

# Farmer held liable for car accident caused by calf

The responsibility for a motor accident caused by a calf on the road is a complex matter involving both the owner of the calf and the driver.

Imagine finding yourself on a normal day, you work a bit later than usual and decide to finally head home. The sun has already set, but you've driven this road so many times that you're not worried about it being dark. You're enjoying some music when suddenly you see a calf in the middle of the road. You try to swerve, but it's too late, and you're involved in a serious accident.

Who would be responsible for the damages to your vehicle, or even your death, in these circumstances? Who would be liable for the farmer's damages of losing a cow?

In the recent case of *Ralikonyana v De Villiers & Another 2024 (4633/2021) [2024] ZAFSHC 3*, an employee of the South African Police Service was still on duty and on the road at midnight. A calf stood in the middle of the road, he tried to swerve left but still hit the calf, resulting in a motor accident. The court held that the farmer is responsible for the driver's injuries and damages as the driver proved that the farmer negligently breached the duty of care to take steps to prevent the calf from escaping from the kraal in which it was kept and from straying on the road.

However, the farmer will not always automatically be liable whenever a calf is in the road. Let's discuss the circumstances in which the farmer will be liable and when the driver will be liable.

In *Kruger v Coetzee 1966 2 ALL SA 490 (A)*, the court explained the test which is to be applied to determine negligence:

Would the reasonable person in the position of, in this case, the farmer, foresee that their behaviour could lead to injury/damage to another person or their property, and take necessary steps to prevent that injury or damage.

Therefore, the farmer who owns the calf must prevent its cattle from wandering

in the road and can be expected to:

- Erect and maintain proper fences to prevent cattle from escaping onto public roads.
- Install and maintain proper gates in the fences and keep them closed.
- Employ sufficient and reliable staff as cattle herders.
- Have a system of inspection and repair in place to ensure fences are maintained to keep cattle secure.
- Keep newly weaned calves in a pen or enclosure to prevent them from escaping.

Numerous case law dealing with similar matters have shown that livestock owners owe a duty of care to the public and should take additional precautionary measures to ensure that their animals are kept in a secure space. The courts have found that additional measures can be achieved easily and inexpensively.

If the driver was contributory negligent, you will not be held liable for the total amount of injuries/damages but only a portion thereof. It is important to take note that contributory negligence refers to a situation where a person contributes to their own injury or loss through their own negligent actions or omissions. It can affect the amount of compensation they may receive in a legal claim for damages.

For instance, as a driver on a public road, you still have a responsibility to avoid the accident to the best of your ability. If you, for instance, do not adhere to the speed limit and do not follow the rules of the road, the court may find that you contributed to your own damages by not following the rules of the road and only award a portion of your damages.

Here are examples that could lead to an order of contributory negligence in the specific scenario:

- If you exceeded the speed limit;
- If you were driving too fast given the conditions - it was night, and there were no lights on the road;
- If you had only one working headlight - roadworthiness;
- If you did not brake or failed to brake timeously;
- If you could have avoided the accident by swerving, which you did not;

In conclusion, it is important to note that, as a farmer and owner of livestock, you

must ensure that your livestock does not end up on the road as it can cause significant damage and or loss of life for which you could be held liable.

Similarly, drivers should consider that accidents can occur and animals can find themselves on the road - be cautious and obedient to the rules of the road!