

SOUTH AFRICA / JUDGMENT

Stephens v Minister of Police (21884/2017) [2025] ZAWCHC 72 (28 February 2025) [2025] ZAWCHC 72

COURT

Western Cape High Court, Cape Town

BEFORE

P D Andrews

CASE / FILE NUMBER

21884/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

FLYNOTES:

PERSONAL

INJURY – Fall at police station – Landing
without railing –

Elderly

man had fingerprints taken – Directed to the tap by police
officer – No warning signs and absence of railings

–

Negligence and breach of duty of care – Plaintiff failed to
keep proper look-out and instead blindly proceeded
in direction of

tap – Steps were next to landing – Plaintiff 20%
contributorily negligent – Minister liable
for 80% of proven
or agreed damages.

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

CASE

NO: 21884/2017

In the matter between: RICHARD
 WILLIAM STEPHENS
 Plaintiff
 and
 THE
 MINISTER OF
 POLICE
 Defendant

JUDGMENT

ANDREWS AJ

Introduction

- [1] The Plaintiff instituted an action against the Defendant for damages suffered as a result of an incident that occurred on 10 August 2016 at Stanford, Western Cape South African Police Services (“SAPS”), when the Plaintiff fell from an unsecured landing and injured himself. As a consequence of the incident, the Plaintiff sustained injuries to his left knee and damage to his teeth and jaw.
- [2] The Plaintiff’s claim against the Defendant is predicated on the assertion that the members of SAPS, acting within the course and scope of their employment, were under a legal duty to ensure that the premises were safe when used by members of the public. The Plaintiff pleaded that the incident was caused by the sole negligence of the Defendant and/or its members, by inter alia failing to ensure that the landing was safe for members of the public and to display warning signs.
- [3] The Defendant in its Plea denied liability and culpability of the stated harm and injuries sustained by the Plaintiff. In amplification of such denial, the Defendant averred that the Plaintiff’s injuries were as a consequence of his own negligence and unreasonable conduct in that he jumped from the landing, whereafter he lost his balance and fell against an iron bar thereby injuring himself.
- [4] The matter proceeded on the issues of both merits and quantum.

Ad merits

Common cause facts

- [5] The following facts are common cause, namely[1]:
- (a) The identity of the parties;
 - (b) Jurisdiction;

- (c) That the Defendant is the owner / lawful occupier / responsible for the maintenance and structure of the premises situated at 8 Du Toit Street, Stanford (“the police station”);
- (d) at all relevant times, the premises were open to members of the public to use
- (e) the Defendant owed members of the public the legal duty to ensure that the premises were safe;
- (f) The Plaintiff sustained injuries and
- (g) There was no railing on the landing.

The evidence

- [6] Two witnesses testified in the Plaintiff’s case namely, the Plaintiff and Dr Le Roux. The evidence of one witness, Warrant Officer Booysen, was led in the Defendant’s case.

Evidence led in the Plaintiff’s case

- [7] Mr Richard William Stephens (“the Plaintiff”), testified that he is 80 years old and currently resides in Howick, KwaZulu-Natal. He narrated that on 10 August 2016, he attended Stanford Police Station (“the police station”), to take fingerprints which was required for him to join the neighbourhood watch. He explained that his fingerprints were taken whereafter the Station Commander came to him with toilet paper to clean his fingers. The Sergeant who took his fingerprints then directed him to go through the police station to a tap on the wall, that was approximately 6 meters away, to wash his hands.
- [8] He explained that he did as he was told, namely to walk down the corridor to wash his hands. As he proceeded down the corridor, he turned around because he was unsure where he was supposed to be going. The officer, who was watching him the whole way, then gestured to him with his hand with a sweeping movement to keep on going. The Plaintiff proceeded to walk out onto the landing and went straight, following the officer’s directions. He further orated that he expected steps, but instead, he hit the ground and assumed that he must have passed out. He described how he tumbled and smashed his leg on the concrete path. He further explicated that when he gained consciousness he was holding onto the galvanised pipe with hooks in it and his chin was pouring with blood. A policeman arrived with toilet paper to stop the bleeding.
- [9] The Plaintiff further narrated that he patched himself up and went to a doctor in Hermanus who advised him to go to Medi Clinic immediately where he received medical attention. The Plaintiff refuted the assertion that he jumped off the landing.
- [10] Dr Theo Le Roux (“Dr Le Roux”), testified that he is an orthopaedic surgeon. He qualified in 1972 and has been in private practice from 1983. He orated that he had written a significant number of medico-legal reports, estimating it to be in the region of 350 reports per year.

[11] He described the extent of the Plaintiff's injuries as contained in his report. Dr Le Roux was requested to comment on the proposition of the Defendant that the Plaintiff jumped from the landing. He stated that he had never seen the kind of bruising as depicted in the photo exhibits to which he was referred, associated with someone who had jumped from a height. [2]

[12] Dr Le Roux further opined that the Plaintiff was expecting a step at the edge of the landing. He reasoned that the Plaintiff put his left foot forward to place it onto a step and there was no step. Being a forward movement, his left foot went down, the Plaintiff fell and landed on the left leg then fell forward with all his weight on his leg thereby causing the injury to the ankle, foot and knee.

