



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

JUDGMENT

Not Reportable

Case no: 12070/2020

In the matter between:

PATRICK ANDREW DARVEL

APPLICANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

Neutral citation: *Darvel v Road Accident Fund* (Case no: 12070/2020) [2025]

ZAWCHC ... (2 October 2025)

Coram: NUKU J

Heard: 19 August 2025

Delivered: 2 October 2025

Summary: Practice – Application for leave to appeal, in terms of section 17(1) of the Superior Courts Act, 10 of 2013, against the judgment and order that found a forklift with significantly improved design qualities not to be a motor vehicle as

defined in section 1 of the Road Accident Fund Act – such significantly improved design qualities constituting compelling reason why the application for leave to appeal should be granted – in addition to the reasonable prospects of success.

ORDER

The application for leave to appeal is granted to the Supreme Court of Appeal and costs shall be costs in the appeal.

JUDGMENT

Nuku J :

[1] The applicant is the plaintiff in the main action. He instituted a damages claim against the respondent due to injuries he suffered on 19 September 2019, when a Toyota 8 series 8FD25 forklift collided with him as he was crossing Lonedown Road, Hanover Park, Western Cape.

[2] The success of the applicant's claim depended, among other factors, on whether the forklift that collided with him qualified as a motor vehicle under the definition in the Road Accident Fund Act, 56 of 1996. The applicant believed it qualified, while the respondent held a different view. The disagreement between

the parties focused on one of the requirements of a motor vehicle in the definition, specifically whether the forklift was designed for road propulsion.

[3] The matter was decided in favour of the respondent, and the applicant's claim was accordingly dismissed. That judgment is now the subject of this application for leave to appeal.

[4] In concluding that the forklift in question was not designed for road propulsion, this Court considered the dictum in ***Chauke***¹, which states that the key test is whether general use on the road is intended.

[5] One of the grounds of appeal by the applicant is that the Court ignored the evidence of Mr. Barry Grobbelaar (Mr. Grobbelaar), an expert forensic engineer, who was called by the applicant and whose testimony indicated that the forklift in question was designed with features that make it safe and suitable for road use, including features that are not required if the forklift is only intended for warehouse use.

[6] The applicant also argues that the Court erred in considering evidence from previous cases involving forklifts with inferior designs compared to the current one.

[7] Additionally, it was submitted that the court ignored what was stated in Vogel² to the effect that '*even if a vehicle is designed for a purpose other than its general use on the roads, it does not necessarily disqualify a vehicle from being considered a motor vehicle as defined if it is also designed for other uses.*' The core of this argument was that the safety features of the current forklift, combined

¹ Chauke v Santam 1997 (1) SA 178 (A).

² Road Accident Fund v Vogel 2004 (5) SA 1 (SCA) at para [8].

with the fact that it has been seen, at least by Mr. Grobbelaar, being driven on the roads, should have led the court to conclude that although it may have been primarily designed for use in warehouses, such design does not disqualify it from meeting the definition of a motor vehicle as defined.

[8] There is some merit in the applicant's grounds of appeal because, although it may have been simpler to conclude that older forklifts were not designed for road propulsion, advancements in forklift design have complicated the issue. In this regard, as the judgment records, the present forklift is definitely of superior design compared to those considered by the courts previously. In fact, in one of those cases examining older forklifts, it was the evidence of Mr. Grobbelaar that was relied upon to conclude that such a forklift was not designed for road propulsion³.

[9] In addition to the above, there are also court statements that do not clarify what ultimately determines the issue. For example, there is a part in **Vogel** where it is stated that 'it is sufficient if it is also designed or adapted to enable it to be used for other purposes, which entails use thereof on roads.'

[10] In another part of the same judgment, it is stated that "*the existence of some of the features that are common to motor vehicles properly so called does not take the matter further. These features are obviously needed if the vehicle is to fulfill its primary function as a mobile power source and be able to traverse terrain where people, equipment, and vehicles would be encountered. It does not mean that they were provided to enable the unit to be used on public roads other than those within the operational area of airports.*"⁴ The same case also states that "*The use of a particular item on a road may not be inherently difficult or dangerous, but it may*

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

⁴ Vogel at 4H-5C.

still not qualify as a vehicle designed for the purposes set out in the definition of section 1 of the Act,”⁵

[11] Added to the above is the observation that in most of the cases that considered the question, a lot of attention was paid to the features of the forklift or piece of machinery in question. And as Navsa JA stated in **Day**⁶ ‘*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 problem described by Grobbelaar has been overcome*’. This may well be such a matter where a Court has to consider whether the design qualities of the forklift in question has overcome the problems that disqualified previous forklifts.

[12] For all the reasons stated above, I believe the appeal has reasonable prospects of success. Additionally, the fact that the forklift in question has a superior design compared to forklifts previously reviewed by the Courts is, in my opinion, a compelling reason to grant leave to appeal. Accordingly, leave to appeal is granted.

[13] It was submitted on behalf of the applicant that leave to appeal should be granted to the Supreme Court of Appeal. The motivation related to the novelty concerning the design features of the forklift in question, and it was argued that a full court might find itself in the same position as this Court, since the body of precedent relates to forklifts that are not comparable to the present one. It was argued that because of the general applicability of the issue involved, a decision by the Supreme Court of Appeal is required.

⁵ Vogel at 5C.

⁶ Mutual and Federal Insurance Co Ltd v Day 2001 (3) SA 775 (SCA) at para [18].

[14] There is merit in the applicant's argument, and it is therefore directed that the Supreme Court of Appeal will hear the appeal.

Order

[15] In the result, the following order shall issue:

15.1 The application for leave to appeal is granted to the Supreme Court of Appeal,

15.2 The costs shall be the costs in the appeal.

LG NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicant: HJO (Wallis) Roux

Instructed by: A Batchelor and Associates, Cape Town

For respondent: C Thomas

Instructed by: State Attorney, Cape Town.

