10] The present matter appears to have been brought on the premise that *‘the kind of steering problem described by Grobbelaar’* in **Mutual and Federal** has been overcome. Incidentally, it was the self-same Mr Grobbelaar who presented the evidence that the steering problem that he had identified in respect of the forklift in **Mutual and Federal** has been overcome.

[11] Mr. Grobbelaar had prepared a report detailing some of the features of a Toyota 8 series 8FD25 forklift. He concluded his report by stating that:

‘Though the final decision as to whether the forklift may be considered to be a motor vehicle according to the Road Accident Fund Act or not would be a matter for the Honourable Court to decide, the following aspects also need to be considered in this regard:

- (a) The driving position and manner in which the forklift is driven is similar to that of a motor car, bus or truck, with the steering done by means of a steering wheel (photograph B8 in appendix B), and the accelerator and brake pedal being foot operated and in similar positions as those of a motor car, bus or truck (also photograph B8 in appendix B);
- (b) the dimensions of the forklift are similar to those of a small hatchback vehicle, such as a Daihatsu Mira, which has a length of 3.4m, a width of 1.5m, and a height of 1,5m, and which Daihatsu is considered to be a vehicle according to the Road Accident Fund Act;
- (c) though the instability caused by the rear wheel steering and counterbalance weight in conventional forklifts can be considered to be a problem, this has been addressed in the Forklift 8 series forklift by providing it with an Active Control Rear Stabilizer which prevents the leaning of the vehicle when cornering and therefore provides the stability required for such manoeuvres. The Forklift being fitted with an Active Steering Synchronizer also assists with the stability of the vehicle in this regard.
- (d) rear wheel steering is different to the front wheel steering vehicle, due to the rear of the vehicle stepping out to the left or to the right on a steering input from the driver, and not the front of the vehicle. Though

the vehicle therefore changes direction in the same direction as a front wheel steering vehicle e.g a left turn to the steering wheel, the manner in which it does so is slightly different and would need some training and practice by the driver in order to become a skilled forklift driver.'

[12] When Mr Grobbelaar testified he essentially confirmed the contents of his report, and it is not necessary to repeat his evidence. What appears in para [11] above is really the sum of what differentiates the insured vehicle to the prior forklifts that have been found not to meet the definition of a 'motor vehicle' as contemplated in provisions couched in terms similar to section 1 of the RAF Act. The question therefore is whether the above improvements, as stated by Mr. Grobbelaar, have elevated the Toyota 8 series 8FD25 forklift into a 'motor vehicle' as defined in section 1 of the RAF Act.

[13] Mr Grobbelaar stated in his report that the forklift was designed primarily to lift and move heavy loads in and around warehouses, stock yards or construction site situations where relatively smooth surfaces and slower speeds for the operation of the forklift are applicable. He also confirmed that the forklift's main function is therefore to lift, or lift and move, the heavy loads into or from stacked positions, or to lift the loads into, on to, and from trucks which would then transport the loads over longer distances on public roads. As far as the latter lifting and loading function regarding trucks is concerned, he stated that this could be done in a yard or on a road and he provided examples of similar forklifts loading, offloading and travelling on roads. He also relied on what he had been told when he attended the collision scene that the insured vehicle would drive along the road when moving goods from one side of the premises to the other.

[14] On the basis of the above evidence, I am prepared to accept that the insured vehicle was driven on the road and that the steering problem that had characterized earlier forklifts has been overcome. The question, however, is still whether a *general use on the road is contemplated* in respect of the design of the insured vehicle, and to answer this question one has to have regard to the utility of forklifts. As has been

repeatedly said, the primary purpose of forklifts is 'to lift and move loads in places such as storage and lumber yards, steel mills and wharves ... and although they can travel on roads, their purpose is not to travel up and down the road.'⁴

[15] As was stated in *Prinsloo*⁵:

'One knows that forklifts are customarily used, for example, to move crates and parcels and pallets loaded with goods about warehouses and to load and discharge cargo at airports, harbours and railways stations. By their very design and speed at which they travel, they are obviously intended to operate within a limited range and to convey goods short distances which, in itself, is a material factor relevant to the objective assessment of whether they are designed for use on a road. Their small wheels, and limited ground clearance which they have, shows that they are intended to be operated only on smooth surfaces and are not designed to negotiate or clear obstacles commonly found on roadways, both private and public. More importantly, the lack of visibility enjoyed by the driver of such a vehicle, especially when conveying a bulky load on the forks ahead of him, ... the slow speed at which the vehicle is driven would make a forklift inherently dangerous to other road users if it was to be driven on a roadway....'

[16] Mr Grobbelaar described one of the problems with the forklift as the absence of suspension system, the implication of which he stated was that the forklift was designed for relatively low speed operation. As a matter of fact, his evidence was that the top speed of the forklift in question is 17.4 km/h. Regarding the view of the roadway ahead, he stated that "There is essentially a relatively good view of the roadway ahead and to the sides of the forklift , though the lifting masts do provide a partial obstruction directly in front of the driver' and that 'A clear and unobstructed view is a requirement according to regulation 204 of the Road Traffic Act.

⁴ Road Accident Fund v Mbendera and Others [2004] 4 All SA 25 (SCA) at para [11]

⁵ Prinsloo v Santam Insurance Ltd [1996] 3 All SA 221 [E] at 226

[17] The evidence was also that the forklift in question was used to transport goods over short distances and there was no suggestion that it was suitable to transport goods over long distances. In fact, the evidence of Mr Grobbelaar was that the forklift would convey the goods to the trucks which would in turn transport them over longer distances. In my view and despite the improvements in the design of the Toyota 8 series 8FD25 forklift, these improvements appear to be directed at enhancing its safety when fulfilling its primary purpose and not for the purposes of making it suitable to travel on a road. The result is that I am not satisfied that the Toyota 8 series 8FD25 forklift is a 'motor vehicle' as defined in the RAF Act and as such the plaintiff's claim must fail.

[18] The above conclusion renders it unnecessary for me to deal with the issue of negligence of the insured driver.

[19] The defendant asked for costs, and I am of the view that the costs should follow the result. The matter did not involve difficult questions of law and as such costs should be on scale "A".

[20] The following order shall issue:

The plaintiff's claim is dismissed with costs which shall be on scale "A"

L.G. NUKU

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant:

Advocate HJO (Wallis) Roux

Instructed by: Messrs A Batchelor & Associates
(ref: Ms G Theron)

For the Respondents: Advocate T Sebata-Vundla

Instructed by: State Attorney: Ms Thomas