

SOUTH AFRICA / JUDGMENT

P.B obo S.B and C.B v Road Accident Fund (40955/16) [2025] ZAGPPHC 12 (14 January 2025) [2025] ZAGPPHC 12

COURT

North Gauteng High Court, Pretoria

BEFORE

Mogotsi

CASE / FILE NUMBER

40955/16

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE****NO: 40955/16****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED:****DATE**

14/01/2025

SIGNATURE

In

the matter between: P[...]
B[...] obo S.B and
C.B
PLAINTIFF
and
THE
ROAD ACCIDENT FUND
DEFENDANT

JUDGMENT

MOGOTSI, AJ

Introduction

- [1] On 19 November 2024, this matter came before me on the unopposed motion roll. It concerns the interpretation of section 17(4)(c)(ii) of the Road Accident Fund Act 56 of 1996 (the RAF Act) as amended by the Road Accident Fund Amendment Act of 2005.

Background

- [2] On 10 May 2022, Koovertjie J ordered payment of loss of support in the amount of R4,463,122.09[1]. The issue relating to whether the statutory cap provided for in section 17(4)(c)(ii) of the Act applies to the dependants collectively or individually, and the quantum of the balance of the loss of support claim was postponed sine die in terms of Rule 33(4) of the Uniform Rules of the Court.[2] In essence, the plaintiff now seeks judgment for the sum of R1,685,745.00, which represents the balance brought about by the difference in the loss of support calculated when applying the statutory cap collectively to all the dependants versus individually.

The issue

- [3] The issue to be determined is whether the statutory cap provided for in section 17(4)(c)(ii) of the RAF Act applies collectively or individually to third-party claimants.

The plaintiff's

submissions

- [4] To begin with, the plaintiff's counsel submitted that section 17(4)(c)(ii) should be read with 17(1) of the RAF Act. Lastly,

relying on the decision in *Constantia Insurance Co Ltd v Haerne*, [3] he submitted that the words "the third party" in section 17(1) should be given a wider meaning and section

17(4)(c)(ii) connotes that the cap applies to the third-party claimants individually and not collectively.

The applicable law

[5] The relevant portion of the Act reads as follows:

“(4) Where a claim for compensation under subsection (1)-

...

(c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount exceeding-

(ii) R295 322 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.”

[6] The constitutionality of the provisions limiting the liability of the Fund was considered in *Law Society of South Africa and others v Minister for Transport and Another*,^[4] where the Constitutional Court, per Moseneke DCJ, found that the limitation of compensation payable for loss of income or support does not amount to an arbitrary deprivation of property. The Constitutional Court stated that:

“I have already found that the scheme, including the reduction of compensation recoverable for loss of income or support, properly

advances the governmental purpose to make the Fund financially viable and sustainable and to render the

compensation regime more transparent, predictable and equitable”.

[7] In outlining the fundamental test for statutory interpretation, the Constitutional Court, in *Cool Ideas 1186CC v Hubbard and Another*,^[5] said the following:

“... the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important riders to this general principle, namely: (a) that statutory provisions should always be interpreted purposively; (b) the relevant statutory provision must be properly contextualised; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional

validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).”

[8] Regarding the interpretation of contracts and legislation, the Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality*^[6] per Wallis JA, in of the Supreme Court of Appeal, stated the following:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context, it is to make a contract for the parties other than the one they made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”.

- [9] Similarly, in *Bothma-Batho Transport (EDMS) BPK v S Bothma & Seuns Transport (EDMS) BPK*,^[7] the court held as follows:

“That summary is no longer consistent with the approach to interpretation now adopted by South African courts in relation to contracts or other documents, such as statutory instruments or patents. Whilst the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding

circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is 'essentially one unitary exercise'. Accordingly, it is no longer helpful to refer to the earlier approach.”

Evaluation

- [10] The Road Accident Fund (the Fund) is obliged to compensate any person or a third party for loss or damage suffered as a result of a bodily injury to himself/herself or arising from the death or bodily injury of any other person caused by a motor vehicle collision. Prior to 1 August 2008, the Fund was liable to pay the full amount of the claim as proven for damages for loss of support.^[8] Section 17(4)(c)(ii) of the RAF Act altered this position by introducing a monetary cap on the Fund's liability for loss of income or support suffered as a result of a motor vehicle.

- [11] I agree with the applicant's counsel that section 17(4)(c)(ii) should not be read in isolation but in conjunction with section 17(1) of the RAF Act which provides as follows:

“(1) The Fund or an agent shall-

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 the owner of the motor vehicle or his or her employee in the performance of the employee's duties as employee..."

