

**ROAD ACCIDENT FUND STEPS INTO THE
SHOES OF THE INSURED OWNER:**

***Road Accident Fund v Abrahams*
(276/2017) [2018] ZASCA 49 (29 March 2018)**

1 Introduction

The Supreme Court of Appeal (SCA) in *Road Accident Fund v Abrahams* (276/2017) [2018] ZASCA 49 (29 March 2018) had to decide whether a driver involved in a single motor vehicle accident and who was not an employee of the owner of the insured vehicle was entitled to claim compensation from the Road Accident Fund (the Fund). The facts in the case differed from the usual scenario where two vehicles collide. In the present case, it was the negligent or wrongful conduct of the owner of the vehicle that the party relied upon to sue the Fund. As such, in this case, the focus of liability was not on the driver, but on the insured owner.

2 Facts

On 5 February, while driving the insured vehicle, the respondent (Mogamat Ridaa Abrahams) was involved in a single motor vehicle accident. The vehicle was owned by his father's employer, Secuco Food Manufacturers (the insured owner) (par 2). The accident was due to the bursting of a tyre that caused the insured vehicle to leave the roadway and roll over (par 2). The respondent sustained bodily injuries as a result of the accident and subsequently instituted action in the Western Cape Division of the High Court against the appellant (the Fund) for damages (par 2). The appellant alleged that the accident occurred because the insured owner had failed to maintain the tyres of the insured vehicle in a safe and roadworthy condition (par 2).

2 1 *Proceedings in the court a quo*

The appellant initially filed a plea to the respondent's particulars of claim, but the appellant subsequently added a special plea (par 3). The special plea comprised a main and alternative plea (par 3). The main plea was premised on three grounds. First, it asserted that because there was no employer-employee relationship between the respondent and the insured owner, the respondent was not entitled to claim any compensation in terms of the Road Accident Fund Act 56 of 1996 (the Act) (par 3). Second, it alleged that the respondent's use of the insured motor vehicle was fortuitous and/or unauthorised (par 3). Lastly, the appellant contended that no legal duty could be ascribed to the insured owner in relation to the respondent (par 3). In the alternative special plea, the appellant denied liability on the basis that the

collision involved a single vehicle accident; and the respondent was solely and entirely negligent in causing the collision (par 3).

The special plea came before the court *a quo* on 12 June 2016. The respondent led the evidence of his father, ostensibly to contest the appellant's assertion that his driving of the insured vehicle at the time of the accident was fortuitous and unauthorised (par 4). The essence of the evidence by the respondent's father was that his duties included the delivery of baked goods on behalf of the insured owner to various retailers and that he had a standing arrangement with the insured owner in terms of which he occasionally requested the respondent to make deliveries on his behalf, when he was unable to do so himself (par 4). It was the same on the day of the collision. The upshot of his evidence is therefore that at the time of the accident, the respondent was driving the insured vehicle with the consent of the insured owner. This was uncontested by the appellant and no other witnesses testified (par 4).

The court *a quo* had then dismissed the appellant's special plea with costs (par 5). This conclusion was based on the court *a quo* finding that the respondent's driving of the insured vehicle was with the consent of the insured owner, and in the capacity of sub-contractor. The court *a quo* had accordingly found that this established a basis for liability (par 5).

3 Issue

The issue before the SCA was whether a driver involved in a single motor vehicle accident, and who was not an employee of the owner of the insured vehicle, was entitled to claim compensation from the appellant, the Road Accident Fund, in terms of the Act (par 1).

4 Judgment

Makgoka AJA (Navsa, Lewis and Willis JJA and Hughes AJA concurring) held that the respondent's claim fell within the ambit of section 17(1) of the Act (par 25). Makgoka AJA held further that section 18 of the Act was not applicable in the circumstances and that the court *a quo* was of the erroneous view that for the respondent's claim to be within the ambit of the Act, he had to base his claim on section 18 – hence its reasoning that the respondent was a contractor on behalf of the insured owner at the time of the accident (par 25). This according to Makgoka AJA was not necessary. The liability of the appellant for the injuries sustained by the respondent must be found in the plain wording of section 17, read with section 21 of the Act. The appeal was accordingly dismissed with costs, including the costs of two counsel (par 28).

