



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

NOT REPORTABLE

Case No.: 3702/2021

In the matter between:

EBEN LE ROUX

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

EKSTEEN J:

[1] On 13 December 2016 Mr Eben le Roux, the plaintiff, a 69 year old man, sustained serious bodily injury while working on a Mercedes-Benz truck on the premises of Eveready in Sidwell, Gqeberha. He alleged that the vehicle was driven at the time by one Bongile Tegile and that the accident occurred as a result of his negligence. Mr le

Roux instituted action against the defendant, the Road Accident Fund¹ (the RAF) for damages. By agreement between the parties, I directed at the commencement of the trial that the matter proceed only in respect of the question of the liability of the RAF to compensate Mr le Roux for damages that he may have suffered in consequence of the event.

[2] The matter is unusual in the context of a claim against the RAF and it is instructive to quote the pleaded case. The particulars of claim alleged that Mr le Roux was on the premises of Eveready Battery:

- ‘ ... when the said insured motor vehicle was placed or left in gear by the said Bongile and thereafter started, directly by the Plaintiff from the starter motor on the assurances that the insured vehicle was in neutral, which insured vehicle then proceeded to move forward and drove over the Plaintiff, causing the Plaintiff to sustain serious bodily injuries, for which he received treatment at Greenacres Hospital.
4. ... [T]he insured driver required mechanical work to be executed on the insured vehicle and failed to properly make the insured vehicle safe by placing it in neutral, whilst being aware of the fact that the Plaintiff was working on such vehicle and as such the insured driver’s negligent actions gave rise in terms of Section 17, as read with Section 20 of the Road Accident Fund Act to a claim against the Defendant.’

[3] The defendant admitted the incident, but denied that Mr Tegile was the driver at the time of the event or that he was negligent as alleged in paragraph 4 of the particulars of claim and it averred that the incident occurred due solely to the negligence of Mr le Roux.

¹ Established in terms of s 2 of the Road Accident Fund Act, No. 56 of 1996.

The evidence

[4] Mr le Roux is a qualified auto electrician and the owner of Eben's Auto Electrical in Gqeberha. On the morning of the incident, he was summoned to the premises of Eveready Battery to assist with a vehicle that would not start. The vehicle was a Mercedes-Benz horse (the truck) and trailer, with a manual gearbox, belonging to 'Everfresh', a business operating from the premises. The trailer was an insulated trailer for purposes of the transport of fresh produce, but it was not coupled to the truck at the time. Mr le Roux said that he had proceeded to the premises where he found the truck stationary. He was familiar with the truck, having worked on it before, and with Mr Tegile, who was the regular driver of the vehicle. He explained that when he arrived the truck was parked on a level surface, properly secured, with the handbrake on. The supervisor of Everfresh advised him that the truck would not start. Thus, he proceeded to get into the cabin, behind the steering, and he attempted to depress the clutch in order to check that the gear was in neutral. He was unsuccessful in this endeavour because, so he said, there was no air in the system. He did, however, satisfy himself that the handbrake was on before he alighted. When he got out of the truck Mr Tegile was at the door next to the vehicle and he advised Mr Tegile that he was going under the truck to check the battery cables. He asked Mr Tegile whether the vehicle was in gear or in neutral. Mr Tegile assured him that the vehicle was in neutral.

[5] Mr le Roux proceeded to get under the vehicle where he noted that the battery wires were intact, and he then touched the starter wires and the engine started. The truck took off and dragged him underneath it for about 50 metres before it collided into a wall bringing the truck to a standstill. Mr le Roux said that it had taken off because the handbrake did not work, even though he had satisfied himself that it was on. But, he said that it would not have happened if the vehicle had been in neutral and in this respect he had relied on Mr Tegile's assurance that it was.

[6] Mr Tegile testified on behalf of the RAF and he confirmed that he was the regular driver of the truck. He said that he had parked the truck in that position, although it was

not clear whether he had done so the previous evening or earlier that morning. He distanced himself from the events and said that he does not recall that he spoke to Mr le Roux before he got under the truck or that he had spoken about the position of the gears and he was unable to recall whether the truck was in gear or in neutral. He said that he sat nearby on some pallets where he was having breakfast. There he saw Mr le Roux first tilting the cabin of the truck to work on the engine, an event that Mr le Roux denies. Mr le Roux then went under the truck and he heard the truck starting. When the truck started it jerked forward a few times and he heard Mr le Roux scream for help. He ran after the truck and jumped into the cabin to endeavour to stop the truck whilst others tried to throw bricks under the wheels. The truck came to a standstill after proceeding for about 10 metres. There is clearly a significant difference between their versions of the events after the ignition was started, but I do not think that anything turns on that.

[7] As I have said the plaintiff's claim is based on the alleged negligent actions of Mr Tegile that he contended 'gave rise in terms of sections 17, as read with section 20 of the Road Accident Fund to a claim against the Defendant'. The significance of s 20 is to be found in the extended meaning that it gives to the driving of a motor vehicle. The material portion, for purposes of this matter is recorded in s 20(2) and it provides:

'For the purposes of this Act a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle ... while it is stationary at that place ...'

