THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Reportable
Case no: 295/06

In the matter between:

ROAD ACCIDENT FUND **Appellant**

and

PEDRO ERNESTO MONJANE **Respondent**

Coram	**:**	**SCOTT, CAMERON, CLOETE, MAYA JJA *et* THERON AJA**
Date of Hearing	**:**	**4 MAY 2007**
Date of delivery	**:**	**18 MAY 2007**

Summary: An employee who sustains an 'occupational injury' as defined in Act 130 of 1993 will have no claim under the Road Accident Fund Act 56 of 1996 if the wrongdoer is his or her employer.

Neutral Citation: This judgment may be referred to as *Road Accident Fund v Monjane* [2007] SCA 57 RSA.

SCOTT JA/…

SCOTT JA:

[1] The appellant is the Road Accident Fund, a juristic person established in terms of s 2 of the Road Accident Fund Act 56 of 1996 ('the RAF Act'). The respondent (the plaintiff in the court below) instituted action in the Pretoria High Court against the Fund for the payment of damages in the sum of
R417 600 in respect of injuries he sustained in consequence of the negligent driving of a motor vehicle by Mr Michael Duarte. The circumstances in which his injuries were sustained are set out in paragraph 3 of his amended particulars of claim, which reads:

'On or about the 22nd day of May 1997 and at approximately 11 am and at the Krugersdorp Market, Krugersdorp, Gauteng Province, the plaintiff was engaged in the loading of vegetables on a certain motor vehicle with registration number GZT056T driven by one Michael Duarte when the said driver suddenly and without warning and with reckless disregard for the presence and safety of the plaintiff pulled away or put his said truck in motion causing the plaintiff to fall from the said vehicle.'

The Fund filed a special plea in which it averred that on 22 May 1997 the plaintiff's employer was the driver of the vehicle concerned and that even if the plaintiff's injuries were caused by the former's negligent driving the Fund was not liable to the respondent in law –

'. . . because in terms of Section 19(a) of the Road Accident Fund Act, Act 56 of 1996 [the Fund] shall not be obliged to compensate any person for any loss or damage for which neither the driver nor the owner of the motor vehicle concerned would have been liable [and] in terms of Section 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, no action shall lie by the Plaintiff (as employee) against the said insured driver (the employer).'

The matter came before Shongwe J who, at the request of the parties, ordered that the special plea be dealt with first. No evidence was adduced but the parties reached agreement on the facts necessary for the determination of the special plea. They were: (a) that the respondent was 'a pedestrian' at the

time of the accident (by which the parties presumably intended to convey that the respondent was not 'being conveyed in or on the motor vehicle concerned' within the meaning of s 18 of the RAF Act); (b) that he was in the employ of Duarte and was carrying out his duties in pursuance of that employment when the accident occurred; and (c) that Duarte was solely to blame for the accident. After hearing argument and reserving judgment Shongwe J dismissed the special plea with costs, but subsequently granted the Fund leave to appeal to this court.

[2] Before dealing with the issues raised in the special plea it is necessary to outline the relevant statutory provisions.

[3] Section 17 of the RAF Act imposes on the Fund (or an agent) an obligation '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 . . . 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 . . .' . Where the identity of the driver or owner has been established (as in the present case) this obligation is stated in s 17(1)(a) to be 'subject to this Act'. The sections that follow contain a number of qualifications to the general obligation imposed in s 17.

[4] In terms of s 18(1) and (2) the Fund's liability is limited in certain specified circumstances where the third party was at the time of the occurrence being conveyed in or on the motor vehicle concerned. Section 18(2) is relevant. It provides for a limitation of the Fund's liability:

'where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), in respect of such injury or death'.

[5] In terms of s 19 the liability of the Fund (or agent), as contemplated in s 17, is excluded altogether in certain circumstances. Of relevance is s 19(a). It provides that the Fund shall not be obliged to compensate any person in terms of s 17 for loss or damage –

'for which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21.'

Section 21, in turn, provides that when a third party is entitled under section 17 to claim from the Fund or agent, 'that third party may not claim compensation in respect of that loss or damage from the owner or from the person who so drove the vehicle, . . . unless the Fund or such agent is unable to pay the compensation'.

[6] Section 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ('COIDA') precludes an employee from recovering damages from his or her employer in respect of an 'occupational injury'. The section reads:

'No action shall lie by an employee or any dependant of any employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.'

'Occupational injury' is defined in s 1 to mean 'a personal injury sustained as a result of an accident'. 'Accident', in turn, is defined as 'an accident arising out of and in the course of an employee's employment and resulting in personal injury, illness or death of the employee.'

[7] Against the background I turn to the contentions of the parties. The appellant's defence raised in the special plea is simply that on the basis of the agreed facts it is not liable to the respondent (ie the third party) for compensation in terms of s 17 of the RAF Act because, by virtue of s 35(1) of COIDA, the respondent's employer, Duarte, being the driver whose negligence caused the accident, would not have been liable to the respondent; and in terms of s 19(a) of the RAF Act, the Fund is not obliged to

compensate a third party for loss or damage for which neither the driver nor the owner of the motor vehicle concerned would have been liable but for s 21.

