IN THE SUPREME COURT OF APPEAL
IN SOUTH AFRICA

REPORTABLE

CASE NO: 151/2000

In the matter between:

ROAD ACCIDENT FUND Appellant

and

ALFRED SAMELA Respondent

CORAM: VIVIER ADCJ, MARAIS, OLIVIER JJA, CLOETE and BRAND AJJA

Date of hearing: 4 September 2001

Delivered: 28 September 2001

SUMMARY

Multilateral Motor Vehicle Accidents Fund Act, 93 of 1989 – conveyance 'for reward' and 'in the course of the business of the owner' of the motor vehicle in terms of art 46 of the Schedule interpreted.

J U D G M E N T

CLOETE AJA

INTRODUCTION

[1] On 7 January 1996 the respondent was a passenger in a Toyota minibus motor vehicle travelling between Warden and Villiers in the Free State. The minibus overturned solely in consequence of the negligence of the driver and the respondent suffered personal injuries.

[2] The respondent (as the plaintiff) instituted an action for compensation in terms of the provisions of chapter XII of the Schedule to the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 ('the Schedule') and cited as the defendant (who is the appellant on appeal) the Road Accident Fund, a body established by the Road Accident Fund Act 56 of 1996.

ISSUES

[3] The essential difference between the parties in this Court, as in the court below, is that the respondent contends that he was being conveyed in the minibus for reward as contemplated in paragraph (a)(i), or in the course of the business of the owner of the minibus as contemplated in paragraph (a)(ii), of article 46 of the Schedule; whereas the appellant contends that the respondent was being conveyed in the motor vehicle as contemplated in paragraph (b) of article 46.

[4] Article 46, to the extent relevant for present purposes, provided (at the relevant time) that:

> 'The liability of the MMF or its appointed agent, as the case may be, to compensate a third party for any loss or damage contemplated in Chapter XII which is the result of any bodily injury to or the death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned, shall, in connection with any one occurrence, be limited exclusive of the cost of recovering the said compensation ...-
> (a) to the sum of R25 000 in respect of any bodily injury or death of any one such person who at the time of the occurrence which caused that injury or death was being conveyed in the motor vehicle in question –
> (i) for reward; or
> (ii) in the course of the business of the owner of that motor vehicle; or
> (iii) ...
> (iv) ...
> (b) in the case of a person who was being conveyed in the motor vehicle concerned under circumstances other than the circumstances referred to in paragraph (a), to the sum of R25 000 in respect of loss of income or of support and the costs of accommodation in a hospital or nursing home, treatment, the rendering of a service and the supplying of goods resulting from bodily injury to or the death of one such person, excluding the payment of compensation in respect of any other loss or damage'.

[5] On any basis the respondent's claim is limited to R25 000-00. But if the appellant is correct, the respondent's claim is further limited in that the categories under which damages may be claimed are confined to those mentioned in article 46(b); whereas if the respondent is correct, his claim is not so limited and he may claim, in addition, damages for example for pain and suffering and loss of amenities of life.

[6] It is common cause that the respondent is entitled to the greater protection of article 46(a) if he can bring himself within the provisions of any one of paragraphs (i) to (iv) thereof. Those provisions are disjunctive.

If, therefore, the respondent was being conveyed in the course of the business of the owner of the motor vehicle in which he was a passenger, it matters not whether he was also being conveyed for reward and the converse is also the case.

FACTS

[7] The merits were separated from the *quantum*. The matter came before the court below by way of a stated case. Apart from the facts mentioned in the first paragraph of this judgment, and compliance with the formalities prescribed by the Schedule, the parties were agreed on the following:

(i) One Mfenga was the owner of the minibus and the holder of a valid and current Public Road Carrier Permit issued pursuant to the provisions of the Road Transportation Act 74 of 1977 in respect of the minibus. Mfenga was aware of the terms of the permit and he conducted road transportation by operating the minibus for the conveyance of persons or goods on public roads for reward, or alternatively in the course of his business.