Evidence led in the Defendant's case

[13] Freddie Booysen ("W/O Booysen"), testified that he holds the rank of Warrant Officer, with 36 years' experience. He confirmed that he was stationed at the Stanford police station at the time of the incident that on 10 August 2016. W/O Booysen recounted that he took the Plaintiff's fingerprints at the Community Service Centre ("CSC") because he wanted to join the neighbourhood watch. He explained the process involved in taking the Plaintiff's fingerprints whereafter he told the Plaintiff to wait for him in the CSC while he fetches toilet paper to wipe the ink from his fingers.

[14] When W/O Booysen returned from the bathroom, the Plaintiff was not there. He enquired where the Plaintiff had gone and was told that he is outside at the back of the police station. W/O Booysen proceeded to the outside and found the Plaintiff with Warrant Officer Blayi ("W/O Blayi"). He noticed that there was blood on the Plaintiff's face. W/O Booysen orated that he handed the toilet paper to the Plaintiff to stop the bleeding. The Plaintiff informed him that he had fallen. W/O Booysen enquired from him whether he needed any medical assistance to which the Plaintiff responded that he will be alright.

[15] W/O Booysen disputed the Plaintiff's version that he had instructed him to go to the tap. He refuted that he made any hand gesture motioning him to move in the direction of the tap. W/O Booysen further stated that the door leading onto the landing would ordinarily be used to escort prisoners to the cells by taking them down the steps. Prior to the incident, no one had fallen from the landing. The unsecured landing was subsequently fitted with railing on the advice of the State Attorney.

Principal submissions on behalf of the Plaintiff

[16] Counsel for the Plaintiff argued that the court is to have regard to the fact that the Plaintiff had never visited the police station prior to the day in question. This area is not open to the public and therefore the Plaintiff could not have had any knowledge of the location and/or the existence of this tap unless he was informed by a police officer thereof.

- [17] It was furthermore contended that the Plaintiff's version is corroborated by the evidence of Dr Le Roux who stated that this type of injury would be expected from someone who had fallen and not consistent with the injuries of someone who had jumped. This proposition by the Defendant that the Plaintiff jumped, was argued to not be supported by any evidence, suggesting that such proposal is a fabrication in order to avoid liability. To cement the Plaintiff's contention, the SAP 10 wherein the incident was recorded, references that the Plaintiff had fallen. The Defendant's defence, it was submitted, stands uncorroborated by any evidence, and thus same ought to be rejected as false.

Principal submissions on behalf of the Defendant

- [18] Counsel for the Defendant submitted that the Plaintiff, who was an adult of sound mind, failed to act reasonably by failing to use the steps provided for the purpose of descending from the landing. In this regard, it was argued that the Plaintiff had ample opportunity to avoid going over the edge of the landing. Additionally, it was submitted that despite the landing being unsecured, the Plaintiff's falling over the landing was wholly preventable. They argued that the Plaintiff had unreasonably failed to look where he was walking or stepping after being allegedly instructed to proceed to the tap, which allegation was denied.
- [19] They also suggested that the Plaintiff deliberately ignored the steps and chose to go over the edge of the landing. It was further argued that the relief which the Plaintiff sought in terms of the action and the evidence adduced to prove the same,

including that of Dr Le Roux, falls short on the facts of the case and the jurisprudence developed on causation.

- [20] Furthermore, it was argued that the Plaintiff failed to prove that the failure to erect a railing in the area where the Plaintiff had fallen constituted negligent conduct on the part of the Defendant. In the circumstances, they submitted that the Defendant's conduct was unreasonable and grossly negligent, warranting a dismissal of the action.

Legal principles

- [21] The standard of proof is well-established in civil cases.[3] It is trite that the onus of proving negligence on a balance of probabilities rests with the Plaintiff.[4] It is trite that a court will adhere to two general principles that govern the evaluation of evidence. Firstly, the evidence must be weighed in its totality. Secondly, in evaluating all the evidence, a court must distinguish probabilities and inferences from conjecture and speculation.[5] Inference may be drawn and probabilities considered only in light of objectively proven facts.[6]

Analysis

of the evidence in relation to the opposing versions

[22] There are two conflicting versions relating to whether or not the Plaintiff was directed to the tap and by whom and/or whether he was told to wait in the CSC until W/O Booysen returned with toilet paper to wipe the ink off of the Plaintiff's fingers.

[23] The correct approach to be adopted when dealing with mutually destructive versions was aptly set out in *National Employers General Insurance Company v Jagers*[7] which was approved in *Stellenbosch Famer's Winery Group LTD and another v Martell et Cie and Others*[8] where Nienaber JA stated the following:

'The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses;

(b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as –

(i) the witnesses; candour and demeanour in the witness-box,

(ii) his bias, latent and blatant,

(iii) internal contradictions in his evidence,

(iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions,

(v) the probability or improbability of particular aspects of his version,

(vi) the caliber and cogency of his performance compared to that of other witnesses testifying about the same incident or events.

As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on

(i) the opportunities he had to experience or observe the event in question; and

(ii) the quality, integrity and independence of his recall thereof.

As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the later. But when all factors are equipoised probabilities prevail'.