5 Discussion

The object of the Fund is the payment of compensation in accordance with the Act for the loss or damage wrongfully caused by the driving of motor vehicles (s 3 of the Act). The primary concern of our legislation in enacting these relevant statutes has always been to give the greatest possible

protection to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle (*Ebrahams v Road Accident Fund* (15863/2013) [2016] WCC (12 August 2016) par 18 (High Court judgment)). Moreover, it has been recognised in our courts that when provisions of the Act need to be interpreted, such interpretation must be done as extensively as possible in favour of the third party in order to afford the latter the widest possible protection (par 19 High Court judgment).

It was noted that the current system is a hybrid that straddles liability insurance and social security (see Millard and Smit “Employees, Occupational Injuries and the Road Accident Fund” 2008 3 *TSAR* 600). The current system of compensation under the Fund can best be described as social benefits with elements of insurance (Millard and Smit 2008 3 *TSAR* 600). The three main social elements in the current system are the fixed fuel levy that is the same for all motorists, regardless of their risk profile (Klopper *Law of Third Party Compensation* (2012) 112); hit-and-run-claims where the identity of the driver or owner of the motor vehicle that caused the accident cannot be established; and the claimants who are known as so-called one-percenters (see Millard and Smit 2008 *TSAR* 600).

The relevant provisions of the Act are sections 17, 18 and 19, and for the present case section 21 is also relevant (par 6). Briefly, section 17(1) establishes the liability of the appellant and is hence the gateway for compensation under the Act. Section 18(2) on the other hand limits liability of the appellant, while section 19 excludes liability in certain cases. Moreover, section 21(1) abolishes common-law claims against the owner (par 6).

Before establishing the liability of the Fund, it is important to take cognisance of the fact that the Fund’s liability may be limited in certain circumstances. Such circumstances are articulated in section 18(2) of the Act, which states:

“Without derogating from any liability of the Fund or an agent to pay costs awarded against it ... or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or 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 and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death– ...”

The courts have also recognised, in the context of occupational injuries and diseases, that one is faced with “social” legislation. Price JP stated that social labour legislation:

“[i]s designed to protect the interests of employees and to safeguard their rights, and its effect is to limit the common law rights of employers and to enlarge the common law rights of employees. The history of social legislation discloses that for a considerable number of years there has been progressive encroachment on the rights of employers in the interests of workmen and all employees. So much has this been the purpose of social legislation that employees have been prevented from contracting to their own detriment. They have been prohibited from consenting to accept conditions of employment

which the Legislature has considered are too onerous and burdensome from their point of view" (see *R v Canqan* 1956 3 SA 366 (E) 367–368).

The Compensation for Injuries and Occupational Diseases Act 130 of 1993 (COIDA) and the regulations promulgated in terms thereof seem in certain respects to afford superior compensation to that effected by the Act. In addition, compensation under COIDA is on a no-fault basis (Klopper "Discussion of the Most Important Provisions of the Road Accident Fund Act 56 of 1996" 2017 35 *RAF Practitioners Guide* 6A). Not only does COIDA seem to be at odds with the main objective of the Act, but the Act also retains fault as a condition for a successful claim (see generally Klopper 2017 *RAF Practitioners Guide*). This places a road accident victim in the unenviable position of not only having to prove fault but having to fully prove damages as well, while his or her ultimate claim is still subject to apportionment of damages (see generally Klopper 2017 *RAF Practitioners Guide*). The principle that should hold here is that for any statutory restriction of a common-law right to be valid, there should be a compensating advantage. In the case of COIDA, damages are restricted since a victim may claim no general damages and only prescribed benefits, but the compensating advantage is certainty of recovery since fault is not required to be proved. It has to be observed that generally in other jurisdictions, the restriction of benefits of road accident victims is almost invariably accompanied by no-fault liability (see generally Klopper 2017 *RAF Practitioners Guide*).

