

SOUTH AFRICA / JUDGMENT

Strydom v Road Accident Fund (1444/2023) [2024] ZAMPMHC 62 (19 November 2024) [2024] ZAMPMHC 62

COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

1444/2023

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IN THE

HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE NO: 1444/2023

In the matter between:

JULIAN JACOBUS

STRYDOM

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT**CORAM: LANGA J****Introduction and Concise Facts**

- [1] This is a personal injury, and damages claim against the Road Accident Fund ("the RAF") emanating from an incident involving a Hangcha 5t Series Forklift, ("the insured vehicle") driven by one Mr Gerrie Horn, (insured driver). The claim is brought in terms of the provisions of the Road Accident Fund Act 56 of 1996 as amended, ("the RAF-Act").
- [2] It is common cause that the Plaintiff who was a pedestrian was injured when the load of the forklift fell on him in a parking lot which constitutes a public space of road. The incident took place on 18 June 2018 at 7 V[...] B[...] Street, Extension 8, E[...] in the public parking area of the business premises. The Plaintiff was seriously injured and hospitalised. The WPI-index of the Plaintiff per Serious Injury Assessment report (RAF-4) is in excess of 30%.
- [3] The matter is up for the determination of the merits only after a separation of the merits and quantum was ordered in terms of Rule 33(1) of the Uniform Rules of Court. Although the Defendant in defending the action initially filed 4 separate special pleas, only one is now up for determination in respect of the merits. In terms of this plea, the Defendant disputes that the Hangcha 5t Series forklift in question is a motor vehicle for the purposes of the RAF Act.
- [4] The parties agreed to proceed on the basis of a written statement/s of facts on the merits only and in particular on the issue whether the forklift constitutes a motor vehicle of. They formally agreed that the only determination which the court has to make at this stage is whether this forklift falls within the definition of a "motor vehicle" in terms of the RAF Act. The parties were in agreement that if the question is answered in the negative that will be the end of the Plaintiff's claim.
- [5] As part of the stated case the "Operation and Maintenance Manual", of the insured vehicle, ("the manual"), the written sworn statements of the insured driver, Mr Gerrie Horn dated 7 February 2024 and 15 October 2024 respectively, and the written sworn statement of another witness, Mr Christiaan Daniel du Plessis, dated 30 September 2024 were admitted into evidence by agreement between the parties. The parties further agreed that the Court may take judicial notice of certain sections of the National Road Traffic Act no. 93 of 1996, as amended, read with the National Road Traffic Regulations published on 17 March 2000 under reference: Government Gazette GNR225 (GG20963).

The issue in dispute

- [6] It is common cause that the only issue in dispute at this stage is a question of law namely, whether the Hangcha 5t Series Forklift Truck, which caused the Plaintiff's injuries, is a motor vehicle for the purposes of the RAF Act. In other words, the question is whether the forklift in question qualifies as a motor vehicle in terms of the RAF Act and consequently whether Plaintiff's claim for compensation qualifies in terms of the provisions of the RAF Act.

Common cause issues

- [7] The parties in essence agreed that the forklift in question is propelled by a diesel combustion engine and that the accident occurred on a public road and/or public parking area. What they don't agree on is whether the forklift is designed for propulsion or adapted for propulsion or haulage on a road. (my emphasis)
- [8] Concerning this aspect the Plaintiff contends that the forklift truck was designed for propulsion on a road. Relying on the evidence of the insured driver, and the Safety Officer Mr Christiaan Daniel du Plessis, the Plaintiff argues that based on its basic design, features and equipment as per the "Operation and Maintenance Manual", the vehicle is designed, or as a minimum, is adapted for propulsion on a public road.

Discussion and

analysis

- [9] it is trite that for purposes of the RAF Act a motor vehicle means "any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle." As stated in *Nemangwela v Road Accident Fund* 2024 (2) SA 316 (SCA) at para [7], three requirements must be met before a motor vehicle can qualify as such. Firstly, it must be propelled by fuel, gas or electricity; secondly, it must be designed or adapted for propulsion or haulage and thirdly, it must be designed to operate on a road.
- [10] As stated above, it is common cause that the forklift in casu is propelled by fuel as it uses a diesel combustion engine. It is also not seriously disputed that it was driven on a public road as the incident took place in a public parking lot which falls within the definition of a public road. It can therefore safely be accepted that the first and third definitional requirements above have been met and are therefore not in dispute. What is clearly in dispute is whether the forklift was designed or adapted for propulsion and haulage on a road. See in this regard *Road Accident Fund v Mbele* 2021 (6) SA 118 (SCA).

