

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:43139/2020

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 28 November 2023 E van der Schvff

In the matter between:

ANGELA SLATER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Van der Schvff J

[1] The plaintiff was injured in an incident that occurred on 8 October 2016, while she was a passenger in a motor vehicle. She was 64 years old at the time. Both merits and quantum are in dispute. Since the plaintiff was a pensioner when the accident occurred, the only relevant heads of damages are past and future medical

expenses. The injury sustained does not qualify to be categorized as a serious injury.

- [2] The plaintiff testified that she was a passenger in a courtesy vehicle, a bus, being conveyed between venues at the Sun City resort. The plaintiff testified that she was seated in the shuttle bus next to the door on a seat reserved for the frail and elderly. She held onto what she believed was a safety rail. It transpired, however, that the safety rail was removed and that she held onto a pole attached to the shuttle's doors. When the shuttle reached a drop-off point and came to a stop for some passengers to alight, the driver opened the door, and this resulted in her arm being wrenched backward and her hand being crushed in the door.
- [3] It was put to the plaintiff in cross-examination that she chose to hold on to the pole. She reiterated that she was under the impression that it was a safety feature to assist the elderly and frail in keeping their seating while being transported in the shuttle. She explained again that she only became aware of the missing safety rail when she and her husband looked at the other doors after the accident occurred, saw the safety rails there, and noted the empty bracket at the door where she was injured. They realised that a safety rail had to be attached to the bracket.
- [4] The plaintiff's evidence was corroborated by her husband, who was not cross-examined.
- [5] The relevant part of s 17(1)(a) of the Road Accident Act 56 of 1996 provides that the Fund shall be obliged to compensate any person for any loss or damage that the third party has suffered as a result of any bodily injury caused by or arising from the driving of a motor vehicle by any person at any place within the Republic if the injury is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle.

- [6] The injury *in casu* arises from the driving of a motor vehicle, in that the plaintiff had to stabilize herself by holding on to what she deemed to be a safety rail to secure her seating while the shuttle was driven from point A to point B. The wording 'cause by or arising from' denotes the common law requirement that there must be a sufficiently proven causal link between the conduct (the driving of the vehicle) and the consequence of such conduct (the injury). It has been established that the notions 'caused by' and 'arising from' are not synonyms.¹
- [7] The term 'caused by' refers to the factual link between the driving of a motor vehicle and the resulting damages. A sufficient link will exist if the conduct is the immediate and direct consequence of the injury.²
- [8] The term 'arising from' refers to those instances where the driving is the indirect cause of the injury. Injury will 'arise from' the driving of a motor vehicle where, according to the standard of common sense, the injury is sufficiently connected or related to the driving. Although the injuries in this matter arose because a door was opened to allow passengers to alight, the facts of this case distinguish it from the facts in *Wells*. Other than in *Wells*, the ignition of the bus was not switched off, and the driver did not exit the bus, causing the accident while exiting the vehicle. In *casu*, the bodily injury is causally linked to the driving of the vehicle because, amongst others, the undisputed evidence of the plaintiff was that she was obliged to hold on to what she deemed the safety rail to secure her seating while the shuttle was in motion, and the driver was merely allowing passengers to alight before continuing on his route. For purposes of this set of facts, it is necessary to note that the term 'convey' is defined in the Act to include alighting from the vehicle.
- [9] The subsequent enquiry relates to whether the injuries that arose from the driving of a motor vehicle were due to the negligence or other unlawful act of the driver or the owner. The second leg of the liability inquiry is often lost sight of because, in

¹ *Wells and Another v Shield Insurance Co Ltd and Others* [1965] 3 All SA 132 (C) at 135.

² *Petersen v Santam Insurance Co Ltd* 1961 (1) SA 205 (C).

most cases, the injury is caused by the negligent driving of the insured motor vehicle.³

[10] *In casu* the injuries arose from the driving of a motor vehicle, and although the injuries were not sustained due to the negligent driving, it is still due to the negligence of the driver and/ or 'another' wrongful act of either the driver or the owner. It was not disputed that the plaintiff, an elderly lady, sat on the seating reserved for the elderly and frail. It was also not disputed that the safety railing was missing, a fact proven by the photographs admitted into evidence. The reasonable driver would have foreseen the possibility that an elderly or frail passenger occupying the designated seat for elderly and frail passengers would have to hold on to a safety railing, and would mistake the pole attached to the door for a safety railing and would not have allowed a frail and elderly person to occupy a seat where the safety rail was missing. The driver and owner of the vehicle had the duty to ensure that elderly and frail passengers were transported safely, and therefore, they had the duty to ensure that the safety railings were properly installed where seating was specifically reserved for the elderly and frail. Their omission in this regard created a potentially dangerous situation and is wrongful and in itself negligent. In not warning the plaintiff of the danger of holding on to the pole, the driver failed to take reasonable steps to guard against a potentially dangerous situation.

[11] This view is substantiated if regard is had to *Road Accident Fund v Abrahams*.⁴ The Fund was held liable where the plaintiff was injured in a single-vehicle collision in a burst-tyre accident based on the owner's alleged negligent maintenance of the vehicle.

³ *Kemp v Santam Insurance Co Ltd and Another* 1975 (2) SA 329 (C) at 331A-C.

⁴ 2018 (5) SA 169 (SCA).

[12] I am thus satisfied that the jurisdictional requirements for a claim against the Road Accident Fund are met and that the Fund is 100% liable for any of the plaintiff's proven or agreed damages.

[13] As for the past medical expenses, the orthopaedic surgeon confirmed the extent of the plaintiff's injuries and set out the treatment she received. The schedule of expenses correlates with the evidence, and the plaintiff proved on a balance of probabilities that the past medical expenses amount to R 149 478.66.

ORDER

In the result, the following order is granted:

The order marked 'X', dated and signed by me is made an order of court.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiff:	Adv. A.R. Van Staden
Instructed by:	MacRobert Incorporated
For the defendant:	Mr. M. Sekgotha
Instructed by:	State Attorney, Pretoria
Date of the hearing:	31 October 2023
Date of judgment:	28 November 2023