The first principle is that the object of COIDA is to provide compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course and scope of their employment (see *Road Accident Fund v Maphiri* [2003] 4 All SA 168 (SCA) 171). Compensation is not the same as damages; there may be a complete overlap as in the case of hospital and medical expenses, or there may be a partial overlap as in the case of loss of income (see *Road Accident Fund v Maphiri supra* 171). But there may be no congruent relief such as in the case of general damages for pain and suffering (*Road Accident Fund v Maphiri supra* 171). Secondly, COIDA is not for the benefit of third parties, such as the Fund, who are liable in delict; it is for the benefit of the employee and employer and premiums must be paid for this insurance (*Road Accident Fund v Maphiri supra* 172).

If the injured party was injured in the course and scope of employment, he or she is entitled to claim compensation in terms of COIDA (par 10 of the High Court judgment). In the event of the injured party being injured in the course and scope of his or her employment in a motor vehicle accident, the claim is to be instituted in terms of COIDA and the Fund's liability is limited to the balance that an employee is unable to claim in terms of COIDA. In other words, the Fund will only be liable for any balance (par 10 of the High Court judgment).

The submission on behalf of the appellant's counsel is that the only instance where a driver involved in a single motor vehicle accident would be entitled to claim against the appellant is in terms of section 18(2); this is where persons conveyed in or on the insured vehicle are employees of the driver or owner of the vehicle (par 10). Moreover, it was submitted that the

respondent does not qualify as a third party for the purposes of the Act. For this reason, the appellant submitted, the respondent's claim did not fall within the ambit of the Act but lay at common law, and since such a claim is not excluded by section 21 of the Act, it would be against public policy to apply an extensive interpretation of the Act to create a remedy for claimants under such circumstances (par 11). In the alternative, it was argued that the bodily injuries and loss suffered by the respondent were neither caused by nor arose from the driving of the insured vehicle but resulted from a tyre burst (par 11).

Disagreeing with the appellant's argument, the learned Makgoka AJA held that section 18(2) does not create a right of action (par 12). Its clear purpose is to limit certain claims under section 17 where the third party had been conveyed in or on the insured vehicle, and was an employee of the driver or owner of the insured vehicle (par 12). In those instances, the third party's claim lies in terms of COIDA and the Act and the third party's compensation under COIDA is to be deducted from an award made in terms of the Act, to avoid double compensation (par 12). Makgoka AJA stated that it was common cause that the respondent was not an employee of the insured owner at the time of the accident, and therefore section 18(2) and COIDA are not applicable (par 12).

Makgoka AJA then turned to see whether the respondent does in fact have a claim in terms of the Act (par 12). According to Makgoka AJA, the starting point is to consider the effect of section 17(1), read with section 21(1) (par 13).

Section 17(1) of the Act provides:

"(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;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

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 or herself 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 the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum."

However, section 19 further provides:

"The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage-

- (a) for which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21 ..."

Section 21(1) of the Act then provides:

- “(1) No claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie—
- (a) against the owner or driver of a motor vehicle; or
 - (b) against the employer of the driver.”

Section 21(1) abolishes the right of an injured claimant to sue the wrongdoer at common law. Section 17(1) substitutes the appellant for the wrongdoer (par 13). It does not establish the substantive basis for liability: that liability is founded in common law (delictual liability). The claim against the appellant is simply a common-law claim for damages arising from the driving of a motor vehicle that results in injury. The liability only arises if the injury is due to the negligence or other wrongful act of the driver or owner of the motor vehicle (par 13).

Jansen JA in an attempt to contextualise the liability inferred on an owner of a vehicle under the Motor Vehicle Insurance Act 56 of 1972 (one of the predecessors to the Act) stated:

“The very scheme of the Act produces, in effect, this result: by paying the third party in terms of the Act, the insurer pays the delictual claim (i.e. based on “negligence or other unlawful act”) the third party would have had against the owner or driver; on the other hand the owner has, after all, entered into a contract of insurance with the insurer and paid the premium. The Legislature had, perforce, to regulate the incidents in the relationship between insurer, owner and driver. It did this by, in effect, subrogating the insurer in respect of the third party’s delictual claim, and freeing the owner (or a person driving with his consent) of liability in certain cases” (see *Da Silva v Coutinho* [1971] 3 ALL SA (A) 270).