- [24] The considerations articulated in this matter have been quoted with approval in a plethora of subsequent judicial authorities.[9] It is therefore incumbent on this court to consider the aforementioned principles in evaluating the totality of evidence of the Plaintiff in relation to the probabilities.
- [25] The Plaintiff's version is that he was directed by a member of the Defendant to utilise the tap outside. W/O Booysen denied that he was the one who directed the Plaintiff to the tap. The Plaintiff asserted that he had interactions with two police officers, namely a person that he thought was the Station Commander and the police officer who took his fingerprints.
- [26] The Plaintiff denied the exposition of the Defendant's version when it was put to him during cross-examination. It is noteworthy that the Plaintiff was astonished by the version of W/O Booysen which was put to him as he responded in disbelief "What?". The Plaintiff explicated that he was never alone during the process.
- [27] Both the Plaintiff and W/O Booysen remained steadfast insofar as their version of events are concerned and appear to agree on the following pertinent aspects:
- (a) that the Plaintiff's fingerprints were taken and
 - (b) that W/O Booysen found the Plaintiff at the back of the police station;
 - (c) that W/O Booysen observed that the Plaintiff was injured as there was blood pouring from his face;
 - (d) that W/O Booysen came to him with toilet paper in hand and handed it to the Plaintiff to help him staunch the wound and
 - (e) that the Plaintiff reported to him that he had fallen
- [28] Whilst it was submitted that W/O Booysen proved to be a frank and forthright witness who clearly set out the factual aspects of his encounters with the Plaintiff in a sincere and objective manner; the uncontroverted fact is that there is no eye witness account of the actual incident and as such the evidence tendered by W/O Booysen essentially deals with what happened preceding the Plaintiff's fall and post the Plaintiff's fall. It is trite that where more than one reasonable possibility can be inferred from the facts, the decision will depend on the probabilities of the case.
- [29] The plausibility of the Plaintiff's version in my view is underpinned by W/O Booysen's version that when he returned with the toilet paper he enquired as to his whereabouts and was told that the Plaintiff was at the back. This, to my mind suggests that there was definitely another police officer who not only knew about the Plaintiff's presence but was sure where the Plaintiff had gone. W/O Booysen after being told where he could find the Plaintiff, went in that direction and indeed found the Plaintiff at the back, who had by then already presented with the injury and was given the toilet

paper to stem the flow of the bleeding. This lends credence to the Plaintiff's version, more especially as W/O Blayi wasn't

called to give evidence, who may have been the first person at the scene and/or who may have witnessed the incident.

[30] I am therefore satisfied, on a balance of probabilities that the Plaintiff was directed to the tap by a police officer; bearing in mind that it was the first time that he had accessed the precinct and would otherwise not have known about the location of the tap, which was situated at a place, not ordinarily accessible to members of the public. Furthermore, to my mind, the said police officer ought to have accompanied the Plaintiff as the unrefuted evidence on record is that the direction in which the Plaintiff was sent was also the exit point of the CSC through which prisoners would be escorted to the cells. On this basis also, the Plaintiff was potentially at risk of harm which in my view further underscores the assertion of negligence and/or breach of duty of care by the Defendant's member who sent the Plaintiff unaccompanied to the back of the CSC, in the context of the factual matrix. I will return to this point later in this judgment.

[31] It would therefore be incumbent to consider the concept of duty of care as the Plaintiff's claim against the Defendant is predicated on the assertion that the Defendant was under a legal duty to ensure that the premises were safe when used by members of the public, more specifically the Plaintiff.

Legal Duty

[32] The Plaintiff averred that the incident was caused by the sole negligence of the Defendant and/or its members, acting in the course and scope of their employment with the Defendant in one or more of the following respects:

(a) Being aware that members of the public were likely to use the landing to the backyard, the Defendant and/or its servants failed to:

(i) Ensure that the walking landing was safe for members of the public, more specifically the Plaintiff;

(ii) Indicate that the walking landing did not have a railing at the place

where there were no stairs;

(iii) Failed to display warning signs to warn the public, more specifically the Plaintiff, of the absence of stairs and railings at the place where the Plaintiff fell off the landing;

(iv) Provide and/or provided a railing in the area to prevent harm to the public, more specifically the Plaintiff.

[33] The concept of a “legal duty of care” derives its influence from English law. The Court in *Union Government v Ocean Accident & Guarantee Ltd* [10] stated that the expression “duty of care” had sometimes been criticised as introducing an unnecessary complication into the law of negligence. The court set out the duty of care approach based on the reasonable person as follows:

‘The duty of care is in our case law rested upon foreseeability and this gives rise to artificiality... the test must be that of the reasonable man; what he would have foreseen and what action he would have taken may not be calculable according to the actual weighing of probabilities, but the device of reasoning on these lines helps to avoid the impression of delivering an unreasoned moral judgment ex cathedra as to how the injurer should have behaved...’ [11]

[34] This approach combines wrongfulness and negligence, and uses a flexible concept of foreseeability to cover value judgements and policy considerations that legal writers have identified as often remaining unexpressed.[12] It is trite that foreseeability of harm is a concept that is central to negligence and central to the duty of care concept of English law.

Negligence

[35] The benchmark test for negligence has been distilled in the oft-quoted matter of *Kruger v Coetzee*, [13] (“*Kruger*”) where Holmes JA, elucidated the proper approach for establishing the existence or otherwise of negligence as follows:

‘For the purposes of liability culpa arises if—

- (a) a diligens pater familias in the position of the defendant—
- (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss;

and

- (ii) would take reasonable steps to guard against such occurrence; and

- (b) the defendant failed to take such steps.’

