



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 8 June 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Nemangwela v The Road Accident Fund (437/2022) [2023] ZASCA 90 (8 June 2023)*

---

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Limpopo Division of the High Court, Thohoyandou (the high court).

The issue before the SCA was whether the Hyster 250 forklift was a 'motor vehicle' as contemplated in s 1 of the Road Accident Fund Act 56 of 1996 (the RAF Act).

On 4 November 2016, Ms Nemangwela was knocked down by a Hyster 250 forklift driven by Mr Mashudu Tshishonga (the driver), at her workplace at Nzhelele Spar, Vhembe district, Limpopo. She sustained injuries from the accident and was admitted to hospital. She instituted an action against the respondent, the Road Accident Fund (RAF), for damages arising out of the injuries she sustained from the accident. The RAF conceded the merits at 80% in favour of Ms Nemangwela if the high court found the forklift to be a motor vehicle.

Ms Nemangwela testified that the forklift was generally used to carry loads within the Nzhelele Spar premises; that the receiving zone was used for stock loading; and the receiving zone was separated from the outside parking areas by a gate. The forklift would, however, sometimes be driven outside the Spar premises, crossing over the public road to Boxer store. The driver on the other hand denied that the forklift would sometimes be driven outside the premises or around the parking areas. He testified that he was specifically told and trained not to drive the forklift on the main road. Counsel for the RAF argued that the incident occurred at the receiving bay, which was a private loading facility and therefore not a public road to be used by the general public at large. He argued that for a collision to occur within the context of the RAF Act, the driver must have driven the vehicle on a public road.

The SCA found that the Hyster 250 forklift in this case was used in and out of the Spar store at the receiving area in the yard. The receiving area is a private area and not a road. It was used only to receive and load goods and was not used by the general public. The focus of the definition of 'motor vehicle' for the present purposes must be on the words 'motor vehicle designed ... for propulsion ... on a road.' The SCA held that the forklift did not qualify to be classified as a motor vehicle for purposes of the RAF Act.

~~~~ends~~~~