

# Court overturns judgment, clarifies term "motor vehicle" in RAF Act

A widow has won her appeal against the Road Accident Fund (RAF) for compensation in the Cape Town High Court after her common law husband was fatally injured after being knocked over by a container being conveyed by a so-called "reach stacker" at the Multipurpose Terminal at Cape Town Harbour nearly nine years ago.



© Prasit Rodphan – [123RF.com](https://123RF.com)

This is according to the widow's lawyer Chris Smit from DSC Attorneys, who says that the judgment will bring the widow and her children much needed compensation for the death of her husband.

On 20 February 2010, Simpiwe Robert Makutoana, Thandiswa Linah Mbele's common law husband, was fatally injured leaving Mbele, then 35 years of age, alone to raise their four children, ranging in age from 5 months to 9 years.

Despite submitting Mbele's claim in 2010 for the lost financial support suffered as a consequence of Makutoana's passing, Smit says that the RAF has resisted her claim to date on a technical point, namely that the "reach stacker" was not a motor vehicle as contemplated in the Road Accident Fund Act.

"Ms Mbele had to go to court to challenge the RAF's rejection of the claim on this basis, with the initial trial having started as

long ago as June 2016,” he explains. “In November 2017 judgment was given in the RAF’S favour, which was a huge blow to Ms Mbele and could have nullified any chances she had at receiving compensation for herself and her children.”

The Western Cape High Court has since overturned the earlier decision – finding that the vehicle was indeed a “motor vehicle” as contemplated in the Act. However, Smit says that the RAF has not yet relented following this judgment, and is currently considering approaching the Supreme Court of Appeal for leave to appeal.

Smit adds that the judgment stresses that each case of this nature has to be determined on its’ own merit, although it is now clear that in these particular circumstances the vehicle in question is indeed one which is “covered” as it were, for purposes of access to compensation from the RAF.

With regard to the compensation will they receive, Smit says that the late Makutoana was employed as a stevedore at the time of his passing, earning a very modest salary, meaning that the financial losses suffered by Mbele and her children are limited.

“It’s frustrating to consider that the legal expenses incurred by the RAF to date in contesting this modest claim, in all probability exceeds the compensation which is recoverable,” Smit concludes.

For more, visit: <https://www.bizcommunity.com>