Applicable Case Law

[11] This issue is not novel. On many occasions our courts have had to determine whether a forklift, albeit a different make, is a motor vehicle as defined in the RAF Act. For instance, an interpretation of the definition of a motor vehicle was considered in *Chauke v Santam Limited* [1996] ZASCA 120; 1997

(1) SA 178 (A) based on section 1 of the Motor Vehicle Accidents Act 84 of 1986, which is couched in similar terms as section 1 of the RAF

Act. In that case the forklift in question had no lights, indicators or speedometer and break lights. It also operated at very low speed and its hoist obstructed the driver's view. There was further evidence that the drivers were prohibited from driving it on the road. In concluding that the forklift was not a motor vehicle within the meaning of the Act the Appellate Division held as follows:

'The correct approach to the interpretation of the legislative phrase quoted above is to take it as a whole and to apply to it an objective common-sense meaning. The word designed in the present context conveys the notion of the ordinary, everyday and general purpose for which the vehicle in question was conceived and construed and how the reasonable person would see its ordinary and not some fanciful use on a road. If the ordinary, reasonable person would perceive that the driving of the vehicle in question on a road used by pedestrians and other vehicles would be extraordinarily difficult and hazardous unless special precautions or adaptations were effected, the vehicle would not be regarded as a motor vehicle for the purposes of the Act...' (my emphasis).

[12] In *Mutual and Federal Co Ltd v Day* 2001 (3) SA 775 (SCA), the court dealt with a similar question and held that the forklift in question, despite having more features and being superior in design to the one in *Chauke*, was not a motor vehicle for the purposes of the Act. The court's ratio in the *Mutual* case can be gathered from the following paragraph:

"[11] Like the forklift in the Chauke case, the Komatsu has a rear-wheel steering system. This, according to Grobbelaar, makes steering it a difficult task... Rear wheel steering has the effect of swinging the rear of the vehicle outwards in the direction opposite to the one in which it is being steered. This is a phenomenon known as over-steering. Grobbelaar was adamant that sudden steering movements could lead to a loss of control with the probability that the Komatsu could capsize. He stated that this could occur even at a speed of 20 km/h. Grobbelaar testified that in the event of a sudden steering movement on a public road to avoid other vehicles, or pedestrians, the overweight added to the risk of the vehicle capsizing. He repeatedly stated that a skilled driver could not necessarily avoid such a consequence..." Despite this conclusion the court remarked that it is still possible that in a particular case a forklift owner, designer or manufacturer may be able to persuade a court that the steering issue found in Chauke and Mutual and Federal has been overcome.

[13] In the recent unreported decision of the Western Cape Division in *Patrick Andrew Darvel v Road Accident Fund*, Case number 12070/2020 (delivered on the 01 August 2024), the court was also called upon to determine the similar issue whether the forklift was a motor vehicle for the purposes of the RAF Act. I pause here to state that the forklift in question, a Toyota 8

series 8FD25, was a much-improved design than the forklifts which were the subject of court determination in previous cases. According to the witness Mr Grobbelaar, who incidentally also testified in the Mutual case, this forklift had amongst other improvements, the driving position and manner similar to a motor car or bus with the steering

done by means of a steering wheel. It also has foot operated accelerator and brake pedals. He stated further that the dimensions

of the forklift are similar to those of a Daihatsu Mira motor vehicle. He added that despite these improvements, the forklift still

had a stability issue caused by the rear wheel steering and counterbalance weight found in other conventional forklifts. He however stated that this problem has been addressed by providing it with an Active Control Rear Stabilizer which prevents the leaning of

the vehicle when cornering and therefore provides the stability required for such manoeuvres. He further stated that although the

vehicle changes direction in the same direction as a front wheel steering vehicle, it however does so differently that it would need some practice and training for one to become a skilled driver.

[14] After considering the evidence, the court stated the following in paragraph 14:

'On the basis of the above evidence, I am prepared to accept that the insured vehicle was driven on the road and that the steering problem that had characterised earlier forklifts has been overcome. The question, however, is still whether a general use on the road is contemplated in respect of the design of insured vehicle, and to answer this question one has to have regard to the utility of forklift. As has been repeatedly said, the primary purpose of forklift is to lift and move loads in places such as storage and lumber yards, steel mills and wharves ... and although they can travel on roads, their purpose is not to travel up and down the road.

[15] The court further referred to *Prinsloo v Santam Insurance Limited*

[1996] 3 All SA 221 [E] at 226 where the court stated the following regarding the utility of forklifts:

"One knows that forklifts are customarily used, for example, to move crates and parcels and pallets loaded with goods about warehouses and to load and discharge cargo at airports, harbours and railways stations. By their very design and speed at which they travel, they are obviously intended to operate within a limited range and to convey goods short distances which, in itself, is a material factor relevant to the objective assessment of whether they are designed for use on a road. Their small wheels, and limited ground clearance which they have, shows that they are Intended to be operated only on smooth surfaces and are not designed to negotiate or clear obstacles commonly found on roadways, both private and public. More importantly, the lack of visibility enjoyed by the driver of such a vehicle, especially when conveying a bulky load on the forks ahead of hi... the slow speed at which the vehicle is driven would make a forklift inherently dangerous to other road users if it was to be driven on a roadway ..."