(ii) At the time of the accident the passengers in the minibus, including the plaintiff, were being conveyed as fare paying passengers (the plaintiff having boarded the minibus in the Transkei in order to be conveyed to Johannesburg). However, the minibus was being

operated outside the area specified in the permit (a radius of 50 km from the Kokstad taxi rank) in contravention of section 31(1)(b) of the Road Transportation Act. The passengers, including the plaintiff, were unaware of the terms of the permit and the contravention.

[8] The court below found that the respondent was being conveyed 'for reward' as contemplated in article 46(a)(i) and gave the following order:

> '1. It is declared that the plaintiff was being conveyed in the insured vehicle in terms of Article 46(a) of the Schedule to the Multilateral Motor Vehicle Accidents Fund Act, 93 of 1989.
> 2. The defendant is ordered to pay the costs occasioned by the determination set out in paragraph 1 above, which costs shall include the costs of the hearing on 24 February 2000'.

The respondent appeals with the leave of the court below.

BUSINESS

[9] I shall first consider whether the respondent was being conveyed 'in the course of the business of the owner'.

[10] Article 1(ii) of the Schedule provides that ''business' does not include any unlawful business'. The journey – the particular conveyance – of the respondent, was illegal. But it does not follow that the business of the owner was unlawful. The definitions of ' reward' (quoted below) and 'business' in the Schedule distinguish between an illegal conveyance and conveyance in the course of an unlawful business. There is a difference between being conveyed legally/illegally (in which case one looks to the conveyance) and

being conveyed in the course of a lawful/unlawful business (in which case one looks to the business). The distinction was drawn by this Court in *Santam Insurance Co Ltd v Tshiva; Maxanti v Protea Insurance Co Ltd*, 1979(3) SA 73(A) at 82C-F where Kotzé JA, writing for the majority of the Court, said:

> 'I conclude therefore that the reference in s 23 (b) (ii) of the Act to conveyance "in the course of the business of the driver or owner" is not restricted to conveyance which is not illegal in terms of any provision of Act 39 of 1930 (now repealed and re-enacted by the Road Transportation Act 74 of 1977). The illegality of conveyance under the road transportation legislation should not without the clearest indication be imported into the Act (which after all reflects an intention to provide comprehensive protection in respect of damages sustained as a result of motor vehicle accidents) to nullify a claim against a registered insurer. Accordingly, on the facts of the present case: Daniso operated a lawful taxi business. In the course of that business, in addition to three duly licensed taxis, he also operated motor vehicle CB 44478 as a taxi in contravention of the provision of Act 39 of 1930. On 6 October 1972 his servant Dindala conveyed the husbands of the respondents, who were innocently unaware of the illegality pertaining to the vehicle in question, in the course of his taxi business. They met their death in the course of such conveyance which, constituting (as I have held) conveyance in the course of Daniso's business within the meaning of s 23 (b) of the Act, renders

> Santam liable to the respondents in the agreed sums of damages caused by the admitted negligence of Dindala.'

The distinction apparent from the extract of the judgment just quoted was spelled out by Wessels JA (who was a party to that judgment) in *Southern Insurance Association Ltd v Khumalo and Another* 1981(3) SA 1(A) at 10D and 10F as follows:

> 'In *Tshiva's* case the Court held that the conveyance was undertaken in the course of the owner's lawful business as a taxi operator, notwithstanding the fact that the conveyance in the unlicensed vehicle rendered the conveyance illegal in terms of the provisions of Act 39 of 1930 ... In *Tshiva's* case, the passengers were being conveyed in the furtherance of a taxi operator's lawful business, notwithstanding that the conveyance as such was tainted with illegality'.

[11] The definition of business so as to exclude any unlawful business was introduced after the decision in the *Tshiva* and *Maxanti* case (by section 1(a) of Act 23 of 1980, with effect from 11 April 1980). But it does not follow, as Klopper suggests in *'The Law of Third Party Compensation'* (2000) 239, that the definition was introduced in response to that decision and to reverse its effect. In the first place, the definition means that not only business which is unlawful under the law governing road transportation services, is excluded – all unlawful business is excluded (ie the definition goes further than would be necessary to deal with the effect of the *Tshiva* and *Maxanti* decision). The definition could therefore have been introduced to cover all unlawful businesses. In the second place, if the definition was intended to

eliminate the distinction drawn by this Court in the *Tshiva* and *Maxanti* case, it has singularly failed in its purpose: a provision that the business of the owner of the vehicle must be lawful, does not exclude the occasional illegal conveyance in the course of a predominantly lawful business.

