Case no: 33595

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

DAVID DODD :Appellant

AND

THE MULTILATERAL MOTOR VEHICLE

ACCIDENTS FUND :Respondent

Coram: EM Grosskopf, Eksteen, Olivier, Schutz et Zulman JJA

Date of Hearing: 7 November 1996

Date of Judgment: 21 November 1996

JUDGMENT

ZULMAN. JA:

The first, second, third and fourth plaintiffs in the court a quo, (the plaintiffs), claimed compensation in terms of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 ("the Act") in respect of the death of the late Arnold Siegers. Siegers was killed in a collision which occurred during the evening of 5 June 1991. The collision occurred between a vehicle driven by Jacob Matheba and a vehicle driven by the appellant. At the time of the collision Siegers was a passenger in the vehicle driven by the appellant. The plaintiffs are the dependants of Siegers. Both vehicles involved in the collision were insured in terms of the Act. President Insurance Company Limited (President) was at the time of the institution of the action the agent duly appointed, by virtue of the provisions of the Act, to handle on behalf of the Multilateral Motor Vehicle Accidents Fund (the MMF) all claims arising from the

said collision. President was, therefore, sued as first defendant. In the course of the proceedings President was placed in liquidation and its place was taken by the MMF as third defendant.

Not content with its claim against the MMF only by virtue of the provisions of the Act, the plaintiffs, who had originally brought four separate actions which were thereafter consolidated, cited the appellant as second defendant. They claimed the damages allegedly suffered by them from the appellant and the MMF jointly and severally.

It is common cause that the first R25 000 of the claims of each of the plaintiffs could, by virtue of the provisions of article 46 of the agreement incorporated into the schedule to the Act (the schedule), not be claimed from the appellant. The appellant denied liability for any damage that any of the plaintiffs' may have suffered and pleaded that President (and later the MMF) was exclusively liable for the damages

caused. A consolidated action preceded before Preiss J on the question

of liability only. Preiss J found negligence on the part of both the appellant and Matheba (one third and two thirds respectively) and held the appellant and the MMF liable to the plaintiffs jointly and severally. The question of the quantum of the claim then came before Spoelstra J. The appellant, who had previously contended, and notwithstanding the finding that the appellant was negligent, again contended that the plaintiffs could not recover any damages from the appellant in that the MMF was exclusively liable for any such damages. The argument was rejected by Spoelstra J. Judgment was granted against the MMF and the appellant jointly and severally. The appellant, with the leave of Preiss J, appeals to this Court. The plaintiffs are not participating in this appeal and abide the decision of this Court. Neither the judgments of Preiss J nor that of Spoelstra J is of assistance in resolving the matter before this

court since in the judgment of Preiss J only the question of liability was dealt with and no consideration was given to the present issue now before this court. Spoelstra J adopted the attitude that he was bound by the judgment of Preiss J in regard to the question of liability on the part of the appellant and expressed no views on that issue now before this court.

The essential matter in dispute in this appeal which concerns only the appellant and the MMF is whether the provisions of article 52 of the schedule deprive the plaintiffs of their common law right to hold the appellant liable, as a joint wrongdoer, for their damages in excess of R25 000.

Article 52 reads as follows:-

> "When a third party is entitled under Chapter XII to claim from the MMF of its appointed agent any compensation in respect of any loss or damage resulting from any bodily injury to or death of any person caused by or arising out of the driving of a motor vehicle by the owner thereof or by any other person with the consent of the owner, that third

> paryt shall not be entitle to claim compensation in respect of that loss or damage from the owner or from the person who so drove the vehicle, or if that person drove the vehicle as a servant in the executionof his duty from his employer,
> unless the MMF or its appointed agent is unable to pay the compensation." (emphasis supplied)

It will be observed at the outset that the provision is cast in the singular. Accordingly the article refers to "a third party", "any person", "a motor vehicle", "the owner", "any other person", "the person", "the vehicle", "his duty", and "his employer". This fact assumes importance when considering the thrust of the appellant's argument viz that by making use of the provisions of section 6(b) of the Interpretation Act 33 of 1957, the reference to "any other person" could be read, in a case such as the present, to mean a reference to any other persons and that the driving of "a motor vehicle" could be read to mean the driving of motor vehicles. The result of this construction would be that because there was a second vehicle involved in the collision (that driven by Matheba) and in respect of which vehicle the MMF was fully liable to compensate third

parties (the plaintiffs), the appellant, as the driver of the first vehicle was excused from any common law liability to the plaintiffs. Article 52 thus interpreted would mean that the limitation of R25 000 imposed by article 46 upon the dependants of a passenger making a claim against the MMF would fall away because they would have a claim for the full amount of their damages against the MMF as insurer of the second vehicle. Furthermore, the apportionment of liability made in this matter would be irrelevant. In other words the MMF would be liable in full for the plaintiffs' claims as insurer of the second vehicle and which would be liable even if the driver was only one percent negligent.

The crux of the problem, however, is that had the appellant been the only driver, the MMF would only have been liable for a maximum of R25 000 per passenger. The appellant would have been liable to the passengers for the balance of their claims. What happens if there are two

vehicles involved? Does the common law liability of the appellant simply disappear? This question may only be of academic interest to the plaintiffs, but is of vital importance as far as the right of contribution, inter se between the appellant and the MMF is concerned.

It is to be stressed, as previously pointed out, that this appeal concerns only the rights of the MMF and the appellant who seek to determine their liability inter se.