- [16] The court ultimately held that despite the improvements in design of the Toyota 8 series 8FD25 forklift, it is not satisfied that this forklift is a motor vehicle as defined in the RAF Act. It held that the “improvements appear to be directed at enhancing its safety when fulfilling its primary purpose and not for the purpose of making it suitable to travel on a road. (my emphasis).
- [17] In the present case, as stated above, the Plaintiff relies on the evidence of the insured driver Mr. Gerrie Horn, Mr du Plessis and the manufacturer's operation manual in its submission that the Hangcha forklift has additional features specifically making it suitable for travelling on a road. The features referred to include inter alia the Instrument cluster with hour meter, water temperature gauge, fuel gauge, charge lamp for battery, oil pressure alert lamp; brake pressure lower warning indicator light, warning indicator for engine malfunction, engine malfunction detect switch, left turn and right turn indicators. The controls with features such as key switch, turn lamp, head lamp, side lamp, horn pull, brake pedal, hand steering wheel, engine hood fastener, idle speed control button. It also has accelerator pedal, parking brake and lever, forward and reverse gear with switch, emergency power switch.
- [18] Mr du Plessis's statement is essentially about forklifts generally from his experience as a Safety Officer at a mine. His evidence is not about the specific Hangcha forklift involved in this case. He stated that the general minimum required adaptation for haulage on the roads include that the forklift must be fitted with brakes and operator-controlled steering, over guard protector, seatbelt and warning device or hooter and rear-view mirror. In his evidence Mr Horn also repeated these requirements and also added that the steering wheel of the forklift is like that of a normal sedan vehicle with hydraulic power which makes it easily manoeuvrable. He further stated that its maximum speed is about 25km/h and that the driver's view is not obstructed.
- [19] Although the Plaintiff relies on the evidence of Mr Horn and Mr du Plessis in its assertion that the forklift is designed or adapted for use on a public road, it must however be mentioned that neither Mr Horn nor Mr du Plessis is an expert on forklifts generally or the forklift in question. Although he drove the forklift in question, Mr Horn is employed as a supervisor, and nowhere does he state that he is an expert in the operation of forklifts or is a qualified forklift driver for that matter. Mr du Plessis on the other hand is a Safety Officer at a mine. As a Safety Officer he is responsible for ensuring inter alia that the minimum standards required for the usage of equipment and machinery including forklifts are met. Although he asserts that he is familiar with the standard specifications and requirements for industrial forklift, he however does not allege that he is a forklift expert. These two witnesses are not alleging that they work for the designers or manufacturers of the Hangcha 5t series forklifts. Mr Horn only alleges that he works for Riveo (Pty) Ltd, the owner of the Hangcha ST-5T R Series forklift in

question. In short, they are not expert witness regarding the operations of the machinery and cannot therefore with authority say

that the forklift has been designed or adapted for use on public roads or streets.

[20] I now deal with the Plaintiff's further assertion that the operation manual by the manufacturer explicitly provides that the vehicle may be operated on public roads. In the papers the Plaintiff apparently relies in this regard on paragraph 3 of the Safety Instructions in the manual which is referred to in footnote 15 of the stated case. However, paragraph 3 does not deal at all with operation of the vehicle on a public road or street. It is paragraph 12 of the Operation and Maintenance Manual which makes mention of a public road and reads as follows. "Observe speed and traffic control. When travelling on public roads or streets obey all local traffic regulations." This paragraph does not explicitly state that the forklift may be operated on a public road and this assertion is therefore misplaced and incorrect. (my emphasis).

[21] Furthermore, I want to point out that this assertion does not find support in the other paragraphs from the operation manual. For instance, paragraph 21 of the General Rules is particular about the work road surface the forklift is to be operated on. It specifically requires work road surface for this forklift to be cement, blacktop or beton surfaces. Further to this, paragraph 22 also provides that the forklift must be operated on a flat work surface such as cement road surface, bituminous macadam and beton road surface. Paragraph 22 further requires that the surface over which the forklift will run must be inspected and holes, drop-offs, obstacles

and rough spots must be eliminated. It is clear from these instructions that the forklift has to be operated on particular road

surfaces and not any road surface. Even though Mr Horn admits having driven the forklift on the road on more than one occasion, that does not clear the forklift to be operated on the road. The above instructions from the manual in my view are not consistent with the assertion that the forklift can be operated on just any road or public road or street for that matter.

