IN THE HIGH COURT OF SOUTH AFRICA

NORTH GAUTENG, PRETORIA

Not reportable

Not of interest to other judges

Revised.

8/7/2016

CASE NO: 41110/2013

In the matter between:

G C BE — Plaintiff

And

ROAD ACCIDENT FUND — Defendant

JUDGMENT

MOLOPA-SETHOSA J

[1] The Plaintiff, G C B ("the plaintiff ') has instituted an action against the Road Accident Fund ("the defendant") for damages arising out of a motor vehicle collision which occurred on or about 30 October 2011 at Menlyn Motor City, Garsfontein Road, Pretoria, between a silver Jeep Cherokee motor vehicle ("the insured vehicle") there and then driven by one Daniel Johannes Andries Br ("Br-the insured driver"), and the plaintiff, who was a pedestrian at the time of the collision.

[2] The plaintiff's claim is based on Section 17 (1) of the Road Accident Fund Act, Act 56 of 1996 ("the Act")

[3] The plaintiff has pleaded that the defendant was at all material times, and more specifically on the 30the October 2011, in terms of section 17(1) of the Act, obliged to compensate plaintiff

for any loss or damage suffered by himself as a result of any bodily injury or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if such injury or death is due to the negligence or the wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as an employee.

[4] The defendant admits that an 'incident' occurred on 31 October 2011 at Menlyn Motor City between a motor vehicle driven at the time by Br-the insured driver and the plaintiff, but denies liability and specifically denies that the actions of Br-the insured driver, constituted an act of driving.

[5] At the commencement of the trial, the parties by agreement made an application for the separation of merits and quantum in terms of Rule 33(4) of the Uniform Rules of the Superior Court, which order was granted. The parties agreed that this matter will proceed by way of a stated case in respect of the merits portion of this matter only.

[6] The stated case is set out as follows:

"1.

The *locus standi* of the Plaintiff is admitted.

2.

The Plaintiff has complied with the procedural requirements, as required in terms of the Road Accident Fund Act, 56 of 1996, and the regulations thereto, to lodge and prosecute his claim.

3.

The portion of the version of the insured driver as quoted herein below is common cause between the parties, and is admitted to be the facts giving rise to the present action:

"I, Daniel Johannes Andries Br, hereby state as follows:

On 31October 20I I -date given to me by investigator-I took my Jeep to the Menlyn Jeep Garage. It was around 07:00 in the morning. The Claimant [Plaintiff] was the only person in the workshop at the time. I explained the problem I had with my vehicle and the Claimant [Plaintiff] said I should drive my vehicle into the workshop, which I did. After stopping, I got out to open the bonnet of my vehicle. I got back into the vehicle. The Jeep has a safety mechanism built into the vehicle, whereby the driver has to step on the clutch pedal.

At the time I started the vehicle, the Claimant [Plaintiff] was right in front of the vehicle. Whenever I park my vehicle, I have the habit to engage the hand brake and put the vehicle intofirst gear. This was also the case on that particular morning. After starting the vehicle I released the clutch. As the vehicle was in first gear, it moved forward and bumped into the Claimant [Plaintiff].

I realized what had happened, switched off the engine and jumped out to assist the Claimant [Plaintiff], who fell in front of the vehicle. He was fully conscious the entire time and I helped him up and move to a chair. He complained of pain in his leg ... "

4

The actions of Daniel Johannes Andries Br are negligent.

5

The parties agree that the issue to be decided by this Honourable Court is whether the actions of Daniel Johannes Andries Br constitute "driving" as envisaged in Road Accident Fund Act 56 of 1996, and concomitantly, whether the injuries sustained by the Plaintiff are "caused or arising from the driving of a motor vehicle"

[7] The following are common cause facts between the parties:

[7.1] The *locus standi* of the plaintiff, and that he/plaintiff has complied with all the procedural requirements for the lodgement of the claim.

[7.2] The date, time and place of the accident; [though in the particulars of claim the plaintiff had alleged that the accident occurred on 30 October 2011, it seems to be accepted by both parties that the actual date of the accident is 31 October 2011].

[7.3] The facts as narrated by the insured driver, as outlined more fully in the stated case; i.e. the portion of the version of the insured driver as quoted in paragraph 3 of the stated case set out in para [6] here above, is common cause between the parties, and is admitted to be the facts giving rise to the present action.