[12] If the legislature intended, as the appellant contends and Klopper suggests (*op. cit.* 240), that a single illegal conveyance should be excluded, the words 'legally and' (which would qualify the conveyance) could have been used to introduce paragraph (ii) of Article 46(a). The combined effect of such a provision and the definition of 'business' which currently appears in the Schedule would be to require both the conveyance of the passenger and the business of the owner of the vehicle to be lawful.

[13] This Court has held that a business can consist in a single act: *AA Mutual Insurance Association Ltd v Biddulph and Another* 1976(1) SA 725(A) at 739 B-C. But it does not follow that where a business does not consist in a single act, but comprises numerous transactions, the one which is unlawful is a business in itself distinct from the rest of the business – any more than it follows that a business comprising numerous transactions is unlawful because one transaction is unlawful. I therefore respectfully disagree with the reasoning of Levy AJ in *Nhlangwini and Another v*

National Employers General Insurance Co Ltd and Another 1989(1) SA 96(W) at 99 B-C.

[14] There is no suggestion in the pleadings in the present matter that the business of the owner of the minibus in which the plaintiff was being conveyed, was in fact unlawful. It is clear from the stated facts that the owner of the minibus held a valid permit in respect of the minibus and that he operated the minibus for the conveyance of persons on public roads in the course of his business – ie that he conducted a lawful business. In these circumstances it seems to me (and it was conceded by the appellant's counsel) that it was not incumbent on the respondent to go further than to show that at the time of the accident he was being conveyed in the minibus in the course of the business of the owner of the vehicle (which is established by the stated facts).

[15] I therefore conclude that the respondent was being conveyed in the course of the business of the owner of the minibus as contemplated in article 46(a)(ii) of the Schedule.

REWARD

[16] The learned judge in the court below held, as I have said, that the respondent was being conveyed 'for reward'. I respectfully disagree with that conclusion for the reasons which follow.

[17] Article 1(xiv) of the Schedule provides that:

> ''reward', with reference to the conveyance of any person in or upon a motor vehicle, does not include any reward rendering such conveyance illegal in terms of any law relating to the control of road transportation services applicable in the area of jurisdiction of a Member'

(ie a Member of the Multilateral Motor Vehicle Accidents Fund – originally, in terms of article 4, the Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei).

[18] The 'law' in question is, for present purposes, the Road Transportation Act and more particularly section 31(1) which (to the extent relevant for present purposes) provides:

> 'Any person who –
> (a) undertakes road transportation except under the authority of a permit authorizing such road transportation; or
> (b) being the holder of a permit, undertakes road transportation otherwise than in accordance with the provisions of such permit, or ... contravenes or fails to comply with any condition or requirement of a permit ...
> ...
> shall be guilty of an offence'.

'Road transportation' is defined (subject to exceptions not presently relevant) to include *inter alia:*

> '(a) the conveyance of persons or goods on a public road by means of a motor vehicle for reward;
> (b) the conveyance of persons or goods on a public road by means of a motor vehicle in the course of any industry or trade or business'.

Section 31(1) envisages two possibilities: road transportation, in the case of (a), without a permit; and in the case of (b), with a permit but outside the terms of the permit: *S v Smith* 1986(3) SA 714(A).

[19] In *Mutual & Federal Insurance Co Ltd v Gounder* 1995(1) SA 486(D & CLD), in *Ncqulunga and Others v President Insurance Co Ltd* 1995(1) SA 594(N) and in the court below it was reasoned that for the purposes of article 46(a)(i) there is a distinction between paragraphs (a) and (b) of section 31(1) in that (to quote the court below):

> 'Where section 31(1)(a) is contravened, the conveyer has no permit. In such a case the mere payment of the reward probably renders the conveyance illegal. (I say probably because that is not what I have to decide.) In the case of a contravention of section 31(1)(b) the permit holder is entitled to receive reward for conveyance. It is not the payment of the reward that makes the conveyance illegal. It is the fact that he contravenes the terms of his permit.'