At common law, the position was that an injured party could sue the person who was liable for damages in respect of his injuries; such liability being founded on *culpa* or *dolus* (see *Da Saliva v Coutinho* 1971 (3) SA 123 (A) 139 A–H). *Ownership*, as such, of a motor vehicle was no criterion for establishing liability for such loss or damage. On ordinary common-law principles, a person could be liable for such loss or damage only on account of his or her own unlawful conduct or that of another for whose acts he or she was vicariously responsible (see *Da Saliva v Coutinho supra* 285). The position under common law often worked an injustice since the injured party in many cases could not obtain satisfaction of his or her claim by reason of the financial circumstances of the person or persons legally responsible for the loss or damage sustained (see *Da Saliva v Coutinho supra* 285).

Corbett JA in *Evins v Shield Insurance Co Ltd* (1980 (2) SA 814 (A)), in an attempt to sum up the position, stated:

“To a great extent the Act represents an embodiment of the common law actions relating to damages for bodily injury and loss of support where the bodily injury or death is caused by or arises out of the driving of a motor vehicle insured under the Act and is due to the negligence of the driver of the vehicle or its owner or his servant. Then in place of, and to the exclusion of, the common liability of such persons is substituted the statutory liability of the authorized insurer. Sections 21, 23(a) and 27 indicate that the statutory liability of the authorized insurer is no wider than the common law liability of the driver or owner would have been but for the enactment of the Act (indeed

in certain instances it is narrower – see sections 22 and 23(b)) and that this statutory liability is dependent upon the existence of a state of affairs which would otherwise have given rise to such a common-law liability. The negligence upon which liability under section 21 hinges is the *culpa* of the common law and, save in certain specified instances, the compensation claimable under section 21 is assessed in accordance with common law principles relating to the computation of damages. In one significant respect, however, the Act brings about an innovation. Whereas at common law a person who suffered bodily injury (which would now fall under section 21) and also damage to property in a motor accident could – and was obliged to – claim damages in respect of both aspects from the responsible party in one action, now, save where the wrongdoer is a “self-insurer” (see section 3 of the Act), he must perforce bring separate actions, one against the party liable at common law for the damage to his property and one against the authorized insurer in respect of his bodily injury.” (par 58)

In plain language, section 21 provides that no claim for compensation arising from the driving of a motor vehicle shall lie against the owner or driver of a motor vehicle or against an employer of the driver (see *Law Society of South Africa v Road Accident Fund CCT 28/10 [2010] ZACC 25*). To this immunity from liability, there are two exceptions (par 26). The first is if the Fund is unable to pay any compensation (see *Law Society of South Africa v Road Accident Fund CCT supra* par 26). The second is when the action for compensation is in respect of loss or damage resulting from emotional shock sustained by a person other than a third party. The emotional shock must have arisen when the claimant witnessed, observed or was informed of the bodily injury to or death of another person as a result of a motor collision (*Law Society of South Africa v Road Accident Fund CCT supra* par 26).

In deciding whether the respondent’s claim fell within the ambit of section 17(1), the court analysed six elements in this section that can conveniently be broken down as follows: (par 15)

- (a) the liability is towards a “third party”;
- (b) such party suffered loss or damage;
- (c) the loss resulted from bodily injury to him- or herself;
- (d) the loss arose from the driving of a motor vehicle;
- (e) the injury was due to negligence or other wrongful act;
- (f) the negligence or wrongful act must be that of:
 - (i) the driver; or
 - (ii) the owner of the motor vehicle; or
 - (iii) his or her employee.

Of these six elements, two were disputed by the appellant. The appellant argued that the respondent was not a “third party” and also that his injuries were not caused by or did not arise from the “driving” of a motor vehicle.