In my view the construction contended for by the appellant is not consistent with the plain and clear intention of the legislature. This intention was to limit the claim of a passenger or a dependant of a passenger against the MMF to R25 000 and to leave it to such person or persons to claim the balance of their claims from the wrongdoer. Although section 6(b) of the Interpretation Act provides that words in the singular number include the plural this will only be so "unless the

contrary intention appears" (cf S v Colgate-Palmolive Limited and another 1968 (4) SA 429(A) at 435G-H). Whilst it would be permissible to read the phrase "a third party" in the section as referring to more than one third party in an appropriate case, I do not believe that one can read the phrases "a motor vehicle" and "any other person" as including a reference to motor vehicles and other persons. Such a contrary intention does appear from the wording of article 52 and its clear purpose.

The predecessors to article 52 were section 13 of the Motor Vehicles Insurance Act 29 of 1942, section 27 of the Compulsory Motor Vehicle Insurance Act 56 of 1972 and section 12 of the Motor Vehicle Accident Act 84 of 1986. The wording of the aforementioned provisions is the same in all material respects. Accordingly decisions dealing with the earlier provisions are of relevance in the interpretation of article 52, there being no reported decision dealing directly with article 52.

The first such decision is that given in Rose's Car Hire (Pty.) Ltd v Grant 1948 (2) SA 466(A) which deals with the provisions of Section 13 of Act 29 of 1942. The court there held that Section 13 of the Act meant that in so far as an injured persons or dependants, were able to recover compensation from an insurer, have no right to claim compensation from the owner or the authorised driver. The court held that the section, properly interpreted, did not deprive the claimant of the right to recover from the owner or the authorised driver damages in excess of the amount for which the insurer was made liable under the Act. In this latter regard the following remarks of Centlivres JA at page 474 are directly apposite.

> "Counsel for the appellant also argued that if the Legislature had intended that there should be a residual right to claim a balance of damages from the owner the section would have said so and could have said so in simple terms. The fallacy underlying this argument is that it ignores the principle referred to above; the Court must be satisfied that Parliament has in express terms or by clear implication altered the common law and taken away existing rights."

Schreiner JA put the matter in these terms in his concurring

judgment at page 475:

> "The same claim is not to be made against the owner as has been made against the registered company; a further claim in respect of the same injury is not prohibited"

Rose's Car Hire case was followed by this court in Da Silva and Another v Coutinho 1971 (3)

SA 123(A) at 139C - H, where Jansen JA said the following:-

> "It is suggested that, in effect, regardless of the purported cause of action, this is the very thing the appellants are trying to do - claim compensation 'in respect of fW loss or damage'. This contention, however, is founded on an assumption that the Legislature used the words 'in respect of in a widely extended sense which the context does not justify. From the judgments in Rose's Car Hire (Pty) Ltd v. Grant, 1948 (2) SA 466 (AD), it is clear what the person in question is not entitled to claim from the owner of the vehicle, is 'that compensation' which he is entitled under sec. 11 to claim from the registered company. Reference to sec. 11 (l)(i) indicates that the latter is, indeed, the compensation the third party would have been entitled to claim in delict from the owner or driver. Secs. 11 and 13 are complementary and purport to do no more than to substitute for the common law action for damages, based upon the negligence or other unlawful act of the owner or driver causing injury or death, an action against the insurer, which involves relieving the owner or driver, vis-a-vis the third party, of his original liability. Sec. 13 does not go

> beyond this and to equate damages for breach of a statutory duty to 'that compensation' would therefore be to ignore all distinction between differing causes of action - a disregard of legal principle which the wording of secs. 11 and 13, as also the purpose of the Legislature, does not justify. That the quantum could, in circumstances such as those in the present case, be the same as that which could have been claimed from the registered company, and that it would be determined with reference, inter alia, to 'the loss or damage .... suffered as a result of ... bodily injury ... caused by or arising out of the driving of the insured motor vehicle' does not alter the position. The liability itself is founded on totally different grounds. In my view sec. 13 is no bar to the appellants' claims."

As far as I am aware the correctness of the principles enunciated in the Rose's Car Hire case have not been challenged. Indeed counsel for the appellant did not seek to do so but argued that the position of a second driver was not covered by the ratio of the case.

It was also suggested in argument by counsel for the appellant that Da Silva's case was distinguishable from the present case upon its own facts since in that case it was held that the claim which a person, much in the position of the plaintiffs in this case, had against other parties had become prescribed. I do not agree that this distinction affects the

principle laid down in Rose's Car Hire case. The fundamental finding of the court is fully consistent with the principle enunciated in Rose's Car Hire case. The clear intention of the legislature in enacting article 46, with which article 52 must be read, was to limit the liability of the MMF to R25 000 for claim of each passenger or dependant. If this were not so then the claims of passengers against the MMF in certain situations, for example passengers in a crowded bus, could well be enormous. It is impermissible to so frustrate that intention because another vehicle is involved.

To summarise I am of the view that the introduction of a second vehicle which happened to be insured, as it were, by the MMF, does not alter the position. The common law claim which the plaintiffs or "third parties" bring against the appellant is, as between the appellant and the MMF in this case, one which is regulated by the provisions of article 52

read with articles 40 and 46. The claims are not excluded in total but are merely reduced by the sum of R25 000.

Counsel were agreed that the judgment of the court a quo, although perhaps not as accurately expressed as it might have been in regard to the question of the R2S 000 reduction, was nevertheless consistent with what was contended for by the MMF and inconsistent with the contention of the appellant.

In all of the circumstances the appeal is dismissed with costs, such costs to include the costs attendant upon the employment of two counsel by the respondent.

RH ZULMAN JA

EM GROSSKOPF JA }
EKSTEEN JA } CONCUR OLIVIER
JA } SCHUTZ JA }