The fallacy in this reasoning in my respectful view is that in a case of a contravention of section 31(1)(b) the permit holder is not 'entitled to receive reward' for <u>that particular conveyance</u> which is illegal in that it is contrary to the terms of the permit and accordingly the provisions of the Road Transportation Act. In neither situation – (a) or (b) of s 31(1) – is the permit holder entitled to a reward (in the case of (a), at all; and in the case of (b), for the particular conveyance) and if a reward is paid, it has the effect of 'rendering' the 'conveyance illegal' (the Afrikaans text is: 'vergoeding wat sodanige vervoer onwettig maak').

[20] Inherent in both ‘render’ and ‘ maak’ is a causative element. But payment of a reward does not by itself make a conveyance illegal. In both subsections (a) and (b) something more is required: in the case of (a), conveyance without a permit; and in the case of (b), conveyance outside the terms of a permit. I therefore do not consider that emphasis on the causative element inherent in the verbs used in both texts can be a basis for distinguishing between sections 31(1)(a) and (b) of the Road Transportation Act for the purposes of the definition of ‘reward’ in the Schedule; and I accordingly disagree, with respect, with the reasoning in the *Gounder* case at 491 F-H.

[21] What must be borne in mind in interpreting article 46(a)(i) and the definition of ‘reward’ is that numerous offences under the Road Transportation Act can be committed – eg where the permit holder does not carry the permit on the motor vehicle as required by section 24(1)(a). It is for that reason in my view that the legislature provided in the Schedule that in order for the additional protection under article 46(a)(i) to be excluded, the reward must have the effect of rendering the conveyance of that person to whom the reward relates, illegal. It is the conveyance of the passenger which must be illegal (and therefore the appellant’s counsel was incorrect in submitting that any contravention of the Road Transportation Act not

incidental to the conveyance of a particular passenger such as the failure to carry the permit in the vehicle, takes that passenger outside the protection of article 46(a)(i)); it is the reward which must make it so (which will be the case where either subsection of section 31(1) is contravened, for in neither case can there be a contravention if a reward is not paid); and because the phrase 'such conveyance' in the definition of 'reward' refers to the conveyance of the particular person in respect of whom the reward is paid, the rights of other passengers are not affected.

[22] Arguably this interpretation operates harshly on the respondent, who was ignorant of both the terms of the permit and the contravention of the Road Transportation Act. Before the insertion of the definition of the term 'reward' in section 1 of the Motor Vehicle Insurance Act, 29 of 1942, this Court held in *Ndhlovu v Mathega* 1960(2) SA 618(A) that a passenger who was unaware of the illegality of his conveyance was not barred from recovering damages for injuries under that Act. The definition inserted by s(1)(e) of Act 60 of 1964 provided that 'reward' did not include 'any reward rendering such conveyance illegal in respect of any provision of the Motor Carrier Transportation Act 39 of 1930.' This Court then held in *Martin and Others v Marine & Trade Insurance Co Ltd* 1978(3) SA 640(A) that the effect of the insertion of the definition was that a passenger for reward who

was unaware of the illegality of his conveyance was barred from recovering damages for injuries from the insurer. (See also *Parity Insurance Co Ltd v Marescia and Others* 1965(3)SA 430(A) at 434 A-B and the *Tshiva* and *Maxanti* case *supra* at 80F.) The same reasoning must apply to the Schedule, with the consequence that the respondent's ignorance that he was being conveyed illegally in the minibus, is irrelevant. It is the objective illegality of the conveyance and not the passenger's knowledge thereof, which takes the passenger out of the ambit of article 46(a)(i).