[36] It is trite that a Defendant is negligent if a reasonable person in his position would have acted differently and if the unlawful act causing damage was reasonably foreseeable and preventable. It is settled law that culpa arises for the purposes of liability if a diligens pater familias in the position of the Defendant-

- (a) Would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
- (b) Would take reasonable steps to guard against such occurrence; and
- (c) The defendant failed to take such steps. [14]

[37] The enquiry into negligence therefore involves evaluating a Defendant's conduct according to a standard that is acceptable to society. Reasonable conduct is said to mean that a person must have acted appropriately in the circumstances and behave in the same way that a reasonable person would have behaved in the same circumstances. Should harm nevertheless ensue despite a person's reasonable behaviour, that fact does not affect the standard. The said behaviour or conduct remains reasonable and that person would not be at fault.

[38] Courts have adopted different approaches to the principle of legal duty in relation to the role of foreseeability of harm in the enquiry into wrongfulness.[15] In the matter of *Brauns v Shoprite Checkers (Pty) Ltd*[16] the court held that:

'The *diligens pater familias* in the position of the Defendant would have foreseen and guarded against the reasonable possibility of the Plaintiff slipping and falling on the quantity of water which had found its way onto the floor of its supermarket and injuring herself in the process. This is something which our courts have consistently stated in analogous situations over the past fifty years or more. Like anyone else who walks in a walkway where the general public not only has access, but indeed is invited to enter to walk on it, the Plaintiff was entitled to expect that he or she could walk on it safely.' [17]

[39] Similarly, in *casu*, the Defendant and/or its member, acting in the course and scope of his duties (in this case the police officer who directed the Plaintiff to the tap), as a *diligens pater familias* in the position of the Defendant should have foreseen and guarded against the reasonable possibility of the Plaintiff would be at risk of harm if not properly directed to the tap and ensuring the Plaintiff's safety.

[40] Although the general public does not ordinarily have access to that environment of the police station, the Plaintiff was invited and / or authorised to enter or access the back of the police station to wash the ink from his fingers. However, to say that an area is off-limits to members of the public and then to send a member of the public unaccompanied, is by all accounts a fundamental breach of the duty of care that rested on the Defendant and/or its members. In the circumstances of this matter, the police officer who sent the Plaintiff in the direction of the tap, unaccompanied and /or without specific orientation to either look out for the steps on the right or to say that there are steps that would lead to the tap, in my view is negligent.

[41] When the Plaintiff turned around for reassurance that he was navigating his way in the proper direction ought to have triggered to the police officer that the Plaintiff was unsure as to where he was meant to find the tap. This more especially because the Plaintiff was an elderly member of the public. The Plaintiff therefore was entitled to have a legitimate expectation that he could walk in safety as he made his way to the tap in uncharted territory.

- [42] It is common cause that the Defendant owes a legal duty towards the public to ensure that the premises were safe to use. It is undisputed that there was no railing on the landing at the time of the incident and that a railing has subsequently been put up because of what happened to the Plaintiff. W/O Booysen conceded that the railing was erected because the landing was unsecured which was a dangerous situation. This concession underscores his objectivity as he was prepared to concede reasonable general propositions made to him under cross-examination.
- [43] It is also uncontroverted that there were no warning signs displayed to warn the public, more specifically the Plaintiff, of the absence of stairs and railings at the place where the Plaintiff fell off the landing in order to prevent harm to the public, more specifically the Plaintiff. Counsel for the Defendant during argument conceded that the lack of signage could have contributed to the harm caused to the Plaintiff.
- [44] Consequently, having found on a balance of probabilities that the Plaintiff was directed to the tap by a police officer, I am therefore of the view, that the police officer ought to have foreseen the possibility that the Plaintiff was at risk. The Defendant was under a legal duty to ensure that the premises were safe when used by members of the public, more specifically the Plaintiff. The police officer's conduct coupled with the absence of a railing and/or a warning sign in my view is sufficient to constitute negligence and a breach of duty of care on the part of the Defendant.
- [45] The enquiry does not end here as it is trite that liability based on negligence depends on whether there is an obligation not to be negligent as it is a fundamental legal principle that negligence must be proved by he who alleges negligence.
- [46] The full bench in *Hammerstrand v Pretoria Municipality*[18] held that:
- 'The mere fact of a person having fallen into an excavation which has been lawfully dug by another raises no manner of presumption of negligence on the part of the latter; for, in spite of the defendant having taken all reasonable precautions the plaintiff may have fallen into the excavation through gross carelessness on her own part. There is, therefore, no reason to depart from the ordinary rule of law that he who alleges negligence must prove it.'[19]
- [47] In contemplating whether the Plaintiff succeeded in proving negligence on the part of the Defendant, it would be incumbent on this court to consider the challenges by the Defendant regarding:
- (a) the version of the Plaintiff insofar as he stated that he passed out;
 - (b) The perceived partisan explanation opined by Dr Le Roux and
 - (c) the proposition that the Plaintiff had jumped from the landing.
- (a) Plausibility of the Plaintiff's version

[48] The Defendant argued that the court is enjoined to reject the theory that the Plaintiff fell, passed out and continued to roll or slide on his side to hit his head against the metal structure pole if regard were to be had to the distance from the landing to the pole. More particularly that Dr Le Roux, under cross-examination disagreed with the Plaintiff's testimony on the issue of whether the Plaintiff rolled to continue the momentum from where the Plaintiff passed out. The Defendant further contended that the explanation provided by the Plaintiff in this regard is incredible and unsustainable.