[7.4] The collision between Br'-the insured driver's vehicle and the plaintiff, i.e. that the insured driver's Jeep/vehicle *"moved forward and bumped into the plaintiff '*.

[7.5] That the plaintiff got injured on the day and time at the place in question herein.

[7.6] That Br-the insured driver was 100% negligent.

[8] The plaintiff and defendant agreed that the only issue to be determined by this Court is whether the actions of Br-the insured driver, constitute 'driving' as envisaged in the Act, and concomitantly, whether the injuries sustained by the plaintiff were *"caused by or arising from the driving of a motor vehicle";* i.e. the question for determination before the court is whether the insured driver's actions constituted 'driving', which resulted in the injuries sustained by the plaintiff.

[9] In order to determine whether the injuries sustained were caused or arise from the driving of a motor vehicle, one has to look at the concept of driving.

[10] For purposes of the Act, and from authorities referred to by the parties, the concept of driving has two meanings, namely

[10.1] driving in the ordinary sense as contemplated in section 17(1) of the Act;

[10.2] driving in an extended sense as contemplated in section 20 (1), (2) and (3) of the Act.

[11] Section 17 (1) of the Act provides as follows:

> *"17 Liability of Fund and agents*
>
> *(1) The Fund or agent shall-*
> …
> *be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself ... caused by or arising from the driving of a motor vehicle ..., if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicIe ...* "

[12] From the reading of sl 7 (a) *supra* it is clear that the driving of the motor vehicle is the kernel/core of success in claiming compensation under section 17 (1) (a), where the identity of the driver thereof has been established. Refer *Wells and Another v Shield Insurance Co Ltd* 1965 (2) SA 865 (C); *Makhubele v RAF* (3718/2009) [2010] ZAGPPH C 630 (5 May 2010). Therefore, in order for the defendant to incur liability for loss or damage suffered as a result of bodily injuries, such loss or damage arising from injuries must have been *caused by or arising from the driving of a motor vehicle"* (my underlining).

[13] The identity of the driver herein [Br], as well as his negligence is not an issue here.

[14] The courts have also interpreted the forerunners of section 20 of the Act in the previous legislation, to give the term driving an extended meaning. Refer *Wells and Another* v *Shield Insurance Co Ltd* 1965 (2) SA 865 (C); *Flynn* v *Unie Nasionaal Suid Bre Versekiringsmaatskapy Bpk* 1974 (4) SA 283 (NC) and *Petersen* v *Santam Insurance Co Ltd* 1961 (1) SA 205 (C).

[15] Section 20 of the Act provides as follows:

> *"20 Presumptions regarding driving of motor vehicle*
>
> *(1) For the purposes of this Act a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.*

(2) For the purposes of the Act a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle while it moves from that place as a result of gravity, or while it is stationery at that place to which it moved from the first-mentioned place as a result of gravity.

(3) Whenever any motor vehicle has been placed or left at any place, it shall, for the purpose of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such place by the owner of such vehicle."

[16] The plaintiff contends that Br-the insured driver started the insured vehicle and released the clutch of the insured vehicle, while the insured vehicle was in gear and the hand brake was on, as a result of which the insured vehicle moved forward and collided with *['bumped into']* the plaintiff, causing him injuries.

[17] The plaintiff s counsel thus submitted that, with Br-the insured driver sitting inside the insured vehicle, having the key in the ignition, and the act of turning the ignition/starting the insured vehicle, then releasing the clutch of the insured vehicle whilst the insured vehicle was in first gear and the hand brake was on, which resulted in the insured vehicle moving from point A to B, that that in itself constitutes driving as envisaged in the Act.

[18] Counsel for the plaintiff further submitted that the deeming provisions of s20 (1) and (2) of the Act can also be applicable in this matter, taking into account that any mechanical power of propulsion includes the mechanical propulsion provided by the vehicle's own engine. That if the vehicle was being propelled by any mechanical power, which mechanical propulsion is provided by the vehicle's own engine, it is deemed to be driven. That therefore there can be no doubt that the insured vehicle was so propelled. Refer *Flynn v Unie Nasionaal Suid Bre Versekiringsmaatskapy Bpk supra*.

[19] That the insured driver was driving the vehicle, as contemplated in the Act (both in the ordinary sense of the word, or in the extended sense of the term 'driving', and that accordingly, the plaintiff s injuries were caused by or arose from negligent driving. That the defendant is therefore, liable for one hundred per cent of the plaintiff s agreed or proven damages, and costs.