[23] A passenger will nevertheless always have the protection of article 46(b). But the effect of excluding a passenger from the categories of damages for which article 46(a) additionally provides when compared to article 46(b), has the effect that the residual common law obligation of the owner of the vehicle, the driver and the latter's employer – ie those involved in the taxi business – is correspondingly increased (in as much as, in terms of article 52, an injured person is deprived of the right to claim compensation only to the extent that such compensation is payable under the Schedule). Accordingly if a business is lawful in the sense described above (with the consequence that a passenger will fall under article 46(a)(ii)) the obligation to compensate him/her for the additional categories of damages for which article 46(a) provides, is not imposed on those involved in the taxi

business. Because the business is lawful, the passenger's claim lies against the Fund even although his conveyance may have been illegal. Conversely, if a business is unlawful in the sense described above (with the consequence that a passenger cannot fall under article 46(a)(ii)) the obligation to compensate him/her for the additional categories of damages contained in article 46(a) will only be transferred to those involved in the taxi business if they further the unlawful business *vis-a-vis* that particular passenger by receiving a reward which renders his/her conveyance illegal (so taking him/her outside the protection of article 46(a)(i)). On the interpretation I have given, this situation occurs where those involved in an unlawful taxi business contravene either subsection of section 31(1) of the Road Transportation Act (by operating without a permit under (a), or outside the terms of the permit under (b)). That appears to me to accord with the intention of the legislature. If, however, the definition of 'reward' is interpreted so as to exclude the situation contemplated in section 31(1)(b), then the reward paid in such a case will always qualify as a 'reward' and the passenger will automatically fall under article 46(a)(i), even although his conveyance was illegal under the Road Transportation Act and even where it formed part of a business which was exclusively unlawful under that Act. I cannot accept that the legislature intended this result.

[24] On the stated facts, the respondent paid a fare to be transported outside the area of the permit held by Mfenga. The consequence in my view is that the reward he gave rendered his conveyance illegal in terms of section 31(1)(b) of the Road Transportation Act and such reward is accordingly not a 'reward' as defined for the purposes of article 46(a)(i) of the Schedule.

CONCLUSION

[25] I therefore conclude that the respondent was not being conveyed for reward, but was being conveyed in the course of the business of the owner of the minibus; and that for this latter reason, the respondent falls under article 46(a) of the Schedule. Although the reasoning of the court below was in my respectful view incorrect the order given requires no alteration. The appeal is accordingly dismissed with costs.

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TD CLOETE
ACTING JUDGE OF APPEAL

CONCUR

OLIVIER JA

BRAND AJA

[1] I have read the judgment of Cloete AJA. I find myself unable to agree with his conclusion that the respondent was not a passenger "for reward" within the meaning of article 46 (a)(i) of the Schedule to Act 93 of 1989 (the Schedule"). For the following reasons I believe that the respondent did in fact qualify as a passenger for reward.

[2] As appears from the agreed facts set out in the judgment of Cloete AJA respondent was a fare-paying passenger and the owner of the vehicle was the holder of a permit to engage in road transportation. As a fact respondent therefore did pay a reward for his conveyance. It is contended, however, that this reward is to be disregarded for purposes of Article 46 (a)(i) of the Schedule because "it rendered the conveyance illegal in terms of the law relating to the control of road transportation services" as

contemplated by the definition of "reward" in article 1 of the Schedule. The basis for this contention is that the conveyance of the respondent was in contravention of s 31(1)(b) of the Road Transportation Act 74 of 1977 ("the Act").

[3] On the agreed facts the respondent and his fellow passengers were indeed conveyed in contravention of s 31(1)(b) of the Act in that the owner of the minibus conducted road transportation outside the area prescribed in his permit. Putting aside the potential applicability of paragraph (b) of the definition of "road transportration" in the Act and confining my consideration to paragraph (a), it is so that, but for the reward paid by the passengers their conveyance would not have qualified as "road transportation" as defined in paragraph (a) of the definition in the Act and could therefore not have constituted a contravention of either s 31(1)(a) or s 31(1)(b). But it is equally clear that payment of a reward alone without an

intended or actual transgression of the terms of the permit would not have "rendered the conveyance illegal".