[49] The Plaintiff testified that he passed out and could not account for how he ended up against the galvanised pole. He found himself at that point when he gained consciousness. He reasoned that soldiers are trained to fall and roll and made light of the fact that he might have been a combat soldier in his previous life who was trained to roll. The Defendant argued that the Plaintiff's version is absurd and indicative of the fact that it showed the Plaintiff's

lack of seriousness.

[50] Dr Le Roux was requested to comment on the Plaintiff's explanation that he had passed out. He opined there were a number of possibilities. For instance, if one lands on the leg the pain could cause one to pass out, or sudden movement causing a disturbance in the ear could cause one to pass out or; the Plaintiff's hypertension could have caused him to pass out. The Defendant argued that these reasons were a novelty as the Plaintiff never testified nor hinted at anything in this regard.

[51] The Defendant's challenges to the Plaintiff's version primarily appear to be centred around the plausibility of the response elicited from the Plaintiff. The Defendant requested that the Court makes a negative credibility find as most of the Plaintiff's responses were incredible. This court is however mindful that the Defendant invited an elucidation which in my view, called for a speculative response from an 80-year-old Plaintiff who was 72-year-old at the time of the incident. The reality is that the Plaintiff cannot remember what actually happened between the time when his foot hit the ground and how his hands ended up holding the galvanised pole. The cynical response of the Plaintiff is in my view, is not indicative that he does not have regard to the seriousness of the matter. The Plaintiff's responses can therefore not be criticised as the contextual narrative must further be considered within the background of his overall health and agility bearing in mind that he had already suffered two heart attacks and had other co-morbidities such as hypertension as verified by Dr Le Roux. It is also apposite to mention that the Plaintiff testified that he was in a state of trauma after the incident.

(b) Perceived partisan opinion of Dr Le Roux

- [52] The Defendant argued that Dr Le Roux was unable to address the exigencies of his sliding theory when it was pointed out to him that the surface was even and not sloping and that it was dry. This theory they submitted, is not probable and partisan as it is solely aimed at advancing the Plaintiff's claim referring to Dr Le Roux as a "gun for hire". It was argued that the Court is enjoined to treat these aspects of Dr Le Roux with the utmost circumspection.
- [53] In support of this contention, the court was referred to the matter of Price Waterhouse Coopers Inc. & Others v National Potato Co-operative Ltd & Another [20] (Price Coopers") where the Supreme Court of Appeal ("SCA") enunciated on the admissibility of opinion evidence as follows:
- '...by reason of their special knowledge and skill, they are better qualified to draw inferences that the trier of fact. There are some subjects upon which the court is usually quite incapable of forming an opinion unassisted, and others upon which it could come to some sort of independent conclusion, but the help of an expert would be useful.'
- [54] Dr Le Roux provided an opinion as to the plausibility of the Plaintiff's recollection relating to how he traversed the distance from the landing to the galvanised pole. He explained that if you are already moving forward, and you pass out during the fall, it is your momentum that moves you forward, it is not a voluntary movement. The distance covered would essentially be relative to the momentum of the person moving forward. Dr Le Roux was challenged regarding his opinion in this regard, which did not accord with the Plaintiff's explanation that he rolled towards the galvanised pole. To this, Dr Le Roux theorised that it looked like the Plaintiff landed on his left foot and his whole body moved forward, on his left side in a sliding motion. He opined that the most probable explanation is that the Plaintiff was sliding on his side after passing out which explains how the Plaintiff made it across the terrain.
- [55] The SCA in Price Coopers enumerated the duties and responsibilities of expert witnesses of which Counsel for the Defendant highlighted that 'an expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider facts which detract from his concluded opinion. An expert witness should make it clear when a particular question falls outside his expertise.'[21]
- [56] Dr Le Roux estimated that the distance covered by the Plaintiff was less than 6 meters based on the pictures shown to him of the scene. The Defendant argued that Dr Le Roux attempted to recalculate and recalibrate the distance between the edge of the landing to the tap contrary to the clear estimation of the Plaintiff and the testimony of Warrant Officer Booysen in this regard, who they contended were physically in the area and had personally observed the distance. They both estimated the distance for the Court's benefit and this was the Plaintiff's version in evidence in chief and during cross-examination. To my mind, the concession made by W/O Booysen in this regard is indicative that the distance is by no means based on an accurate measurement.

