



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 5469/2020

In the matter between:

MARIUS CEYSTER

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Marius Ceyster v Road Accident Fund* (Case no 5469/2020)
[2020] ZAWCHC ... (110825)

Coram: **MTHIMUNYE AJ**

Heard: 31 July 2025

Delivered: 11 August 2025

Summary: Claim for damages arising from a motor vehicle accident. Only issue of liability to be determined.

ORDER

1. The defendant is liable for 100% of the plaintiff's proven damages regarding the motor vehicle accident that occurred on 19 February 2019 at Station Road, Tulbagh.
 2. The trial in respect of quantum is postponed sine die.
 3. The defendant is ordered to pay plaintiff's party-and-party costs on the High Court Scale C, as taxed or agreed by the parties, such costs to include the costs occasioned on 29 April 2025.
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JUDGMENT

Mthimunye AJ:

- [1] This is a claim for damages arising from a motor vehicle accident that occurred on 16 February 2019 at or near Station Road, Tulbagh. The plaintiff a driver of a motor vehicle bearing registration number C[...] at the time was involved in a collision with a motor vehicle of which the identity of the owner and driver was unknown.
- [2] The plaintiff suffered injuries to his head, right arm and elbow. He claimed damages in the amount of R4,253,082,80. The defendant's plea amounted to a bare denial, claiming that the accident was caused partly by the negligence of the plaintiff. At the start of the trial the defendant admitted that it is not in dispute that an accident did occur. The only issue for determination was liability.

Summary of the Evidence

[3] The plaintiff testified that on 16 February 2019 he was travelling with his employers Isuzu bakkie from Remhoogte farm with his colleague Wesley. He was on his way to fetch his girlfriend and their child from Uitvlugt farm. While driving in the left lane on Wintershoek road, he was confronted by an oncoming motor vehicle who had on his bright headlights. The oncoming vehicle was straddling the centre white line. During cross-examination he explained that the road was narrow and that the oncoming vehicle's one wheel was in his lane while the other wheel was in the right lane. He further testified that upon realising that there was a problem, he immediately took evasive action to avoid a collision. While swerving to the left to avoid the collision he felt an impact to the right rear of his motor vehicle, causing his vehicle to spin out of control, overturning, whereafter he was unconscious.

[4] The next witness was Mr Wesley Lambert. He testified that he was a passenger in the motor vehicle that was driven by the plaintiff on the day of the incident. He confirms that the accident took place on Wintershoek road. Further that he and the plaintiff were on their way to Uitvlugt farm to fetch their girlfriends. He further testified that as they were coming around a bend he saw an oncoming motor vehicle with its bright headlights on approaching their motor vehicle. The plaintiff then tried to avoid the oncoming vehicle, however the oncoming vehicle hit them on the right back side of their motor vehicle, resulting in their motor vehicle tilting. He testified that he could not see where exactly the oncoming motor vehicle was on the road as he was busy on the phone, talking to his girlfriend at that time.

[5] The defendant led no witnesses.

Issues for determination

[6] The issue to be determined is whether the plaintiff on a balance of probabilities has proved his claim in delict. I order for me to make such determination I will first turn to deal with the relevant legal principles applicable.

Legal Framework

[7] The provisions of section 17(1) of the Road Accident Fund Act 56 of 1996 ('the RAF Act') stipulate that:

[8] *'The Fund or an agent shall-*

(a) ...

(b) ...

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...'

[9] In *Septoo v The Road Accident Fund* 2017 JDR 1913 (SCA), the Supreme Court of Appeal stated that a claimant must prove all the elements of a delict in order for it to succeed with its claim in terms of the RAF Act.

[10] The plaintiff has to prove the following five elements to succeed with his claim;

(a) that the defendant actively did something, in this matter it is not disputed that an accident occurred; (b) wrongfulness (the legal duty to avoid causing harm); (c) fault (negligence); (d) causation and (e) that he suffered injuries (damages). If any single element is not established, that is the end of the plaintiff's claim.

Discussion

[11]0 Both the plaintiff and Mr Lambert's testimonies were cogent and satisfactorily. From their evidence it is evident that at some point in time they were travelling together on Winterhoek Road. They were confronted by an oncoming motor vehicle that had its bright head lights on. The plaintiff intimated that he saw the oncoming

motor vehicle straddling the centre white line and realised there was a problem and took evasive action to avoid an accident. Unfortunately, the oncoming vehicle hit his motor vehicle on the back right side causing him to lose control of his motor vehicle. The plaintiff was admittedly rendered unconscious by the collision. The plaintiff's version was undisputed and in so far as it is materially relevant corroborated by Mr Lambert. Both these witnesses were credible and reliable witnesses.

[12] The defendant never suggested or proposed to any witnesses during cross-examination that the collision did not occur in the manner which the witnesses had testified. It is trite law, that where the facts are indicative of negligence on the part of a driver, unless the driver comes to testify to refute the facts or furnish an explanation why he was on the incorrect side of the road, the facts speak for itself (*res ipsa loquitor*). Thus, the evidence of the plaintiff stands uncontested. I therefore accept the plaintiff's version that there was an oncoming motor vehicle which partly travelled on the incorrect side of the road and that as a result of the plaintiff taking evasive action the unknown motor vehicle impacted with the plaintiff's motor vehicle, causing the collision and the plaintiff sustaining injuries.

[13] During the proceedings, counsel for the defendant suggested that by the plaintiff being unable to recall at what speed he was driving, he contributed to the negligence of the unknown driver. In the absence of a version by the insured driver the issue of contributory negligence must be determined on the version of the plaintiff. There are further no circumstances based on the evidence before court from which an inference can be drawn that there was causal negligence on the part of the plaintiff. The only inference to be drawn by this court is that the insured driver was solely negligent for the accident.

Conclusion

[14] On a proper evaluation of the evidence in its totality, the court is satisfied that the collision was occasioned by the sole negligence of the unidentified insured driver and that there is no evidence of contributory negligence on the part of the plaintiff.

Costs

[15] The only issue remaining is that of costs. There is no reason why the general rule should not apply. The plaintiff being successful is thus entitled to his costs.

[16] **The following order is made:**

1. The defendant is liable for 100% of the plaintiff's proven damages regarding the motor vehicle accident that occurred on 19 February 2019 at Station Road, Tulbagh.
2. The trial in respect of quantum is postponed sine die.
4. The defendant is ordered to pay plaintiff's party-and-party costs on the High Court Scale C, as taxed or agreed by the parties, such costs to include the costs occasioned on 29 April 2025.

S MTHIMUNYE
ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for Plaintiff : Adv H G McLachlan
(advmac@capebar.co.za)

Attorneys for Plaintiff: Ms N K Haupt
(nicola@krugercolaw.co.za)

Counsel for Defendant: Ms Claireese Thomas of State Attorney
(claireese@raf.co.za)