[22] Furthermore, a warning is sounded under paragraph 5 at page 34 of the manual that that it will be dangerous to apply brakes suddenly as that may cause the forklift to capsize. This means that should this forklift find itself in a situation where it has to make an emergency stop as almost always happens on streets and public roads, it is more than likely to cause an accident and endanger other road users. Given the traffic conditions on the roads, it should be accepted that all vehicles operating on the public roads should be able to execute a "dead break" manoeuvre at any time should that be necessary. Any vehicle which is not designed to make a sudden stop without causing an accident is not safe for use on the road and cannot be said to be designed or adapted for use on public roads.

- [23] Additionally, according to the driver Mr Horn, the maximum speed of this forklift is approximately 25km/h, which is very low compared to a normal vehicle. Concerning the aspect of speed, it was cautioned in *Prinsloo v Santam Insurance Ltd* [1966] 3 All SA 221 [E] at 226 that the slow speed at which forklifts are driven would make them inherently dangerous to other road users if it was to be driven on a roadway. (my emphasis).
- [24] I must pause to indicate that Mr du Plessis also attached to his statement a document dealing with the minimum requirements and standards for forklifts in general. At page 10 thereof it is stated that “forklift must not be used beyond its fit for purpose operating area. Clear and physical delineation or demarcation of permitted areas of operation must be provided and maintained. ...Operations in areas of uneven ground, adverse grades, poor road conditions, and/or exclusion zones and pedestrian walkways must be avoided.” Once again it is clear from these standards that the surface used by forklifts has to meet certain standards.
- [25] Furthermore, there is the common issue of steering which was also considered in the *Mutual* case above. At page 12 of the manual, it is confirmed that “The steering hand-wheel is operated in the conventional manner, that is, when the wheel turn right, the truck will turn to the right; when the wheel is turned left, the truck will turn left. The steer wheels are located at the rear of the truck. These cause the rear of the truck to swing out when a turn is made.” (my emphasis).
- [26] This phenomenon of the rear of the forklift swinging outwards is common in most conventional forklifts. It was also considered in the *Mutual* case where the expert witness stated that such a move could lead to the forklift capsizing. In the *Darvel* matter the witness stated that the instability caused by the rear wheel swinging was remedied by providing the Forklift in that case with an Active Control Rear Stabilizer which stabilizes the vehicle when cornering. Although this rear wheel steering problem is identified in the *Hangcha* forklift, unlike in the *Darvel* case there is no evidence that the problem has been addressed.
- [27] In addition to the above, at page 57 the manual states as follows: “The forklift is designed for material handling and short distance transportation only. It is inappropriate for long distance transportation. The Forklift Truck (5-7t) must be transported by ship, train or lorry of 10t loading. Although it is not specified what short distance is, it can nevertheless be safely concluded that the forklift in this case is not adapted or designed for long distance transportation. It has to be transported itself. Considering the above, the contention that the manual explicitly provides that the vehicle may be operated on a public road is incorrect and has to be rejected.

- [28] I now turn to the alleged design and adaptation of the forklift. Firstly, although the Plaintiff contends that the forklift truck is "designed" and/or adapted for use or propulsion on a road, it is however nowhere stated in the forklift manual itself that it was so designed or adapted. The fact that it has the features referred to by the Plaintiff and the driver Mr Horn does not constitute evidence that it complies with the minimum requirements for adaption for use or haulage on public roads as a minimum.
- [29] However, over and above all the issues dealt with above, the issue to be determined is whether the forklift is designed for use on the road. As stated in Chauke above, an objective common-sense approach must prevail when dealing with meaning should be preferred. In line with the approach suggested in Chauke, the Hangcha Forklift Truck was clearly not designed to transport loads over long distances. It is clear from the General Rules in the Manual that the core purpose of the Hangcha Forklift is to lift and move loads around designated places. Considering the work surface preferred in terms of the manual, this forklift was designed primarily to lift and move heavy loads in and around warehouses or construction sites with relatively smooth surfaces and at slower speeds. There is no sufficient evidence to establish that that it was designed as an all-terrain vehicle.
- [30] While the features heavily relied by the Plaintiff enhances the forklift's safety and functioning, they however do not make it suitable for travel on the roads. Considering the issues highlighted above and in particular the steering mechanics, which is still an issue, I am not satisfied that the Plaintiff has proven that the Hangcha ST 5T Series Forklift truck is designed and/or adapted for use on the roads. I accordingly find that the forklift does not qualify as a motor vehicle for the purposes of section 1 of the RAF Act. The Plaintiff's claim consequently has to fail.

Order

- [31] In the result I make the following order.

The Plaintiff's claim is dismissed with costs on scale A.

MBG LANGA

JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff:

Mr DP Du Preez

For the Defendant:

Mr N Mhlanga

Date heard:

25 October 2024

Date delivered:

19 November 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 19 November 2024 at 15h00.

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