- [57] Counsel for the Plaintiff also accentuated the approach to an expert which was set out in the matter of *Wightman v Widdrington* [22] as referenced in *Price Coopers* in terms of which the court held that “[b]efore any weight can be given to an expert’s opinion, the facts upon which the opinion is based must be found to exist”[23] The court went on to state that ‘[a]s long as there is some admissible evidence on which the expert’s testimony is based, it cannot be ignored; but it follows that the more an expert relies on facts not in evidence, the weight given to his opinion will diminish.’[24]
- [58] The SCA in *Price Coopers* emphatically stated that ‘[a]n opinion based on facts not in evidence has no value for the court’[25] Therefore, in my view, W/O Booysen’s, concession under cross-examination that the distance from the edge of the landing to the tap could be less than 6 meters dispels the Defendant’s challenge that Dr Le Roux was not objective and that he made an attempt to tailor his evidence to suit a partisan narrative to ex post facto refashion the Plaintiff’s evidence.
- [59] The Plaintiff’s evidence is corroborated by the evidence of Dr Le Roux who testified that the injuries sustained by the Plaintiff are consistent with the injuries of a person who had fallen as opposed to someone who had jumped. The fact that the Plaintiff could not remember is in my view not untenable. The Plaintiff simply had no memory to rationally explain how he ended up where he did and therefore Dr Le Roux was called to fill in the gap by way of expert testimony. Insofar as his theory differs from that of the Plaintiff, this court is mindful that the Plaintiff is an elderly lay person, who was unable to recall exactly how he ended up at the galvanised pole. I am therefore satisfied that the Plaintiff was a reliable and honest witness. Despite rigorous cross-examination, he remained steadfast on the material dispute and maintained that he fell from the landing.
- [60] The fact that there is no uniformity in the explanations, to my mind does not mean it is not probable. Therefore, I am not persuaded that those differences should cast any aspersions on the credibility of the Plaintiff and Dr Le Roux, whose credentials and experience remain unchallenged.
- [61] I am furthermore satisfied that Dr Le Roux provided an expert opinion and although unsolicited in part, his views as I see it, on the distance was based on the photographs shown to him in court. To my mind, the differences in the testimony fortify my finding that Dr Le Roux is an independent witness and provided an objective opinion which is not indicative that he tailored his evidence to suit the Plaintiff’s narrative. I am not in agreement with the Defendant’s contention that the Plaintiff and/or Dr Le Roux made absurd or incredible claims to support a particular partisan version or narrative. In considering the totality of the evidence, I am not persuaded that Dr Le Roux’s testimony is tantamount to being partisan. In my view, the suggestion that he is a “gun for hire” is unfounded.

- [62] In any event, the Defendant's submissions in challenging the Plaintiff's whimsical speculative reasoning on how he traversed from the landing to the galvanised pole cannot be considered in a vacuum and must in my view, be contemplated in relation to the totality of the evidence as well as the Defendant's theory that the Plaintiff had jumped off the landing.
- (c) Did the Plaintiff jump off the landing?
- [63] The proposition put to the Plaintiff was that he had jumped off the landing which would explain how the Plaintiff was able to end up at the pole. This hypothesis was vehemently denied by the Plaintiff who maintained that he fell. He testified that at his age he wouldn't be jumping off anything.
- [64] In support of his version, the Plaintiff referred the court to the log book at the police station where the incident report recorded that he fell. This aspect was verified when W/O Booysen testified. In this regard, he was referred to the SAP 10 Occurrence Book[26] wherein it was recorded that the Plaintiff fell. Counsel for the Plaintiff highlighted that the Plaintiff's version was consistent with his version that he had fallen as this was what he had reported to W/O Booysen that he had fallen.
- [65] The Plaintiff made light of the suggestion that he had in fact jumped by stating that he could never do long jump at school, which to my mind, whilst said tongue in cheek, must be viewed in the context of his age, overall health and agility which does not fit in with the Defendant's proposed narrative as previously stated. Furthermore, without evidence to gainsay the theory of the Defendant that the injuries to the Plaintiff's foot correlate with injuries of someone who jumped, cannot be sustained in the absence of evidence to rebut the medical findings of Dr Le Roux.
- [66] To my mind, the hypothesis by the Defendant is highly speculative and was not buttressed by any evidence to support its contention that the Plaintiff had jumped from the landing. In my view, these are facts not in evidence and are nothing other than a hypothesis based on conjecture. The Defendant's proposition in this regard is therefore rejected. The opinion of Dr Le Roux therefore stands unabated in relation to the nature of the injuries sustained by the Plaintiff, not being consistent with someone who had jumped.

Voluntary assumption of risk

- [67] The matter of *Waring and Gillow Ltd v Sherborne* [27] crystalised what is meant by voluntary assumption of risk as follows: "He who, knowing and realising a danger, voluntarily agrees to undergo it has only himself to thank for the consequences."
- [68] It is trite that the Plaintiff had to have appreciated the extent of that risk and consented to the risk.[28] The Defendant correctly explains this legal principle to the extent that no wrong can be done to a person who engages in an activity and are aware of the risks inherent during that activity. If regard is had to the totality of the evidence, having found that the Plaintiff was directed towards the tap on the outside of the CSC it is my view that *volenti non fit injuria*, does not find application, in the context of this matter in *casu*. To reiterate, the

Defendant's injuries were not consistent with the injuries of someone who would have jumped as per the expert opinion of Dr Le Roux.

Link between negligence and causation

- [69] The Defendant argued that the Supreme Court of Appeal in *Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage*[29] ("Sea Harvest") provided a useful critique of the approach adopted in *Kruger*. Sea Harvest significantly developed the test for negligence as established in *Kruger* by emphasizing the crucial link between negligence and causation. The court clarified that it is insufficient for a Plaintiff to merely prove that precautions were necessary; they must also demonstrate that specific preventive measures would have actually prevented or reduced the harm suffered.
- [70] The case refined the assessment of reasonable precautions by requiring a more explicit cost-benefit analysis and consideration of practical feasibility. This development meant that courts must not only consider whether steps could have been taken, but also whether such steps would have been reasonable and effective in the specific circumstances of the case.
- [71] In terms of risk assessment, Sea Harvest required a more detailed analysis of risk foreseeability, moving beyond the simple question of whether a risk was foreseeable to examine the degree and nature of the risk. This includes consideration of industry standards and practices as benchmarks for determining

reasonable conduct.

