

IN THE HIGH COURT OF SWAZILAND

Selby John Gama N.O.

Estate Late Sibusiso Fakudze

V

Motor Vehicle Accident Fund

Case No 211/96

For

Plaintiff Mr. Maziya

For Defendant

Mr. H H Currie

Judgment

(28/05/99)

A point of law, as to the interpretation of section 11 (1) (a) of The Motor Vehicle Accidents Act, 1991 has arisen for decision in the present action. The parties have agreed that the matter be decided as a separate issue without leading evidence. It is clearly appropriate to do so. The parties have filed a notice of the "Special Case and adjudication on points of Law" in which they agree that there is a dispute between the parties as to whether

"damages due to the Estate of the Late Sibusiso Fakudze, in terms of section 1 l(l)(a) of the Motor Vehicle Accidents Act 1991, is limited to E25000 in toto or to E75 000"

The section reads 1 Act No 13 of 1991

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"Liability limited in certain cases.

11 (1) The liability of the MVA Fund to compensate a third party in connection with any one occurrence for any loss or damage under section 10 resulting in any bodily injury to or the death of the third party who, at the time of the occurrence which caused that injury or death was being conveyed in or on the motor vehicle concerned, shall be limited.

(a) to the sum of E25,000 in respect of the bodily injury or death of any one such person or to the sum of E250,000 in all in respect any bodily injury to, or the death of, any number of such persons, (but in either case exclusive of the cost of recovering such compensation) who at the time of the occurrence which caused that injury or death was being conveyed in the motor vehicle in question-

Although the Defendant has not raised the point, the claim in respect of the loss suffered by the deceased's three minor children is personal to them and they or their guardians should be the plaintiffs. The present plaintiff does not appear to have locus standi, and the estate of the deceased has no right to make the claim on behalf of the minors. As no issue has been made of this, I will proceed to consider and determine the question of law and leave it to the parties to deal with the claim on the basis of my decision.

The liability of the Fund is created by section ten of the Act as follows

"Liability of MVA Fund

10. (1) The MVA Fund, shall, subject to the provisions of this Act and to such conditions as may be prescribed, be utilized for the purposes of compensating any injured person or, in the event of death, any dependant of the deceased or, where reasonable funeral expenses only is payable, the relatives

of the deceased (in this Act called "the Third Party") for any loss or damage which the third party has suffered as a result of:

- (a) any bodily injury to himself;
- (b) the death of or any bodily injury to any person;

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which is caused by....."

A "third party" therefor may be the individual who is injured in the occurrence. Each dependant of an individual in the case of the death of the individual, as a result of the occurrence is also a "third party". So too in special circumstances, may the relatives of the deceased be "the third party" This last definition raises difficulties, which do not presently have to be considered,'

An individual who is killed in an occurrence can obviously not be a third party. The wording "for any loss or damage under section 10 resulting in any bodily injury to or the death of the third party " in section 11 causes difficulty. A person who dies in the occurrence cannot be a third party.

Both sides argued that the intention of the section is quite clear. The plain meaning of the words the defendant contended is to impose a limitation of compensation of E25 000 in respect of each person killed in the occurrence. The plaintiff on the contrary argued that the limitation is the maximum payable to each third party.

Both sides while maintaining that the meaning of the section was clear advanced policy considerations favouring their respective interpretation. These arguments cannot be entertained as the section falls to be interpreted in accordance with the meaning of the language used.

Mr. Maziya who appeared for the plaintiffs referred to the judgment of Hefer J A in *Constantia Insurance Company Ltd v Hearne 2*, which he argued supported the interpretation, contended for by the plaintiffs. Mr. Currie for the Defendant pointed out that the decision cannot be used to interpret the local act which differs considerably in wording and content from the corresponding legislation in South Africa A comparison of Section 22(2)(a) of the South African act with the section of the local act with which we are now concerned does reveal differences of wording. Whether these differences are such as to lead to a different interpretation of the effect of the sections is not so clear.

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The headnote reads

"In construing s 22 (1) (aa) of the Compulsory Motor Vehicle Insurance Act 56 of 1972, the only specific meaning which the words "The liability of an authorised insurer... to compensate a third party... shall be limited... to the sum of R12 000... in respect of any bodily injury to or the death of any one such person" is the literal one. What is limited is the insurer's liability to compensate "a third party". And so construed the liability is individual and not collective. Accordingly an insurer is liable to each third party in respect of injury to or death of each passenger for the maximum amount of R12 000."

The same considerations as motivated the Appellate Division, are apposite in this case. What is limited in both statutes, notwithstanding any differences of wording, is the liability to compensate the third party. In respect of each person killed in an occurrence there may be one or more third parties. Each is entitled to the maximum.

The argument advanced by Mr. Currie that the reference to a maximum liability of E250 000 in all in respect of any bodily injury to, or the death of, any number of such persons, favoured the interpretation contended for by the Defendant was dealt with in Hearn's case. The following is an extract from the judgment

"Since several passengers in the insured vehicle may be injured or killed in the same incident, thus rendering the insurer liable in respect of the injury or death of each of them, the section provides that the limitation shall operate accordingly. This is not merely stating the obvious, for cases may occur

where the same third party is affected by the injury or death of several passengers. In a single incident a woman may eg be injured, and her husband on whom she was dependent, killed and both parents from whom a minor had received maintenance, may be killed in the same incident. Had the insurer's liability not been limited in respect of the injury or death of each passenger, the third party would not have been entitled to recover more than R12 000 from the insurer. By giving effect to the words of ss (1) (aa ) as a whole the position, as I see it, is accordingly that an insurer is liable to each third party in respect of injury to or the death of each passenger for a maximum amount of R12 000"

As in Hearn's case what is limited is the Fund's liability to a third party. There may be more than one third party in respect of each death. The same individual may be a third party in relation to more than one person killed in

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the occurrence. I see no reason not to follow the persuasion of the Appellate Division case. I accordingly find for the Plaintiff on the point of law with costs

S W Sapire CJ