[8] As I understand the contention advanced on behalf of the respondent – and seemingly accepted by the court *a quo* – it is this. Section 18(2) of the RAF Act does not create a new right of action against the Fund; it serves merely to qualify or limit the Fund's liability under s 17. That limitation, it is argued, relates solely to the situation where the third party is conveyed 'in or on the motor vehicle concerned' and accordingly s 18(2) contemplates that a third party will have an unlimited claim where he or she was not being conveyed in or on the motor vehicle concerned even though the vehicle was owned or being driven at the time by the third party's employer. I pause to observe that this argument would no doubt be correct if it were not for the provisions of s 19(a), read with s 35(1) of COIDA. The respondent contends, however, that if s 19(a) of the RAF Act were to be construed so as to preclude an action against the Fund in every case where the vehicle concerned was owned or driven by the third party's employer regardless of whether the third party was being conveyed in or on the vehicle, the effect would be to render meaningless the limitation contained in s 18(2). Accordingly, so it was contended, s 19(a) had to be strictly construed so as not to exclude the liability of the Fund in a case such as the present.

[9] The argument is unsound. The effect of s 18(2), when read with s 19(a) (and s 35(1) of COIDA) is that the limited claim contemplated in s 18(2) will lie against the Fund when the wrongdoer, whether the driver or the owner of the vehicle concerned, is not the third party's employer. In such a case the claim is limited but not precluded. It is only when the wrongdoer *is* the third party's employer that the claim is precluded. In such a case the claim will be precluded regardless of whether or not the third party is being conveyed in or on the motor vehicle concerned, provided only that the injury sustained by the third party is an 'occupational injury' as defined in COIDA. The effect of s 19(a), read with s 35(1) of COIDA, is therefore not to render s 18(2) meaningless.

[10] The same argument which was advanced by the respondent in the present case was advanced in *Mphosi v Central Board for Co-operative Insurance Ltd*[1] in relation to para (aa) of the second proviso to s 11(1) of the Motor Vehicle Insurance Act 29 of 1942, being the equivalent of the present s 18(2) of the RAF Act.[2] In rejecting it, Botha JA at 646B gave as an example of when the paragraph would be applicable, the case where A, the owner of the insured motor vehicle, lets the vehicle to B, an employer of labour, to transport his workers from one place to another, and one or more of the workers are injured in an accident arising out of the negligence of the owner of the vehicle for having let a dangerously defective vehicle to B. In such a case (as the learned judge pointed out in relation to the provisions of the 1942 Act) the injured workers would be entitled to compensation under COIDA but their common law action for damages would not be precluded by s 35(1) of that Act. They would accordingly be entitled to proceed against the Fund, but subject to the limitation imposed by s 18(2) of the RAF Act.

[11] It follows that the respondent's answer to the special plea cannot prevail and the appeal must succeed.

[12] It is no doubt so that where an 'occupational injury' is sustained in the context of a motor accident s 35(1) of COIDA may on occasions have seemingly unfortunate consequences. The reason is that the basis upon which compensation is determined under COIDA differs markedly from that under the

RAF Act. The effect of s 35(1) is to deprive an employee of his or her common-law right of action to claim damages from an employer. But COIDA substitutes a

system which has advantages for an employee not available at common law.[3] The RAF Act, like COIDA, constitutes social legislation but it caters for a

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[1] 1974 (4) SA 633 (A).
[2] The first proviso to s 11(1) of the 1942 Act is the equivalent of the present s 19(a); s 13 of the 1942 Act is the equivalent of the present s 21 and s 7(a) of the Workmen's Compensation Act 30 of 1941 is the equivalent of s 35(1) of COIDA.
[3] The constitutionality of s 35(1) of COIDA was upheld in *Jooste v Score Supermarket Trading (Pty) Ltd* 1999 (2) SA 1 (CC).

different situation. Inevitably, as in the present case, there will be some overlapping of the areas covered by each and provision is made for an injured party in certain circumstances to claim under both Acts.[4] But ultimately, however, a line must be drawn and where that is to be is essentially a question of policy for the legislature to decide. Section 19(a) of the RAF Act, read with s 35(1) of COIDA, indicates where that line has been drawn: an employee who sustains an 'occupational injury' in the context of a motor accident will have no claim under the RAF Act if the wrongdoer is his or her employer. This was recognised by this court as long ago as 1974 in *Mphosi's* case. It is a well-established rule of construction that the legislature is presumed to know the law, including the authoritative interpretation placed on its previous enactments by the courts. Significantly, the legislature has in a series of subsequent enactments retained in substance the statutory provisions upon which *Mphosi's* case was decided.[5] It must be accepted, therefore, that the construction placed upon them correctly reflects the policy of the legislature.

[13] The appeal is upheld with costs. The order of the court *a quo* is set aside and the following order is substituted in its place:

'The special plea is upheld with costs.'

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D G SCOTT

[4] See eg s 18 (2) of the RAF Act and s 36 of COIDA.
[5] Compulsory Motor Vehicle Insurance Act 56 of 1976; Motor Vehicle Accidents Act 84 of 1986; Multilateral Motor Vehicle Accidents Fund Act 93 of 1989.

JUDGE OF APPEAL

CONCUR:

CAMERON JA
CLOETE JA
MAYA JA
THERON AJA