First it was argued that as the respondent was the driver in a single motor accident he could not be a “third party” for the purposes of section 17 (par 17). The respondent, it was argued, could only be a third party as a driver if he had been involved in a multiple vehicle collision arising from the negligence of the insured driver of another vehicle. The learned Makgoka

AJA held that section 17 defines a third party as being “any person” (par 17). This undoubtedly is wide enough to include a driver involved in a single motor vehicle accident, such as the respondent, provided the injury arises from the negligence or wrongfulness of the owner, among others (par 17). An argument advanced in the High Court on behalf of the defendant was that the term “third party” is defined in the Act to mean: “*the third party referred to in section 17(1)*” (par 12 High Court judgment). Further, it was argued in the High Court that the term “third party” denotes any Fund victim who has suffered damage or loss as a result of bodily injury to him- or herself, or of the death of or injury to his/her breadwinner, as a result of the negligent and unlawful driving of a motor vehicle (par 12 High Court judgment). Klopper points out that the concept “third party” derives from the Motor Vehicle Insurance Act 29 of 1942, in terms of which the owner was compelled to insure against the possibility that his negligent driving would cause damage to other persons, and that the term “third party” has been retained in the new Act (Joubert “HB Klopper, The Law of Third-party Compensation” 2013 4 TSAR 828; see *Rose’s Car Hire (Pty) Ltd v Grant* 1948 (2) SA 466 (A) 473).

The appellant based its argument on the fact that the respondent was the driver, who in its view was solely negligent in causing the accident (par 18). The appellant made reference to the respondent as a “delinquent driver” in the heads of argument. According to Makgoka AJA, negligence or otherwise of the respondent does not arise in the present inquiry and the appellant loses sight of the pertinent provisions of section 17 – namely, that liability arises from among others, blameworthy conduct of the owner of the insured vehicle. Furthermore, in some instances, this may have nothing to do with the actual driving (par 18).

Corbett J points out that section 11(1) of the Motor Vehicle Insurance Act 29 of 1942, which is the predecessor to section 17, provided that a registered insurance company that has insured a vehicle is obliged to compensate a third party who has suffered loss or damage as a result of bodily injury to himself (see *Wells v Shield Insurance Co Ltd* 1965 (2) SA 865 (C) 867).

As was pointed out by Corbett J in *Wells v Shield Insurance Co Ltd* (*supra* 867H), the section (the predecessor to section 17) lays down two prerequisites for liability on the part of the registered insurance company for loss or damage suffered by a third party as a result of bodily injury. They are: (i) that the bodily injury was caused by or arose out of the driving of the insured motor vehicle; and (ii) that the bodily injury was due to the negligence or other unlawful act of the driver of the insured vehicle or owner thereof or his servant (*Wells v Shield Insurance Co Ltd supra* 868). The decision as to whether in a particular case these prerequisites have been satisfied involves two separate inquiries. Broadly speaking, the first prerequisite is concerned with the physical or mechanical cause of the bodily injury, whereas the second is concerned with legally blameworthy conduct on the part of certain persons as being the cause of the bodily injury (*Wells v Shield Insurance Co Ltd supra* 868). In *Santam Versekeringsmaatskappy Bpk v Kemp* (1971 (3) SA 305 (A) 332C) (albeit in a dissenting judgment), Jansen JA observed that there are two separate enquiries, a fact that is

sometimes lost sight of because in most cases the injury is caused by negligent driving of the insured vehicle.

It is clear that the appellant has fallen into the pitfall that Jansen JA cautioned against (par 20). As correctly submitted on behalf of the respondent, it is the negligent or wrongful conduct of the owner of the insured vehicle that the respondent relies upon. The focus of liability is not on the driver, but on the insured owner. The facts of this case differ from what is usually encountered, where two vehicles collide. In such instances, the appellant steps into the shoes of the negligent driver (par 20). In the present case the appellant steps into the shoes of the insured owner, whose conduct is alleged to have been negligent. For these reasons, Makgoka AJA concluded that the respondent falls within the definition of a “third party” (par 20).

