



THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

Case No.: 2960/2009

In the matter between:

ELVIS PHUMEZO NGCUWA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT: 19 MARCH 2012

VELDHUIZEN J:

[1] The plaintiff claims damages from the defendant. The plaintiff alleges in his particulars of claim that he was injured when a motor vehicle collided with him on 14 October 2006 on the N2 National Road, New Horizons, Plettenberg Bay.

[2] The parties agreed that the issues regarding the merits and quantum should be tried separately.

[3] The plaintiff testified that he was on his way home after playing soccer and visiting a friend. The time was approximately 9pm and, as one would expect, fairly dark. He arrived at the N2 National Road, Plettenberg Bay and noticed a motor vehicle approaching from his right. It was a gold coloured Nissan Micra motor vehicle. The motor vehicle was travelling from the direction from Knysna towards Plettenberg Bay. The plaintiff proceeded into the road walking at a brisk pace. When he reached the demarcated area between the lanes for vehicles travelling from Knysna and those travelling towards Knysna this motor vehicle collided with his right leg. He marked the point of collision with an 'X' on page 19 of exhibit 'B'. He recalls falling on his head. He lost consciousness and only regained it in the George hospital.

[4] An acquaintance of the plaintiff, Mr Bayanda Dibela, testified that he arrived on the scene and found the police in attendance. The police requested him to inform the plaintiff's parents; which he did. They returned to the scene. The ambulance arrived and he accompanied the plaintiff to the Knysna hospital.

[5] This concluded the evidence for the plaintiff. The defendant did not tender any evidence but from the cross examination of the plaintiff it appears that it is the defendant's contention that the plaintiff sustained his injuries in an assault and not a motor vehicle collision.

[6] There are a few troubling features in the evidence of the plaintiff. It is highly unlikely that he would have been able to see the make and colour of the approaching car at that time of the night even if there was a full moon as he testified. It is far more likely that he gleaned this information from the Accident Report Form which is on page 13 of exhibit 'B'. This report, however, deals with a different incident. Although the plaintiff initially testified that he was standing in the middle of the road when he was struck he later stated that he did not stop and was still in the process of crossing the road. The weaknesses in the plaintiff's testimony do not, in my view, warrant a total rejection of his evidence as being false. His witness, although not corroborating his evidence that he was struck by a motor vehicle, does confirm that he was lying in the vicinity of the place where the plaintiff says the motor vehicle collided with him.

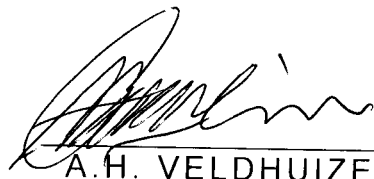
[7] I am satisfied that the plaintiff proved that he sustained his injury when he was struck by a motor vehicle. This brings me to the next question. Was the driver of the motor vehicle negligent? To reach the point where he was struck the plaintiff had to travel a distance of approximately 2.5 to 3 metres. The plaintiff should have been visible to the driver even before he entered the road and the driver had ample space to pass behind the plaintiff. This he did not do. Instead he moved to his right in the very direction

that the plaintiff was moving. This manoeuvre was dangerous and, in my view, negligent.

[8] The plaintiff should, however, not have entered the roadway knowing that there was an oncoming motor vehicle. I do not accept the plaintiff's evidence that the motor vehicle was far away when he first noticed it. The facts indicate that it must have been fairly close when the plaintiff started to cross the road. In so doing the plaintiff was negligent and contributed to the collision.

[9] I conclude that the plaintiff and the driver of the motor vehicle were equally to blame for the collision and that the plaintiff's damages should be reduced by 50%.

[10] In the result the plaintiff's claim is upheld but should be reduced by 50%. The defendant is ordered to pay the plaintiff's costs of suit.



A.H. VELDHUIZEN, J
JUDGE OF THE HIGH COURT