[12] The key word in interpreting section 17(1) of the RAF Act is "any person". To enhance clarity and understanding of "any person" the legislator placed the words "the third party" in brackets. Therefore, a proper interpretation of section 17 (1) of the RAF Act entails interpreting both keywords. The phrase "any person" is a general term that refers to anyone without specifying a particular person and implies that any person is treated as a single entity. In *Constantia Insurance Co Ltd v Haerne*,^[9] the Appellate Division had to interpret section 22(2)(a) of the Compulsory Motor Vehicle Insurance Act 56 of 1972 (the MMF Act),^[10] which is the equivalent of section 17(1) of the RAF Act, and determine whether the liability of an insurer under section 22(1)(aa) of the Compulsory Motor Vehicle Insurance Act 56 of 1972 (the MMF Act) to the dependants of a deceased workman limited by the provisions of s 22(2)(a) of the Act to R12 000 in respect of the claim of each dependant, or to an overall amount of R12 000 irrespective of the number of claims by dependants. Considering the phrase "the

third party" the court stated as follows:

"In the words of section 21(1) a third party means "any person whatsoever" (who has suffered a loss recoverable in terms of the Act). Now, "any person whatsoever" may mean a number of things depending on the use to which it is desired to be put. In section 21(1) e.g. it may mean "every person whatsoever", or "each person whatsoever", or "all persons whatsoever". Any one of these expressions may be substituted equally fittingly for the one actually used without doing violence to the wording and without affecting the application of section 21(1) at all; it really makes no difference which expression one prefers to use. In subsection (1)(aa), however, the position is obviously entirely different. There, the same degree of flexibility could not have been intended for it is inconceivable that the legislature could have intended anything but a specific and precise meaning to be attached to its description of the liability which it was limiting. It must accordingly be assumed that a specific and precise meaning was intended to be attached to the words "to compensate a third party. Having said that, I have really also said how subsection (1)(aa) is to be interpreted. The only specific meaning which the words in question can have is the literal one. What is limited, is the insurer's liability to compensate "a third party ". And so construed, the limitation is individual, not collective".

[13] In my view, the legislature's intention when enacting section 17(1) of the RAF Act was to ensure that the Fund remains financially viable. Had the legislature intended the cap to apply collectively, the legislature could have drafted the provision unequivocally to cater for such eventuality. To preserve the constitutional validity, the cap must be interpreted to avoid unfair differentiation between dependents. Therefore, "any person" (the third party) in section 17(1) of the RAF Act should be interpreted widely to mean that the cap in section

17(4)(c)(ii) applies individually in respect of each deceased breadwinner.

[14] The purposive interpretation of section 17(1) of the RAF Act supports this conclusion. In *Englebrecht v Road Accident Fund*,^[11] the Constitutional Court, with reference to *Aetna Insurance Co v Minister of Justice*,^[12] emphasised that:

“The stated primary concern of the legislature in enacting these statutes is, and has always been, “to give the greatest possible

protection . . . to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a

motor vehicle.”

[15] Similarly, in *Road Accident Fund v Busuku*,^[13] the Supreme Court of Appeal concluded that:

“In considering the context in which the provisions appear and the purpose to which they are directed it must be recognised that the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or unlawful acts on the part of the driver or owner of a motor vehicle. For this reason, the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection.”

[16] To afford the third parties the greatest possible protection, section 17(1) of the RAF Act must be interpreted as widely as possible in favour of the third-party claimants. Therefore, I find that the cap in section 17(4)(c)(ii) of the RAF Act applies individually to third-party claimants in respect of each deceased breadwinner and that the claimants in casu are entitled to payment of the balance of the amount awarded on 10 May 2022.

Order

[17] The draft order marked “X” is made the order of the court.

P J MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for the applicant: LJ Visser Attorney for the applicant: S Le Roux Attorneys Counsel for respondents: M Sikhosana Attorney for respondents: The State Attorneys Date heard: 19 November 2024 Date of Judgment: 14 January 2025

[1] Court order granted by Kooverjie J on 10 May 2022 in the matter of Paul Bester obo S.B and C.B v Road Accident Fund, heard in the High Court of South Africa, Gauteng Division, Pretoria.

- [2] "In the light of the dispute regarding the question whether the statutory cap provided for in Section 17 of the Road Accident Fund Act, 56 of 1996, is to be applied collectively to the claims of the dependants as contended by the defendant or individually and separately as contended by the plaintiff, the balance of the plaintiffs' claims that he alleges is due to him and the minor children over and above the amounts recorded in paragraphs 1(i), 1(ii) and 1(iii) above by virtue of the plaintiffs interpretation of section 17 is hereby separated in terms of rule 33(4) from the resolved issues and postponed sine die"
- [3] 1986 (3) SA 60 (A).
- [4] 2011 (1) SA 400 (CC).
- [5] 2014
- (4) SA 474 (CC) at para 28.
- [6] 2012 (4) SA 593 (SCA) paras 18 - 19.
- [7] 2014
- (2) SA 494 (SCA) at 499 – 495
- [8] Road Accident Fund v Sweatman [2015] 2 All SA 679 (SCA) at para 1.
- [9] 1986 (3) SA 60 (A).
- [10] 'Where loss or damage contemplated in S21 is suffered as a result of bodily injury to or death of an employee of the driver or owner of a motor vehicle the third party is entitled to compensation under under the Workmen's Compensation Act 30 of 1941, in respect of such injury or death – (a) The liability of the authorise third between the amount which the third party could, party shall be limited to the sum representing the differ
- [10] 'Where loss or damage contemplated in S21 is suffered as a result of bodily injury to or death of an employee of the driver or owner of a motor vehicle the third party is entitled to compensation under under the Workmen's Compensation Act 30 of 1941, in respect of such injury or death –
- (a) The liability of the authorise third between the amount which the third party could, party shall be limited to the sum representing the differ
- [11] 2007
- (6) SA 96 (CC).
- [12] 1960
- (3) SA 273 (A) at 285E-F.
- [13] 2020] ZACA 158; 2023
- (4) SA 507 (SCA) at para 6.

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