[20] On the other hand the defendant denies that the actions of the insured driver constituted an act of driving and contends that the actions of Br-the insured driver do not constitute an act of driving as envisaged in the Act, and that therefore the defendant is not liable to compensate plaintiff, for the following reasons:

> [20.1] That the ordinary meaning of driving should be attributed to the word "driving" in section 17 (1) of the Act.
>
> [20.2] That if one considers the ordinary meaning of the word "driving" Br-the insured driver, did not drive the motor vehicle merely by starting same.
>
> [20.3] That one of the prerequisites for driving is that the driver must have the necessary intention to drive the motor vehicle, i.e. that coupled with starting of the motor vehicle Br-the insured driver, should have had the intent to drive the vehicle. That from the stated case it cannot be said that Br-the insured driver, had the intent to drive the vehicle.

[21] Counsel for the defendant submitted that in starting the vehicle, with the insured vehicle being in first gear, the hand brake on, and releasing the clutch, that Br-the insured driver, could not have intended to 'drive' the vehicle from point A to B for purposes of Section 17(1) of the Act; that Br-the insured driver did not urge or direct the vehicle forward; that therefore Br was not driving the motor vehicle and that his actions do not constitute conduct in terms of which defendant can be held liable.

[22] Counsel for the defendant further submitted that when considering the deeming provisions in section 20(1) of the Act it cannot be said that the insured vehicle started and moved by some other mechanical power, but that the insured vehicle started as a result of its own mechanical power. That, in the circumstances, the deeming provisions are also not applicable and it cannot be said that Br was driving in terms of section 20 (1) of the Act.

[23] There is no definition in the Act of what 'driving' is; i.e. the term "driving" as used within the ambit of the Act, is not defined in section 1 thereof, and accordingly one must have regard to the interpretation thereof, as enunciated by the courts.

[24] The Courts have in some instances found that the word "driving" has, in respect of the Act,

both an ordinary meaning and an extended meaning. See *Wells and Another v Shield Insurance Co Ltd supra.*

[25] In *Wells and Another v Shield Insurance Co Ltd* supra, the court found the ordinary meaning of driving to be the following:

> *"The word 'driving', as used in relation to the insured motor vehicle, means, ordinarily, in my view, the urging on, directing the course and general control of the vehicle while in motion and all other acts reasonably or necessarily incidental thereto. It would thus include, inter alia. the starting of the engine and the manipulation of the controls of the vehicle which regulate its speed and direction and also those which assist the driver and other users of the road, such as lights, traffic indicators etc.* " Refer also *Sehire v Central Board for Cooperative Insurance Ltd* 1976 (1) SA 524 (W) and *Peterson v Santam Versekiringsmaatskappy* 1961 (1) SA 205 (C). (My underlining)

[26] As already mentioned, the courts have also interpreted the forerunners of section 20 of the Act in the previous legislation [Motor vehicle Insurance Act, Act 29 of 1942; Compulsory Motor Vehicle Act 56 of 1972], to give the term driving an extended meaning. See Wells *supra and Flynn v Unie Nasionaal Suid Bre Versekiringsmaatskapy Bpk* 1974 (4) SA 283 (NC) *and Petersen v Santam Insurance Co Ltd* 1961 (1) SA 205 (C).

[27] HB Klopper, in HB Klopper, The law of Third Party Compensation, 3rd edition, LexisNexis at 52, (with reference to the Shorter Oxford Dictionary, the Verklarende Handwoordeboek van die Afrikaanse Taal and case law) explains the meaning of driving as follows:

> *"...any voluntary action which directly sets a stationery vehicle into motion and* is *directed to control the motor vehicle after it has come into motion as well as all related actions which are reasonably and necessarily connected therewith.* "

[28] Further, in an article, HB Klopper in the Tyddskrif VJr Hedendaagse Reg, 'Accidental starting of a motor vehicle', August 2009 THRHR 514,

Klopper wrote that:

"Normally, claims against the road accident fund are caused by or arise from the driving of a motor vehicle. Driving has a circumscribed technical meaning and is constituted by the intentional starting of a vehicle in order to drive it, setting a vehicle into motion, exercising control over the vehicle while it is in motion by using its controls including direction indicators and hooter and then bringing such vehicle to a standstill and all related and required conduct to achieve this ...

