



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

JUDGMENT

Reportable

Case no: 14489/21

In the matter between:

RONDENE CHARNAY JANTJIES

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Coram: AG CHRISTIANS AJ

Heard: 20 November 2025

Delivered: 27 February 2026

Summary: passenger in moving motor vehicle lifted emergency brake – driver no longer in control of vehicle – driver injured – passenger took control of vehicle by lifting emergency brake – passenger became ‘driver’

for purposes of liability in terms of s 17(1) of Road Accident Fund Act 5 of 1996.

JUDGMENT

Christians AJ

Introduction

1. The primary issue for determination in this matter is whether a passenger in a vehicle, who causes a motor vehicle collision by raising the handbrake and causing injury to the driver of the vehicle in the process, is a “driver” for purposes of section 17(1) of the Road Accident Fund Act 56 of 1996 (“the RAF Act”).
2. If the answer is in the affirmative, I must decide whether such passenger was negligent in causing the collision; and whether and to what extent the RAF is liable to compensate the Plaintiff for the injuries she sustained as a result of the collision.

The pleadings

3. The Plaintiff alleges that:
 - 3.1. On 4 March 2019 she drove a motor vehicle along Old Kulbaskraal Road, Malmesbury, a public road;

- 3.2. One, Zaliun George Keating was a passenger in the motor vehicle¹;
 - 3.3. Whilst the vehicle was in motion and being driven by the Plaintiff, the passenger suddenly, and without warning, pulled up the emergency brake (handbrake), causing the vehicle to lose control and overturn.
 - 3.4. The collision was caused solely as a result of the passenger's negligence in that he interfered or took a hold of the steering / operating mechanism of the motor vehicle while it was in motion on the public road when it was neither safe nor reasonable for him to do so.
4. Plaintiff further alleges that she suffered severe injuries as a result of the collision. She lodged a claim against the Road Accident Fund ("the RAF") in terms of the RAF Act.
5. The RAF disputes liability for her injuries, alleging that the passenger was not the driver of the vehicle and, therefore, the RAF is not liable to compensate the Plaintiff in terms of section 17(1) of the RAF Act. Hence these proceedings.
6. Unsurprisingly, RAF's plea includes a bare denial of the facts alleged by the Plaintiff.

The evidence

7. The Plaintiff gave oral evidence and, by agreement between the parties, the accident report and the police docket were admitted as evidence.
8. No evidence was presented on behalf of the RAF.
9. The plaintiff testified that, at the relevant time, the passenger was her boyfriend and they worked together. On the morning in question, and *en route* to work, she collected the passenger from his home. He sat in the passenger seat next to her.
10. The plaintiff recalled that the passenger was very aggravated that morning because, according to him, he had a computer examination for which he was going to be late.
11. The weather was clear, the roads were quiet and she had no problems or issues with her vehicle. She was driving at around 60km/h.
12. While the passenger was complaining and getting frustrated about being late for his exam, he suddenly pulled up the handbrake. He gave her no warning and that was the last thing she remembered before waking up in hospital.
13. She sustained injuries to her legs, arm, spinal cord and face. A police officer contacted her some time after she returned to work.
14. The Plaintiff's version was not impugned under cross examination.

15. The accident report dated 4 March 2019 recorded that, according to an eyewitness who was driving behind the vehicle, the vehicle just left the road and overturned. The report notes that the driver was seriously injured and the passenger died on the scene.

Fault and causation

16. In sum, there is no genuine dispute about the truthfulness of the Plaintiff's version. It can hardly be suggested (and it has not been suggested) that the passenger acted reasonably in pulling up the handbrake as he did. There was also no suggestion that the Plaintiff could have done anything to avoid the collision after the passenger pulled up the handbrake.
17. I am, accordingly, satisfied that the collision was caused by the sole negligence of the passenger.
18. The next question is whether the RAF is liable to compensate the Plaintiff for the injuries she sustained as a result of the collision.

Was the passenger a 'driver' as contemplated in the RAF Act?

19. The RAF Act, quite unhelpfully, defines "*driver*" as meaning "*the driver referred to in section 17(1)*".
20. Section 17(1), in turn, provides in relevant part that:

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;

...

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: Provided that the obligation of the Fund to compensate a third party for nonpecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

21. There can be little debate about the fact that, immediately before the passenger lifted the handbrake, the Plaintiff was the driver of the vehicle. The question to be answered is whether, in so lifting the handbrake, the passenger thereupon became the driver for the purpose of determining liability under the RAF Act.
22. Counsel for the Plaintiff submitted, in the first instance, that this case falls within the presumption in section 20(1) of the RAF Act that:

For the purposes of this Act a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.

23. For the proposition that section 20(1) applies even where the vehicle is propelled by its own mechanical power, he referred me to the judgment of *B v Road Accident Fund* (41110/2013) [2016] ZAGPPHC 543 (8 July 2016). While I cannot fault the outcome of the judgment, I disagree with the (plainly unnecessary) finding that the presumption in section 20(1) applies where the vehicle is propelled by its own mechanical power. The court correctly found that the facts of that case established driving in the ‘ordinary’ sense. In my view, the presumption in section 20(1) is intended precisely to apply in cases where driving in the ‘ordinary’ sense has *not* been established.