- [72] The overall effect of Sea Harvest was to make the negligence test more rigorous, particularly regarding the burden of proof. Plaintiffs must now prove not only that the Defendant failed to take reasonable precautions, but also that those specific precautions would have made a difference to the outcome. This often requires expert evidence to establish the causal link between the failure to take precautions and the resulting harm.
- [73] It is trite that in order for the Court to find the Defendant delictually liable, there has to be a causal connection between the harm that the Plaintiff suffered and the Defendant's conduct. Put differently, the Defendant's conduct must have caused the Plaintiff's harm or loss. Thus, without a causal connection between the harm and the Defendant's conduct, there can be no delict.[30]

Causation

- [74] The Defendant submitted that the Plaintiff's argument of what the court is enjoined to interpret as a cause of the Plaintiff's fall in circumstances where on the clear evidence the Plaintiff had ample opportunity to avoid the edge of the landing is wholly based on a remote and highly derivative interpretation of the notion of causation which is unsustainable in law. The Defendant submitted that regardless of the injuries and the related medical costs not being disputed, the Plaintiff's claim falls short of the jurisprudential standard for legal causation.

[75] In the matter of *Lee v Minister for Correctional Services* [31] Nkabinde J distilled the requirements for causation as follows:

‘The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation.’

[76] The Plaintiff testified that had there been a railing he would not have fallen off the landing. This therefore beckons the question whether those precautions would have made a difference to the outcome. In relation to the factual enquiry, as per my earlier finding, I am satisfied that the negligent act or omission by the Defendant and/or its members acting in the course and scope of their caused the harm giving rise to the claim. Furthermore, whilst there may not have been a prior incident of this nature, the fact that the Plaintiff was harmed, is indicative that the absence of the railing was linked to the harm for legal liability to ensue. To augment this finding, it is uncontroverted that the Defendant only took steps to prevent harm to a person after the incident in which the Plaintiff was injured, by erecting a railing at the landing.

[77] I do not agree with the Defendant’s contention that the steps next to the landing would have been provided to serve the same purpose of descending from the CSC to the rear area of the premises. A railing and steps that are obscured, according to the Plaintiff, cannot logically have the same effect. To my mind, a railing would have been a better safety precaution, notwithstanding the provision of steps to disembark from the landing. Therefore, it follows, that if there had been a railing this increases the possibility that would have made a difference to the outcome as the exit mode would then, in my view, have been more pronounced and there would have been a clear barrier signalling the end of the landing.

[78] The Defendant argued that the steps were clearly visible from any point as one exits the CSC as the Plaintiff did, to anyone who cared to look where they were going. An analogy in support of this contention was given regarding everyday experiences in relation to all open public spaces like roads and traffic crossings that are not barricaded. It is considered reasonable and sensible and expected of every person not to cross public or private roads or simply walk without looking to the left and then to the right and where they are stepping. It was contended that these are basic rules observed by all sensible reasonable persons.

[79] The overall thrust of the Defendant’s argument was premised on the fact that the harm suffered by the Plaintiff would not have materialised if the Plaintiff looked where he was walking or stepping and or utilized the steps to get from the landing to the tap. The Plaintiff agreed to the analogy made that one would not walk off the edge of a cliff. Notably, that may be a bit hyperbolic but calls for a shift of thinking to the reasonable man being required to be alert, aware and attentive to his or her surroundings, not necessarily to the point of

paranoia, but certainly to proceed with a measure of caution in circumstances where the environment are unfamiliar to you. To my way of thinking, it is much the same, as not yielding or stopping when entering into a junction.

[80] It follows as a matter of course that had the Plaintiff paused on the landing to check the territory he required to traverse to access the tap, it would have increased the likelihood that he would have seen the steps. This factor, however, is to be considered in conjunction with the unchallenged evidence of W/O Booysen that no one had ever fallen off the landing before. The court is also mindful that the evidence revealed that the Plaintiff walked briskly and according to him, wasn't told to go down any stairs. He thus carried on straight without looking.

[81] This therefore requires the court to consider whether on the evidence, the conduct of the Plaintiff constituted a novus actus interveniens which broke the causation chain.

Novus actus interveniens

[82] It is trite that a novus actus interveniens is defined as:

‘an independent, unconnected and extraneous factor or event which is not foreseeable and which actively contributes to the occurrence of harm after the defendant's original conduct has occurred.’[32]

[83] The presence of such an intervening cause, breaks the causal link between the perpetrator's conduct and the ensuing harm. Courts are enjoined to adopt a flexible test for legal causation in order to make such a determination. Examples of an intervening event could be for instance, the conduct of the victim or the conduct of another person or it could be due to other factors.[33]

[84] In casu, the Defendant highlighted that the Plaintiff, on his own version, exited the CSC through the door close to the steps which should have been used to access the backyard where the tap is situated. Moreover, the Defendant submitted that even though the barrier to the landing could be regarded as the factual cause of the resultant fall and attendant injuries as suffered by the Plaintiff, the Plaintiff's unreasonable conduct of not utilising the steps clearly erected for the purpose alternatively the Plaintiff's failure to watch where he was walking was unreasonable and constituted an intervening act which breaks the chain of causation. This, they argued is a complete defence and is applicable in our law under the legal causation leg of causation, the novus actus interveniens.