34 Intention required

In Flynn (a matter decided on exception) the court held that the motor vehicle had been driven. This finding was based on the fact that the mechanic working on the motor vehicle in question and who caused the starter to turn over which in turn made the vehicle lurch forward pinning the claimant between the vehicle and the work bench, was in control of the motor vehicle and impliedly had the ability of intentionally setting the motor vehicle in motion by operating the starter. This impliedly indicates that the mere operation of a starter motor either by chance or otherwise, cannot render the RAF liable-intention to operate the starter in order to drive seems to be an added implied pre-requisite.

Apart from the implied intention to drive required in conjunction with the use of a starter motor of a motor vehicle in order for operation of section 20(1) to be possibly applicable (see Flynn), normally the operation of the starter motor of a motor vehicle in itself can only constitute driving if it is *accompanied by an intention to perform the act of driving ...*

4 Conclusion

In view of the doubt that exist whether section 20(1) applies to a situation where a motor vehicle is *accidentally set into motion by the inadvertent or accidental operation of its starter motor and the absence of the required intention to set a motor vehicle in motion subsequent to the operating of the starter, the facile and matter-of-fact assumption that the requirement of driving was complied with, has to be questioned ...* "

[29] Based on the work and interpretation of Klopper *supra,* counsel for the defendant submitted

that Br-the insured driver's action to start the motor vehicle did not constitute an act of driving, where Br-the insured driver did not have any intention to indeed drive the motor vehicle, alternatively where he did not mean to drive the motor vehicle at all. That it can therefore not be said that the action of starting of the motor vehicle was incidental to driving same as there was no intention of driving the motor vehicle. That Br merely started the vehicle with the intention of having the plaintiff listen to what was wrong with the motor vehicle.

[30] Plaintiff s counsel loses sight of the fact that Br-the insured driver did not merely start the insured vehicle only and stop there; he in addition released the clutch thereof, while the hand brake was on and the vehicle was in first gear, all of which is, in my considered view, form part of the manoeuvring/manipulation of the controls of a vehicle, which resulted in the insured vehicle moving from point A to point B and thus amounts to driving; and in the process the plaintiff was hit by the insured vehicle, as a result of which he sustained serious bodily injuries. It is important to note that the article by Klopper *supra* suggests that he was dealing with a situation where a vehicle was accidentally started. this is not the case in the matter at hand here.

[31] Looking at the facts of this matter, and most importantly, having regard to what Br-the insured driver states in his statement set out above, it is clear that he/Br-insured driver considered himself to be the driver of the vehicle in question. He says specifically in the agreed facts that "the Jeep has a safety mechanism built into the vehicle, whereby the driver has to step on the clutch pedal." (My underlining).

[32] Br-the insured driver was most certainly, at the time of the incident, in question, in control of the vehicle.

[33] The .ordinary definition of the term "driving" includes the starting of the engine, and this, coupled with the fact that Br-the insured driver had released the clutch, while he had engaged the insured vehicle in first gear, with the hand brake on, is what gave rise to the vehicle, under the control of the Br-insured driver, lurching forward and colliding with the plaintiff, causing him serious injuries.

[34] As much as we are not dealing with the quantum of damages presently, it is significant to mention that it appears that the plaintiff sustained very serious bodily injuries. In all probabilities the lurch/motion of the insured vehicle was very significant/momentous. It cannot be said to

have resulted from the mere starting of the vehicle only; and from the facts set out in the stated case Br-the insured driver's actions are not limited to mere starting of the insured vehicle. Counsel for the defendant correctly stated that "driving includes other actions incidental thereto such as starting of the engine and the manipulation of the controls.", However, she wants the court not to consider and/or accept that, amongst others, the release of the clutch [which is bound to cause the vehicle to move since the hand brake was on, and he had engaged the vehicle into first gear], is to be regarded as manipulation of the controls of the vehicle.

[35] The court in *Sehire* v *Central Board for Cooperative Insurance Ltd* 1976 (1) SA 524 (W) held that the starting of a tractor was driving. In this regard Melamet J stated the following:

> *"It appears to me that the starting of the engine is included in the ordinary meaning of the word 'driving'*
>
> *The switching on of the engine is an act designed to urge the vehicle into motion and the driver in the seat of the tractor will direct its course having switched it on. Thus, if these two elements, conjunctively, constitute the act of driving, I am of the view that any one of these elements will, in certain circumstances, constitute an act in the driving of a vehicle.* "(My underlining)

[36] Driving thus includes other actions incidental thereto such as starting of the engine and the manipulation of the controls [like releasing a clutch while the vehicle was engaged in first gear], which regulate the speed and direction of the vehicle and those which assist the driver and other users of the road, such as lights and traffic indicators. (My underlining)

[37] Section 20(1) of the Act extends the meaning of driving to include the specific cases where a motor vehicle is not driven in the ordinary sense.