[4] What this shows is that while the payment of a reward is critical to the existence of "road transportation" as defined in paragraph (a) of the definition in the Act and is therefore a necessary condition which must be satisfied before there can be a contravention of either s 31(1)(a) or s 31(1)(b), in the case of s 31(1)(a) it is also a sufficient condition to render the conveyance illegal, whereas in the case of s 31(1)(b) it is not. Under s 31(1)(b) something more is required to render the conveyance illegal. That something is the happening of the particular mischief which constitutes the true gravamen of the offence created by the legislature, namely, transgression of the terms of the permit. That being so, it seems to me to be inaccurate to say that the payment of the reward rendered the conveyance illegal when it seems obvious that its causative role in bringing about that

result in the case of a permit holder was neutral and that the real and effective cause was the transgression of the terms of the permit. I say "neutral" because the mere payment of the reward no more rendered the conveyance illegal than the mere boarding of the vehicle by the passenger did. I say "real and effective cause" because transgression of the terms of the permit is so plainly the particular and specific conduct which the legislature has criminalised by making it an offence and **thereby** rendering such a conveyance illegal. In short, in a case falling under s 31(1)(a) the payment of a reward is manifestly the *causa causans* of the rendering illegal of the conveyance. In a case such as this which falls under s 31(1)(b), it is at best a *causa sine qua non* but not the *causa causans* of the rendering illegal of the conveyance. To that distinction I shall return.

[5] It seems worth mentioning that the Act creates a number of offences which permit holders may commit some of which might be said to render the

conveyance of the passengers who happen to be conveyed illegal and some of which might not. Conveying passengers in an overloaded vehicle may be an example of the former; charging a fare in excess of a prescribed tariff may be an example of the latter. But in neither case will it be the payment of a reward *per se* which renders the **conveyance** illegal. What is noteworthy is that the legislature has not in the Schedule said that the conveyance of a passenger which is rendered illegal by **any** provision of the Act shall not entitle that passenger to the compensation provided for in article 46(a). Instead it has deliberately enacted a far narrower exclusionary provision; it is only where the payment of a reward (and not some other factor) renders the conveyance illegal that a passenger is unable to rely upon the payment of a reward as the basis for a claim in terms of article 46(a). However, as Cloete AJA has said, *non constat* that even in such a case such a passenger may not base the claim on some other provision of article 46(a).

[6] Since the owner of the minibus was the holder of a permit he was entitled to convey passengers for reward within the area prescribed by his permit. But this very same activity (conveyance of passengers for reward), became unlawful under s 31(1)(b) when it was conducted outside the area of his permit. What was it then that "rendered" his conveyance of these passengers unlawful? Giving the word “render” its ordinary meaning, I think that the answer has to be non-compliance with the permit and not the payment of a reward. This situation is to be contrasted with that in which the owner of a vehicle conveys passengers without any permit at all. He may do so legally as long as there is no reward involved. It is when he accepts a reward for the conveyance that the conveyance becomes illegal under s 31(1)(a) of the Act. In that event it can, in my view, rightly be said that it is the reward which renders the conveyance illegal within the meaning of the definition of "reward".

[7] As I have indicated, I believe the difference between the situations contemplated by s 31(1)(a) and s 31(1)(b), respectively, is this: in the s 31(1)(a) situation the reward can rightly be described as the "effective cause" or the "operative cause" or the *causa causans* of the illegality whereas in the s 31(1)(b) situation it is merely a condition precedent together with other equally relevant conditions precedent for the illegality of the conveyance. I am mindful of the reasoning by Cloete AJA in para 20 of his judgment that this distinction between s 31(1)(a) and s 31(1)(b) amounts to a distinction without a difference in that in both subsections, acceptance of a reward is only one of the elements which comprise the offences thereby created. In s 31(1)(a), so his reasoning goes, the other element is the absence of a permit while in s 31(1)(b) it is the contravention *inter alia*, of the provisions of the permit. I do, however, find myself in respectful disagreement with this reasoning. The offence under s 31(1)(a) is not

"conveyance for reward without a permit". It is "conveyance for reward". Absence of a permit is thus not an element of the offence. Possession of a permit is a defence. This appears from the way the offence is formulated in the section, namely, road transportation **except** under the authority of a permit. (See *S v Everson* 1980 (2) SA 913 (NC) at 917 H – 918 C.) According to the formulation of the offence under s 31(1)(b), on the other hand, it is constituted by conveyance for reward **otherwise** than in accordance with the provisions of the permit or the provisions of s 24. In the latter case the elements following the word "otherwise" are constituent elements of the offence. They are not exceptions within the meaning of s 90 of the Criminal Procedure Act 51 of 1977.

