

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

Date: Friday 17 March 2006

Status: Immediate

On 17 March 2006 the Supreme Court of Appeal delivered judgment in the matter of *Sias Smith v The Road Accident Fund*.

Mr Smith was the defendant in an action in the Port Elizabeth High Court. The plaintiff claimed damages for bodily injuries suffered by her resulting from the negligent driving of a motor vehicle by the defendant in which she was a fare-paying passenger.

The defendant denied liability. He pleaded that the accident had been caused by the negligence of two other vehicles whose drivers and details were unknown to him.

The defendant joined the Fund as a third party under the rules of court alleging that if he were found to have been negligent such negligence fell to be apportioned against the drivers of the other two vehicles, that the Fund was liable to compensate the plaintiff for damages suffered at the hand of those persons and that the Fund was accordingly to be regarded as a joint wrongdoer with him and liable to compensate the plaintiff according to the proportionate negligence of those drivers. He claimed indemnification from the Fund in accordance with such an apportionment. The Fund denied that it was a joint wrongdoer and denied further liability to compensate the plaintiff or to indemnify the defendant against part of any order for damages made in

favour of the plaintiff.

The trial court upheld the Fund's objection. It dismissed the defendant's conditional claim for an indemnification. The defendant appealed.

The SCA dismissed the appeal. It held that-

- (1) an uninjured negligent driver has no claim against the Fund in the circumstances relied on by the defendant;
- (2) the benefits conferred by the RAF Act on an injured third party in the case of the negligence of an unidentified driver are not available to a defendant whose negligence contributed to the injuries;
- (3) the Fund cannot be a joint wrongdoer for the purposes of apportioning damages unless it is liable under the RAF Act, which, as against the defendant in this case, it was not.

--ends--