24. In *Krisann v Road Accident Fund* (15257/20) [2022] ZAGPPHC 518 (13 July 2022), the Court adopted the following interpretation:

[19] To properly interpret section 20(1), one should have a look at the words "propelled by any mechanical, animal or human power or by gravity or momentum".

[20] If one considers the words "any mechanical" followed by the words "animal or human power or by gravity or momentum" and when applying the eiusdem generis rule of interpretation "any

mechanical ...power" is intended to mean mechanical or other power other than that of the motor vehicle concerned.

25. I agree.
26. In the circumstances, I must determine whether the passenger's conduct constitutes driving in the 'ordinary' sense.
27. I have not found any authority directly on the point, nor could the parties direct me to any such authority. It is, therefore, necessary to consider analogous cases and how courts have, over time, interpreted and applied the meaning of "drive" and "driver" for purposes of determining third party insurance (or criminal) liability.
28. With reference to the Motor Vehicle Assurance Act 29 of 1942, the Appellate Division in *Mathie v Yorkshire Insurance Co., Ltd* 1954 (4) SA 731 (A.D.) described the purpose of that Act as "*to enable injured persons... to recover loss or damage caused or arising out of negligent or unlawful driving; it is not, apparently, aimed at securing compensation for injuries or death caused by road obstruction, unless, conceivably, such obstruction is so closely linked with the driving of a motor vehicle as to be, in effect, part of the negligent or unlawful driving*"².
29. Relying on the above dicta, the Court in *Rajamma & Ano., N.O. v Union & National Insurance* 1971 (2) SA 86 (D) imputed liability to a person who had negligently caused an obstruction by bringing a vehicle to a stop and leaving it at an inappropriate place, thereby

causing another vehicle to collide with it.³ The identification of the ‘driver’ in such instances has now been codified in section 20(2).⁴

30. In the oft-cited *Wells and Another v Shield Insurance Co. Ltd and Another* 1965 (2) SA 865 (C) Corbett J said:

‘The word “driving”, as used in relation to the insured motor vehicle, means, ordinarily, in my view, the urging on, directing the course and general control of the vehicle while in motion and all other acts reasonably or necessarily incidental thereto. It would thus include, inter alia, the starting of the engine and the manipulation of the controls of the vehicle which regulate its speed and direction and also those which assist the driver and other users of the road, such as lights, traffic indicators, etc.’

31. In *Road Accident Fund v Mkhize* (557/2003) [2004] ZASCA 110; 2005 (3) SA 20 (SCA) (30 November 2004) Conradie JA stated, quite forcefully, that *[a] driver obviously drives a vehicle when he or she propels it by manipulating its controls and [a] person who is in control of a vehicle is the one who ‘can make it move or not as he pleases’.*⁵

32. The statement must, as a matter of common sense and logic, also include *manipulating its controls* to bring the vehicle to a stop. The clearest illustration of the point is that, had the Plaintiff herself lifted the handbrake and caused the vehicle to overturn, there would be no dispute that her doing so was part and parcel of her driving the vehicle.

33. But, what then, is the position when a person other than the one behind the steering wheel does so?

34. Counsel for the Plaintiff referred me to the Canadian case of *Bélanger v. The Queen*, 1970 CanLII 222 (SCC), [1970] SCR 567. Albeit in the context of criminal negligence, Richie J, writing for the majority of the Supreme Court of Canada held the following:

“The fact is that the police cruiser was driven from its own lane directly into the lane reserved for approaching traffic because the appellant had deliberately grabbed the steering wheel and taken control from the hands of the constable. Under these circumstances, with the greatest respect for those who hold a different view, I am of opinion that for the brief period during which the appellant assumed control, he was solely responsible for the dangerous driving of the cruiser and he was for those few moments “one who drives a motor vehicle on a ... highway ... in a manner that is dangerous to the public...” within the natural and ordinary meaning of those words as they occur [in the relevant provision of the Criminal Code].”⁶

35. Counsel for the RAF referred to *Van den Heever v Road Accident Fund* (A202/2019) [2020] ZAFSHC 192 (29 October 2020) and argued that a front passenger, who took control of a vehicle was not found to be the ‘driver’ of the vehicle. She accordingly argued that Canadian law can find no relevance in South Africa. In my understanding of the judgment, the argument is misplaced.

