

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

CASE NO: 3427/2018

Not reportable

Date heard: 11 August 2021

Date delivered: 5 October 2021

In the matter between

CHRISTO JOHAN TAYLOR

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

Krüger AJ

[1] The plaintiff instituted a claim against the Road Accident Fund for damages arising from an accident that took place 17 December 2015 in Da Gama Road in Jeffreys Bay. The defendant resisted the claim.

[2] On 23 April 2021, the parties obtained a court order by agreement to separate the merits and quantum of the claim in the following terms:

- '1. In terms of Uniform Rule 33(4), paragraphs 3, 4 and 6 of the Particulars of Claim read with the correspondent paragraphs of the Defendant's Plea ("the merits issue"), be and are hereby separated from the remaining issues'
2. The remaining issues be and are hereby postponed *sine die*.

[3] The particulars of claim contains the following factual averments relevant to the consideration of the evidence presented:

‘3. On or about 17 December 2015, at approximately 21h00, and at or near Da Gama Road Jeffreys Bay, Eastern Cape, a collision (“the collision”) occurred involving a motor vehicle with registration letters and number not identified and of which vehicle the identity of the owner and/or driver are to Plaintiff unknown (“the insured motor vehicle”) and a motor cycle, more particularly being a scooter ridden by Plaintiff (“Plaintiff’s motor cycle”), which collision was caused by and/or arose out of the driving of the driver of the insured motor vehicle, as a result of which plaintiff lost control of Plaintiff’s motor cycle and fell therefrom and further in consequence of which Plaintiff’s bodily injuries further described below.’

The further paragraphs referred to in the order, relate to the identity of the plaintiff and unknown identity of the insured driver, and the details relating to the accident caused by the sole negligence of the insured driver.

The corresponding paragraphs of the plea of the Fund deny the averments and put the plaintiff to the proof thereof.

[4] On the date of the hearing, the plaintiff testified in support of his claim. The Fund was not represented.

[5] The plaintiff testified that he was on route to deliver a pizza on his scooter on the date of the accident. He was wearing a helmet and the scooter had a box at the back in which pizzas for delivery were placed. He was travelling at about 50km/h down Da Gama Road, a tarred road with a single lane in each direction. Since it was the holiday season the road carried significant traffic at that time. As he was nearing a slight curve in the road, he heard the engine of a vehicle roaring behind him. In the curve, the vehicle sped past him, forcing him to move further to the left of the road. The plaintiff’s evidence was that he had no choice but to steer his scooter onto the gravel verge of the road. On the gravel, the steering mechanism of the scooter pulled to the right, and in order to avoid falling in front of the traffic, the plaintiff pushed out his right foot at which point the scooter went over him. The insured vehicle did not come into contact with the plaintiff or his scooter. The driver of the insured vehicle did not stop. On enquiry from bystanders, the plaintiff stated that he was ‘fine’ and he picked up the pizza which had fallen out, got back onto his scooter to continue his delivery.

His evidence was that he was shocked as a result of the accident. He did not obtain any particulars of any of the bystanders who witnessed the incident. It was only later that he noticed that his right foot was standing at a strange angle. After his shift that evening, he sought medical attention.

[6] The plaintiff must prove his case on a balance of probabilities. His evidence regarding the accident stands uncontested. In a nutshell, his version is that the insured vehicle being driven negligently and without consideration of his safety, passed him at a high speed on a curve in the road, causing him to serve out of the way and to lose control of his scooter, thus causing his injuries when he stuck out his foot to avoid falling in front of the traffic.

[7] Section 17(1)(b) of the Road Accident Fund Act¹ reads as follows:

‘17. Liability of fund and agents

(1) The Fund or an agent shall –

(a)...

(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 of the vehicle 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 the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as an 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 1(A) and shall be paid by way of a lump sum.’

[8] Section 17(1)(b) stipulates that the bodily injury of the third party must have been caused by or arose from the driving of a motor vehicle, and that the injury is the result of the negligence or other wrongful act of the driver of the insured vehicle. But for² the negligent, if not reckless speeding and overtaking of the plaintiff's scooter by the insured driver, the plaintiff would not have suffered the

¹ Act 56 of 1996.

² *International Shipping Co (Pty) v Bentley* 1990 (1) SA 680 (A) as endorsed in *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) and *Mashongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 528 (CC).

injuries on 17 December 2015. He sustained the injuries when he reacted to the danger posed by the insured vehicle to him. There is no reason to question the version of the plaintiff, and I am satisfied that he discharged the onus resting on him on a balance of probabilities. The negligent driving of the insured driver caused the injuries suffered by the plaintiff.

[9] I make the following order:

- a. The defendant is liable for the damages the plaintiff suffered when he was injured as a result of the motor vehicle accident for which the unknown insured driver was solely responsible on 17 December 2015;
- b. Costs to follow suit.

R Krüger AJ

Acting Judge of the High Court of South Africa

For the plaintiff: *Adv White*

Instructed by Lawrence Masiza Vorster Inc, Port Elizabeth c/o Neville Borman Botha
Attorneys

No appearance for the defendant