[38] To properly interpret section 20(1) one should have a look at the words "propelled by any mechanical, animal or human power or by gravity or momentum" .

[39] Counsel for the defendant submitted that if one considers the words "any mechanical" followed by the words "animal or human power or by gravity or momentum" and when applying the *eiusdem generis* rule of rule of interpretation *"any mechanical ...power"* is intended to mean

mechanical or other power other than that of the motor vehicle concerned. (My underlining)

[40] That this essentially means that the operation of a motor vehicle's starter motor cannot result in section 20(1) of the Act being applicable as the operation thereof does not constitute *"any mechanical ...power"* as intended by the by the legislature. Further that the operation of the starter motor of a motor vehicle falls within the ambit of the ordinary meaning of driving, and not the extended meaning.

[41] As already mentioned in para [18] above, and contrary to the view of the defendant's counsel in this regard, counsel for the plaintiff submitted that the deeming provisions of s20 (1) and (2) of the Act can also be applicable in this matter, taking into account that any mechanical power of propulsion includes the mechanical propulsion provided by the vehicle's own engine. If the vehicle was being propelled by any mechanical power, which mechanical propulsion is provided by the vehicle's own engine, the vehicle is deemed to be driven. That therefore there can be no doubt that the insured vehicle was so propelled. Refer *Flynn v Unie Nasionaal Suid Bre Versekiringsmaatskapy Bpk supra.*

[42] Having regard to the totality of the facts and on a proper analysis of all the facts, including the pleading, it is noted that in paragraph 4 of the defendant's plea, in response to paragraph 4 of the plaintiff s particulars of claim, wherein the plaintiff has pleaded that

> "4
> ...a collision has occurred between an unidentified motor vehicle ("the insured vehicle") driven by Johan Br ("the insured driver") and the plaintiff ...

the defendant pleaded as follows

> *"4*
> *The Defendant admits that an incident occurred on 31 October 2011 at Mc Carthy Limited, Menlyn Motor City Garsfontein, Pretoria between a motor vehicle driven at the time by Johan Br and the Plaintiff."* [My underlining]

[43] The defendant has thus in its plea dated 04 September 2013 **[p13 of the pleadings bundle]** clearly admitted the driving of the motor vehicle by Br-the insured driver. Having so admitted

the driving, then in paragraph 5.1of its plea, it pleads that the actions of the insured driver did not constitute driving!

[44] In his statement, set out in the stated case, Br-the insured driver stated that *"...After starting the vehicle I released the clutch .... "* He further states in his statement aforesaid that he had engaged the insured vehicle in first gear and that the hand brake was on. In my considered view by so doing the insured driver, impliedly or otherwise, had the intention to drive, there can't be any other intention other than that.

[45] As mentioned above, the defendant contends that the insured motor vehicle did not start and move by some other mechanical power as envisaged in s20 of the Act, but that it started as a result of its own mechanical power. Counsel for the defendant acknowledges that the insured vehicle has some mechanical power. This confirms the plaintiff s submissions that mechanical power of propulsion includes the mechanical propulsion provided by the vehicle's own engine. If the vehicle was being propelled by any mechanical power, which mechanical propulsion is provided by the vehicle's own engine then the extended meaning envisaged in section 20(1) also applies to the facts herein. The actions of Br-the insured driver can be deemed to be 'driving', as envisaged by the Act.

[46] The insured driver specifically states in his statement that he started the vehicle-"At *the time I started the vehicle, the Claimant [Plaintiff] was right in front of the vehicle* .... ", he thereafter released the clutch-this is the terminology he uses in his statement- [**not** stepped on the clutch, for purposes of the safety mechanism he alleges his Jeep has].

