



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 22 June 2020
STATUS Immediate

The Road Accident Fund v Mbele (Case no 555/2019) [2020] ZASCA 72 (22 June 2020)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (the SCA) dismissed the appeal by the appellant, the Road Accident Fund (the RAF), against the decision of the Western Cape Division of the High Court (the high court).

Mr Simphiwe Robert Makutoana (the deceased) was a pedestrian at the Multipurpose Terminal, Cape Town Harbour when a large industrial vehicle Reach Stacker collided with him. The deceased died as a result of the injuries he sustained in the collision. The respondent, Ms Thandiswa Linah Mbele, the deceased's common law wife, instituted action for loss of support in the high court against the RAF for the payment of damages she and her four minor children suffered as a result of the death of the deceased. Ms Mbele's claim against the RAF for loss of support was based on the provisions of the Road Accident Fund Act 56 of 1996 (the RAF Act). The RAF defended the action and contended that Ms Mbele's claim was incompetent as a Reach Stacker was not a motor vehicle as contemplated in s 1 of the RAF Act. The issue in this appeal therefore is whether the Reach Stacker is a motor vehicle as contemplated in s 1 of the RAF Act.

The SCA held that the definition of a motor vehicle in terms of the RAF Act displays three requirements: (a) the vehicle must be propelled by fuel, electricity or gas and (b) must be designed for propulsion (c) on a road. Regarding the first requirement, the SCA held that it was clear from its features that the Reach Stacker was propelled by means of diesel fuel; and the evidence was that it transported containers on roads within the port premises.

The SCA held that the test whether a vehicle is designed for use on a road is objective. The question is whether a reasonable person viewing the vehicle in question would come to the conclusion that such vehicle when used on a road will not create a danger to other road users. In this regard, design features such as lights, indicators, field of vision, hooter, maximum speed and engine output are all considerations which apply in deciding whether or not there is compliance with the definition.

The SCA held that, regarding the second and third requirement, despite its imposing and gigantic size in terms of mass, width, length, height and low speed limitation, objectively viewed, it cannot be said that driving the Reach Stacker on a road used by pedestrians and other vehicles would be extraordinarily difficult and hazardous. This is on the basis that it was fitted with all the controls and features required to be fitted to a motor vehicle so as to enable it to be used with safety on a road outside the container yard and port terminal where it primarily operates. It also had a number of features of a motor vehicle and was driven in a manner similar to a motor vehicle. Moreover, because of its operation on terminal premises, the Reach Stacker was required to be registered and was registered for use on public roads in terms of road traffic legislation.

In the circumstances, the SCA held that the Reach Stacker was a motor vehicle as defined in s 1 of the RAF Act, and the appeal was accordingly dismissed.