IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE:

(2) OF INTEREST TO OTHERS JUDGES:

(3) REVISED

10/11/16 _____

DATE SIGNATURE

11/11/16.

Case no: 29056/2013

SHACKSON CHIROMBI Plaintiff

and

ROAD ACCIDENT FUND Defendant

Heard: 28 July 2016

Delivered: 10 November 2016

Judgment

Molahlehi J

Introduction

[1] On 23 April 2012, whilst cycling next to the R55 road in Sunderland, the plaintiff, Mr. Chirumbi was hit on his hand by a brick that fell from the truck that was driven by the insured driver. The matter served before this court for the determination of liability. The matter was not ripe for the determination of quantum.

[2] The plaintiff lodged a claim with the respondent, Road Accident Fund (RAF). The RAF rejected the claim and subsequent thereto the plaintiff instituted the present proceedings in this court, claiming damages for the harm he alleges to have suffered as a result; namely a fractured arm.

[3] The case of the RAF is that the insured truck driver was not responsible for the falling of the brick from his truck. It was suggested in this regard that the person responsible for that was the one who loaded the rubble on the truck. It was further contended that the claim should have been instituted against the owner of the truck and not the RAF.

[4] In support of the above contention, counsel for the RAF relied on the decision in Grove v RAF[1] which, as will appear later in this judgment, does not support his case.

Evaluation/ analysis

[5] The essence of the defense of the RAF, as I understand it, relates to the question of whether or not the accident that resulted in the injury of the plaintiff arose from the driving of a motor vehicle as envisaged in section 17 of the Road Accident Fund Act (the Act).[2] Section 17 of the Act reads as follow:

"(1) The Fund or an agent shall-

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established."

[6] The onus is in the plaintiff to show that the collision occurred as a result of the driving of the truck by the insured driver. In other words the plaintiff has to show that there is a causal connection between the driving of the truck by the insured driver, the falling of the brick, and the harm that he suffered. Put in another way the plaintiff has to show that his right to claim compensation arises for the harm he suffered a result either the negligent

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[1] (74/10) 2011 ZASCA 55 (31 March 2011)

[2] Act 19 of 2005.

or wrongful conduct of the driver of the truck. The collision, on the facts of this case is according to the plaintiff, the falling of the brick from the ruble cargo which was on the truck driven by the insured driver.

[7] In dealing with the concept, "arising from the driving of a motor vehicle," the Supreme Court of Appeal (SCA) in Grove v Road Accident Fund, (supra) held that in order to succeed in a claim for damages, the plaintiff must establish both the factual causation and legal causation and that in deciding such issues a court must be guided by the consideration of the object and scope of the Act, including common sense. The SCA, further held that:

> "In most cases there is no problem in determining in one way or another whether or not the conduct of the wrongdoer has caused harm to the plaintiff. This the courts usually achieve this by simply, adopting what is usually termed the 'but-for' test or the *sine qua non* approach which entails an enquiry whether the harm would have occurred but for the wrongdoer's conduct. If it would not have occurred, then the wrongdoer's conduct is not a *sine qua non* of the harm."
>
> The problem with the 'but-for' test is that it does not always provide the right answers to causal problems. One of its major flaws is that if it is used, almost

anything is a cause. It fails to take into account that some consequences of a person's conduct will inevitably be too remote to create liability."

[8] In illustrating the relationship between negligence and the concept, "arising from the driving of a motor vehicle" the SCA in Grove referred to Grobler v Santam Verscecking Bpk,[3] where the first driver failed to remove the horse which he had collided with. He after the accident left the dead horse lying in the road. He was found to have been negligent and to be the cause of the subsequent accident where the second driver collided with the dead horse.

[9] In my view the insured driver drove the truck in a negligent manner in that he failed to ensure that the rubble on his truck was properly secured. The duty of the truck drive in addition to the common sense approach to the issue, arises from the provisions of Regulation 246(b)(11) of the National Road Traffic Act which provides:[4]

"No person shall operate on a public road a motor vehicle carrying any goods which are not (i) safely contained within the body of such vehicle,(ii) securely fastened to such vehicle , and which are not properly protected from being dislodged or spilled from such vehicle."

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[3] (74/10) [2011] ZASC 55 (31 March 2011)
[4] Act number 93 of 1996.

[10] It is, thus evidently, clear from the above that the argument that the truck driver was not responsible for the loading of the rubble bears no merit. A reasonable person in the position of the insured driver would have foreseen that if the ruble was not properly secured in the body of the truck any of the objects in the rubble could fall and cause injury to innocent people, such as the plaintiff. This means that, but-for the negligence and wrongful driving of the truck by the insured truck driver, the plaintiff would not have suffered the harm. It follows that the *sine quanon* of the harm suffered by the plaintiff is the wrongful and negligent conduct of the insured truck driver.

[11] I am thus satisfied, based on the above facts, that the plaintiff has discharge his onus of showing that there is causal connection between the harm he suffered and the negligent driving of the insured truck driver.

Order

In the result I find in favour of the plaintiff and accordingly make the following order:

1. The Road Accident Fund is liable for the injuries and damages suffered by plaintiff.

2. The Road accident fund is to pay the costs of plaintiff on attorney and client scale.

3. The matter is postponed *sine die* for the determination of quantum.

Molahlehi AJ
Acting Judge of the South Gauteng
High Court

APPEARANCES

PLAINTIFF: TRYON I. PATHER INC

DEFENDANT: MATABANE INC