[47] Surely there is a difference between 'stepping on the clutch' and 'releasing the clutch', one releases the clutch after the vehicle has been started and the first gear is engaged to drive the vehicle. This is a basic principle of driving. The conduct and intention of Br- the insured driver was that of a person intending driving a vehicle. If one has regard to the actions of the insured driver, there is no room to give his actions a different meaning other than that he started the vehicle, knowing very well that he had engaged the hand brake and that 'the vehicle was in first gear'. This does not only go to negligence; this is the conduct of a person who intends to drive.

[48] Further, on the facts before this court there is no question and/or a *'situation where a motor vehicle is accidentally set into motion by the inadvertent or accidental operation of its starter'.*

Nowhere in his statement does the insured driver allude to 'a *situation where a motor vehicle is accidentally set into motion by the inadvertent or accidental operation of its starter ... '* He mentions in his statement that *"....After starting the vehicle I released the clutch ...* "this while the vehicle was in first gear! The only intention is that of someone who intended driving.

[49] To sum up, on the version of Br-the insured driver: The hand brake was on at the time of starting vehicle; clutch was released and at the time of starting the insured vehicle the gear was engaged in first gear. This is the act of driving even in the ordinary sense; the intention to drive can be inferred.

[50] The facts of this case actually qualify both ways [in the ordinary as well as in the extended meaning of the word.

[51] The insured vehicle can also be said to have been propelled by the mechanical power of its own engine, emanating from the actions of the Br-the insured driver; it can thus be deemed to have been driven. There can be no doubt that the vehicle was so propelled. *See* Flynn v Unie Nasionaal Suid Bre Versekiringsmaatskappy *supra.*

[52] The insured vehicle was driven, either, in the ordinary sense of the word "driving", or in the extended sense of the term "driving" in the present circumstances.

[53] The question now is whether there was a causal link/connection between the injuries sustained by the plaintiff and the driving of the insured vehicle. In *Petersen v Santam Insurance Co. Ltd* 1961 (1) SA 205 (C) at 209 Van heerden AJ stated at 209 that there must be a causal connection between the infliction of the injury and the driving of the vehicle.

[54] The only answer to the question whether there is a causal connection between the infliction of the injury and the driving of the vehicle in this matter is a positive yes. No doubt there was a causal link between the injuries sustained by the plaintiff and the driving of the insured vehicle.

[55] The Road Accident Fund Act basically constitutes social security legislation with its primary object described as 'to give the greatest possible protection to persons who suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle. Refer Aetna Insurance Co. v Minister of Justice 1960 (3) SA 273 (A).

[56] In *Flynn v Unie Nasionaal Suid Bre Versekiringsmaatskapy Bpk* 1974 (4) SA 283 (NC) a mechanic, who was working on an engine of a vehicle, manipulated the starter in the engine while outside the vehicle, which action prompted the car which was in gear to start, and it lurched forward and crushed into another person. The mechanic was deemed to have been driving the vehicle, as envisaged by sl (2) and (3) of the then applicable Motor Vehicle Insurance Act 29 of 1942; which provisions are similar to provisions of s20 of the RAF Act.

[57] In the case at hand Br-the insured driver, was inside the body of the vehicle, he was in control of the vehicle; he actually started the vehicle while the hand brake was on and the car was in first gear, he then released the clutch; the insured vehicle then moved forward and hit the plaintiff. If this is not driving then what will!

[58] I agree with counsel for the plaintiff's submissions that, with the key in the ignition, the act of turning the ignition/starting the insured vehicle by Br-the insured driver, who was at the time sitting inside the body of the vehicle behind the steering wheel, then releasing the clutch of the insured vehicle, whilst the insured, vehicle was in first gear and the hand brake was on, resulting in the insured vehicle moving from point A to B; that in itself constitutes driving as envisaged in s17 (a) of the Act.

[59] On the totality of the facts set out in the stated case, and on a balance of probabilities, I find that the conduct and actions of Br-the insured driver amounts to, and/or constitutes driving as envisaged by the Act.

In the result, the following order is made:

1. It is declared that the defendant is 100% liable to compensate the plaintiff for the injuries he sustained on 31 October 2011.
2. The Defendant is ordered to pay the Plaintiff s taxed or agreed party and party costs on a High Court scale.

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MOLOPA-SETHOSA

Judge of the High Court

Appearances as follows:

Counsel for plaintiff: Adv. C M DREDGE

Instructed by: GERT NEL INC

Counsel for defendants: Adv. H J BASSON

Instructed by: MOTHLE JOOMA SABDIA INCORPORATED