[8] The conclusion, with reference to offences under s 31(1)(b), that it is the reward paid by the passenger which renders the permit holder's conduct unlawful and the conveyance illegal involves ascribing a strained meaning to

the term "render" and gives rise to untenable results. This can be illustrated by the following example. The permit holder commits an offence under s 31(1)(b) if he contravenes the provisions of s 24. In terms of s 24(1)(a) the permit must at all times be carried on the vehicle to which it pertains. To conclude that the conveyance of the passengers while his permit is at his home and not in his vehicle is "rendered illegal" **by the reward paid** by his passengers and that his passengers will thus not be covered under article 46(a)(i) is, in my view, untenable. I have considered the answer to this problem suggested by Cloete AJA in para 21 of his judgment. I do not think, with respect, that it is a valid answer. Non-compliance with s 24(1)(a) of the Act constitutes an offence under s 31(1)(b). If the contravention of s 31(1)(b) excludes the passenger from the protection of article 46(a)(i), as Cloete AJA holds, it follows that the passenger will not be covered by article 46(a)(i) if the permit is not on the vehicle.

[9] There are two further considerations why I prefer the interpretation of the definition of "reward" that I propose in the present context. First, if the legislature had intended to go further and to exclude any reward paid **"in connection with an illegal conveyance"** (cf *Nhlangwini and Another v National Employers General Insurance Co Ltd and Another* 1989 (1) SA 96 (W) 98 G) irrespective of whether it was indeed the payment of the reward which rendered the conveyance illegal, it would have said so. Secondly, the historical background to the definition of "reward" appears to support the construction that the exclusion is aimed at a reward paid to the owner without a permit, i e the offence under s 31(1)(a). A similarly worded definition of "reward" was introduced for the first time by s 1(e) of the Motor Vehicle Amendment Act 60 of 1964 as an amendment to Act 29 of 1942. It appears that it was the decision of this Court in *Ndhlovu v Mathega* 1960 (2) SA 618 (A) regarding the meaning of "reward" in Act 29 of 1942

that gave rise to the amendment. It is not insignificant in my view that the *Ndhlovu* case itself, as well as the conflicting decisions considered therein, related to rewards paid to persons who were not permit holders. (See also Arthur Chaskalson *"Conveyance for Reward Contrary to the Provisions of the Motor Carrier Transportation Act"* (1960) 77 SALJ 284 and *Santam Insurance v Tshiva* 1979 (3) SA 73 (A) 80 E-H).

[10] Finally, even if I am wrong in thinking that the construction of the definition of "reward" that I favour is the only possible construction, the definition is at least reasonably capable of being so construed. Since this is the construction that gives the greatest protection to third parties it is to be accepted in preference to the interpretation proposed by Cloete AJA which would deny such protection (see e g *AA Mutual Association Ltd v Biddulph and Another* 1976 (1) SA 725 (A) 738 H, *Van Blerk v African Guarantee & Indemnity Co Ltd* 1964 (1) SA 336 (A) 341 C-H). In my view, the

Nhlangwini's case, supra, was wrongly decided and the interpretation given to the definition of reward by Thirion J in *Mutual & Federal Insurance Co Ltd v Gounder* 1995 (1) SA 486 (D) 491 D – 492 A, was correct.

[11] In the result I would uphold the Court *a quo's* finding that in the circumstances of the present case respondent was a passenger for reward as contemplated by article 46 (a)(i) of the Schedule. For the rest, I agree with the judgment of Cloete AJA.

FDJ BRAND
ACTING JUDGE OF APPEAL

AGREED:

Vivier DCJ
Marais JA