The second disputed element of section 17(1) was whether the injuries were caused by or arose from the “driving” of a motor vehicle as required in section 17 (par 21). The term “driving” is not defined in the Act and it must be given its ordinary meaning. Corbett J stated that the word “driving”, as used in relation to the insured motor vehicle, means the urging on, directing the course of control of the vehicle while in motion and all acts reasonably incidental thereto (*Wells v Shield Insurance Co Ltd supra* 870.) It would thus include the starting of the engine and the manipulation of the controls of the vehicle that regulate its speed and direction and those that assist the driver and other road users such as lights and traffic indicators (*Wells v Shield Insurance Co Ltd supra* 871). The appellant’s submission was that the respondent’s injuries were not caused by the driving, but by the unroadworthy condition of the insured vehicle – namely, the worn tyre that burst. Makgoka AJA found there was no merit in this submission (par 21). The respondent’s claim is based on the alleged wrongful and negligent conduct of the insured owner who failed to maintain the tyres of the insured vehicle in a safe and roadworthy condition, which resulted in the tyre bursting and caused the accident (par 21).

Corbett J recognised that the negligence or unlawful conduct may consist of some act or omission on the part of the driver in the actual course of driving, such as driving at an excessive speed or failing to keep a look-out, or it may consist of some antecedent or ancillary act or omission on the part of the driver or the owner of the vehicle or servant of the vehicle, such as failing to maintain the vehicle in a roadworthy condition or overloading the vehicle (*Wells v Shield Insurance Co Ltd supra* 870). He further stated that where the direct cause (in the question of culpability) is the same act or omission on the part of the driver as the actual driving of the vehicle then it would generally be found that the death or injury was “caused by” the driving. However, where the direct cause is some antecedent or ancillary act, then it could not normally be said that the death or injury was “caused by” the driving; but it might be found to arise out of the driving (*Wells v Shield Insurance Co Ltd supra* 870). This would depend upon the particular facts of the case and whether, applying ordinary, common-sense standards, it could be said that the causal connection between the death or injury and the driving was sufficiently real and close to enable the court to say that the

death or injury did arise out of the driving (*Wells v Shield Insurance Co Ltd supra* 870).

Jansen JA in *Santam Versekeringsmaatskappy Bpk v Kemp* (332D) explained:

“It can however happen that even in the instance of blameless driving of a motor vehicle, injury or death may result, for example as a result of a wheel which becomes dislodged. If the dislodgment, and the resultant death or injury is due to the negligence of the owner (for example because he did not tighten it properly) then the insurer of the vehicle is liable because death or injury occurred, despite the blameless driving ...” (see also *Barkett v SA Mutual Trust and Assurance Co Ltd* [1951] ALL SA 462 (A) 465).

Makgoka AJA held that the insured motor vehicle was being driven at the time of the accident. The tyre bursting was dependent on this fact (par 24). As a result, the causal connection between the injuries suffered by the respondent and the driving were sufficiently real. In the circumstances, the court found no merit in the appellant’s contentions (par 24). Makgoka AJA held that the respondent’s claim fell within the ambit of section 17 of the Act (par 25). Makgoka AJA held further that section 18 of the Act was not applicable in the circumstances of this case (par 25) and that the court *a quo* incorrectly found that for the respondent’s claim to be within the ambit of the Act, he had to base his claim on section 18 – hence its reasoning that the respondent was a contractor on behalf of the insured owner at the time of the accident (par 25). Makgoka AJA accordingly held that the liability of the appellant for the injuries sustained by the respondent must be found in the plain wording of section 17, read together with section 21 of the Act (par 25).

6 Conclusion

When interpreting the provisions of the Act, it is important for the courts to keep in mind that the primary purpose and objectives of the legislation is to give the widest possible protection and compensation to claimants. However, some degree of caution is warranted as the Fund relies entirely on the fiscus for its funding and should be protected against illegitimate and fraudulent claims. It is clear that the Act exists for the exclusive benefit and protection of the victim and not for the benefit or protection of the negligent or unlawfully acting driver or owner of a vehicle. In *Road Accident Fund v Abrahams (supra)*, the SCA clearly indicated the circumstances in which the Fund should step into the shoes of an insured owner whose conduct is deemed to have been negligent (par 20).

Darren Subramanien
University of KwaZulu-Natal

Tamera Govender
University of KwaZulu-Natal