Accordingly, Mr Tegile is deemed to have been driving the truck while it was stationary.

[8] Two issues were debated during the trial. First, whether the injuries sustained were caused by or arose from the driving of a motor vehicle as envisaged in s 17 of the Act and, if so, whether it has been established that the negligence of Mr Tegile was a cause, either wholly or in part, of the event.

[9] Section 17(1) of the Act provides that, if a third party suffers any loss or damage as a result of bodily injury to himself 'caused by or arising from the driving' of a motor vehicle, and the requisite negligence has been proved, then the RAF is liable to pay the damages to the third party.² The section lays down two requisites for liability on the part of the RAF for damages suffered by a third party as a result of bodily injury. First, that the injury was caused by, or arose from the driving of the motor vehicle and, second, that the injury was due to the negligence or other unlawful act of the driver of the vehicle, or the owner or his servant.³

[10] In *Wells* Corbett J noted that the words 'caused by' and the words 'arising out of the driving' are not synonymous, and in order to give an appropriate meaning to the phrase, 'arising out of the driving of a motor vehicle' it must be given a wider meaning than the phrase 'caused by'.⁴ Thus, where the direct cause is some antecedent or ancillary act, then it could not normally be said that the injury was 'caused by' the driving; but it might be found to arise out of the driving. Whether this would be so 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 injury and the driving was sufficiently real and close to enable the court to say that the injury did arise out of the driving.⁵ For purposes of this enquiry it has been held that the word 'driving' means, ordinarily, engaging on, directing the course and the general control of the vehicle while in motion and all other acts reasonably or necessarily incidental thereto. It would therefore include the starting of the engine and the manipulation of the controls of the vehicle which regulate its speed and direction and also those that assist

² The material portion of s 17 provides:

'(1) The Fund of the agent shall-

(a) ... in the case of a claim for compensation under this section arising from the driving of the motor vehicle where the identity of the owner or the driver thereof has been established; ... 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 ..., caused by or arising from the driving of the motor vehicle by any person ..., if the injury ... is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle.'

³ *Wells and Another v Shield Insurance Co. Ltd and Others* 1965 (2) SA 865 (C) at 867 and *Kemp v Santam Insurance Co. Ltd and Another* 1975 (2) SA 329 (C) at 331B-C.

⁴ *Wells* was concerned with the interpretation of s 11(1) of the Motor Vehicle Insurance Act, 29 of 1942 which contained wording substantially similar to the Act.

⁵ *Wells* at 870D-F and *Kemp* at 331H.

the driver and other users of the road, such as lights and indicators.⁶ Mr *Jooste*, on behalf of Mr le Roux, fairly, did not contend that the injury was 'caused by' the driving of the truck, but he argued that it arose from the driving in the wider sense of the phrase. As I have said, Mr Tegile is deemed to have been driving the truck whilst it was in a stationary position where he had parked it. Thus, the issue is whether, upon the particular facts of this case, applying ordinary common sense standards, it can be said that the causal connection between the injury and the driving of the truck was sufficiently real and close to enable a court to say that the injury did arise out of the driving. I do not think that it can. The vehicle was stationary with the ignition turned off and the handbrake fully applied when Mr le Roux first arrived. Mr Tegile did not purport to exercise any control over the truck after Mr le Roux had arrived and taken up the position behind the steering, nor did he start the engine or manipulate the controls of the truck. Mr le Roux had attempted to start the vehicle by turning the key and he attempted to depress the clutch. He further satisfied himself that the handbrake had been applied before climbing under the truck and starting the vehicle. What occurred thereafter had no connection with any act performed by Mr Tegile that would ordinarily be associated with the driving or the control of the vehicle.

[11] The second enquiry, as I have said, is whether the injury was due to the negligence or other unlawful act of the driver. There was simply no evidence as to the cause of the events which followed the starting of the vehicle. Mr Tegile could not recall whether the vehicle had been in gear or in neutral and there is no direct evidence on the subject. Mr le Roux assumed that the truck had been in gear, contrary to the assurance given by Mr Tegile. There was, however, no expert evidence in respect of the functioning of the ignition, the clutch or the gearbox of the truck that could justify a finding that the alleged assurance given by Mr Tegile was not true. His evidence that the handbrake had never malfunctioned prior to this occasion was not challenged.

In the result:

⁶ *Wells* at 870H-871A.

1. The plaintiff's claim is dismissed;
2. The plaintiff is ordered to pay the defendant's costs of action on Scale B.

J W EKSTEEN
JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv P Jooste
Instructed by: Gregory Clark & Associates Inc
GQEBERHA

For Defendant: Ms R Naidoo
State Attorney
GQEBERHA

Date Heard: 15 August 2025

Date Delivered: 26 August 2025