36. The issue before the Court in *Van den Heever* was not whether the passenger was, at the moment he grabbed the steering wheel, the ‘driver’ for purposes of liability in terms of the RAF Act. The plaintiff’s claim in that matter was premised on the alleged negligence of the driver of the vehicle in front of her. In other words, she did not allege that the collision was caused by husband, who was sitting next to her and who grabbed the steering wheel when she swerved to the right. Based on the pleaded case and the evidence led, the court in *Van den Heever* found that causation had not been established *vis a vis* the driver of the vehicle in front of the plaintiff’s vehicle.
37. Thus, even if the judgment in *Van den Heever* was binding on this Court (which it is not), it would not preclude me from following the approach adopted in *Bélanger*.
38. In my view, the approach adopted in *Bélanger* is eminently sensible. The question answered is not unique to the specific provisions of the Canadian Criminal Code. As Richie J said, his conclusion was premised on the natural and ordinary meaning of “*who drives a motor vehicle?*”
39. The rationale is consistent with the authorities discussed above, all of which centre the enquiry around who was in control of the vehicle.
40. In *Makhubele v Road Accident Fund* (3718/2009) [2010] ZAGPPHC 630 (5 May 2010) the court was tasked to determine who was ‘in control’ of a vehicle for purposes of the presumption in section 20(1)

of the RAF Act. It was common cause that the truck in question moved as a result of gravity after one Mrs Ratombo had disengaged the gear to neutral and attempted to start it (the engine failed to run). She called the plaintiff to help her open the cabin of the truck and, in the process, the vehicle moved and, evidently, rolled over the plaintiff. The court held that Mrs Ratombo was ‘in control’ of the truck because she had:

“[16] ... exercised control by opening the door of the motor vehicle, inserting the key in the ignition slot, disengaging the gears and starting the motor vehicle though the engine failed to run. I find her state of mind to have been to control the motor vehicle. I thus find her as “the person in control of the vehicle” on the day and time of the accident.”

41. Thus, because the truck was deemed to have been ‘driven’ in terms of section 20(1) of the RAF Act, Mrs Ratombo was *deemed* to be the driver because she was the person in control of the vehicle.
42. As I have already indicated, this case does not implicate the deeming provisions of section 20(1) because the vehicle was being driven in the ordinary sense. And if the vehicle was being driven in the ordinary sense, then there must be somebody who was driving it. To my mind, whether we are concerned with section 20(1) or whether we are concerned with driving in the ordinary sense, the question as to who the driver was must always resort to the question as to who was in control of the collision-causing conduct.

43. In this regard, I align fully with the approach that was adopted in *Bélanger*. That being so, it seems an artificial distinction to draw a line between a steering wheel and a handbrake when, in reality, a person who takes control of either of these mechanisms effectively seizes control of the vehicle itself.

Concluding remarks

44. In response to the argument presented on behalf of the RAF (i.e. that the RAF cannot, under any circumstances, be held liable for collisions caused by passengers), counsel for the Plaintiff pointed out that, on that argument, innocent third parties would be left without a remedy even in the most deserving of cases. He argued that this would lead to absurd results and that the Court should adopt a purposive interpretation to section 17(1) of the RAF Act. I think the facts of this case serve to demonstrate the soundness of the submission.
45. Suppose the Plaintiff's vehicle had hit a pedestrian. If the argument advanced on behalf of the RAF is correct, such pedestrian would have no claim against it. But the very purpose of the RAF Act (and earlier iterations of third party insurance statutes) is to ensure that third parties who are injured as a result of negligently or unlawfully caused motor collisions can adequately be compensated. The purpose of the RAF Act would be subverted if a pedestrian in this scenario could not claim compensation from the RAF simply

because the passenger had taken control of the vehicle away from the driver.

46. And so, if I am correct that a pedestrian in this scenario would be entitled to compensation in terms of the RAF Act, then I see no reason why a driver in the position of the Plaintiff (from whom control of the vehicle was taken) should not also be so entitled.
47. Lest I be misunderstood, my reasoning in no way suggests that any negligent act by a passenger, that results in a collision, will justify a claim for compensation against the RAF. If, for example, a passenger plays the fool and obstructs a driver's vision whilst the vehicle is in motion, and thereby causes a collision in some way or another, such passenger cannot, based on my this judgment, be said to have taken control of the vehicle. This case is materially distinguishable from the hypothetical example and I do not purport to express any view on how a court might determine such a case.

Conclusion

48. On the issue of costs, the main issue in this case is novel and not uncomplicated. Counsel for the Plaintiff, in particular, made compelling oral submissions and assisted the court with useful analogous authorities. For these reasons, I am of the view that costs on Scale B is warranted.
49. I thus make the following order:

(a) Defendant is liable for 100% of the Plaintiff's proven or agreed damages;

(b) Defendant shall pay the Plaintiff's costs and, for purposes of Rule 67A read with Rule 69, such costs shall be on Scale B.

AG CHRISTIANS
ACTING JUDGE OF THE HIGH COURT

Appearances:

For plaintiff: M Oliff

Instructed by: Patterson Breytenbach Inc.

For defendant: C Thomas

Instructed by: State Attorney, Cape Town

¹ Mr Keating died as a result of collision. Without intending any disrespect to his memory, I shall refer to him in the remainder of this judgment as “the passenger”.

² At 735C.

³ At 89C-E.

⁴ To avoid any confusion as to my interpretation of section 20(1) in paragraph 23 *supra* and my interpretation of section 20(2) here, the former creates a presumption as to whether the specified vehicles are being ‘driven’, while the latter creates a presumption in relation to the identity of the ‘driver’. See, also, the discussion in *Makhubele v Road Accident Fund* (3718/2009) [2010] ZAGPPHC 630 (5 May 2010) paras 14 – 15.

⁵ para 4.

⁶ Page 574.