[85] In support of this contention, the Plaintiff referred the court to the matter of Premier of the Western Cape v Loots[34] dealing with causation.

[19] In line with this general approach, the appellants first relied on the direct consequences theory. As developed in English law, a key element of this theory is the concept of a novus actus interveniens.

For this element alone can break the causal link between cause and consequences.[35] By its nature, a novus actus interveniens or independent intervening event, can take many forms, including conduct on the part of the plaintiff following upon the wrongful act of the defendant. The independent intervening cause relied upon by the appellants for its argument was the decision by Mrs Erasmus not to accept the offer of an abortion tendered by the Tygerberg Hospital when she was about eight weeks into her pregnancy.

[20] The appellants rightly accepted that the decision not to have an abortion could not eliminate the second defendant's negligence as a factual cause of the harm. It has already been determined that, but for that negligence, the harm would not have ensued. The fact that the refusal of an abortion became another factual cause of the same consequence does not detract from this reality. Yet it is recognised in principle that even where the plaintiff's conduct does not break the factual chain, it can still interrupt legal causation. But in order to qualify as a novus actus interveniens in the context of legal causation, the plaintiff's conduct must be unreasonable. Reasonable conduct on the part of the plaintiff cannot free the defendant from the imputation of liability. Even unreasonable conduct on the part of the plaintiff will not always absolve the defendant. Whether it will do so, depends on the facts of the particular case.[36]

[86] It is against this backdrop that the court is to consider the defence of contributory negligence.

Contributory Negligence

[87] It is trite that for a defence of contributory negligence to succeed, the Defendant would have to adduce evidence on a balance of probabilities to establish negligence on the part of the Plaintiff, and that such negligence, on a balance of probabilities, was causally connected to the damage suffered.[37]

[88] It is commonplace that where a Defendant pleads contributory negligence and apportionment in the alternative, the Defendant is enjoined to adduce evidence to establish negligence on the part of the Plaintiff on a balance of probabilities. This beckons the question of whether the Defendant has adduced evidence on a balance of probabilities to establish any negligence on the part of the Plaintiff other than suggesting that the Plaintiff should have looked after his own safety.

[89] The matter of Cape Town Municipality v Bakkerud[38] deals with public being obliged to take care of its own safety where Marais JA held that:

'[28] A minuscule and underfunded local authority with many other and more pressing claims upon its shallow purse, and which has not kept in repair a little used lane in which small potholes have developed which are easily visible to and avoidable by anyone keeping a reasonable look-out, may well be thought to be under no legal duty to repair them or even to warn of their presence. A large and well-funded municipality which has failed to keep in repair a pavement habitually thronged with pedestrians so densely concentrated that it is extremely difficult to see

the surface of the pavement, or to take evasive action to avoid potholes of a substantial size and depth, may well be under a legal duty to repair such potholes or to barricade or otherwise warn of them. There can be no principle of law that all municipalities have at all times a legal duty to repair or to warn the public whenever and whatever potholes may occur in whatever pavements or streets may be vested in them.

[31] ...It will be for a plaintiff to place before the court in any given case sufficient evidence to enable it to conclude that a legal duty to repair or to warn should be held to have existed... Having to discharge the onus of proving both the existence of the legal duty and blameworthiness in failing to fulfil it will...go a long way to prevent the opening of the floodgates to claims of this type of which municipalities are so fearful.'

[90] A seminal consideration is whether the standard is unrealistic and impossible.[39] In the *Hammerstrand v Pretoria Municipality*[40] it was held:

'But the law does not set impossible demands in such cases; it does not make any extravagant demands upon a person. It is entitled to assume that others will also take reasonable care of themselves, will keep their eyes open, and will not take risks of which they are or ought to be aware.'

[91] It does however become necessary to consider whether the causative nature of the Plaintiff's actions led to him falling over the unsecured landing. It is settled law that for liability to arise there has to be a causal connection strong enough to be classified as a causal connection in law. It is trite that the test for legal causation, limits liability in that harm factually linked to the perpetrator's conduct might not be imputed to the perpetrator, because the factual link is not considered strong enough in law. The legal writers elucidated the scenarios as follows:

'...there could be circumstances in which a court finds a person to have acted both wrongfully and negligently, and that the conduct factually caused the harm, but where in all fairness the connection between the conduct and the harm is too tenuous for liability to arise. The causation element in delict, therefore, not only links the plaintiff's harm to the perpetrator's conduct, but also restricts the extent of any liability that might result.'[41]

[92] The reasonableness of the Plaintiff's conduct to my mind needs to be assessed in the context of whether he was negligent or whether he was contributorily negligent based on one or more of the following grounds namely that he:

- (a) failed to keep a proper look-out;
- (b) failed to ensure his safety and/or
- (c) failed to prevent the incident when by taking reasonable care, he could have done do.

[93] It is settled law that the causation element in delict not only links the Plaintiff's harm to the Defendant's conduct but also restricts any liability that may result.

Discussion

- [94] The Defendant submitted that the distance between the edge of the landing and the tap constituted a similar landscape which any reasonable person would have easily avoided. They say the fact that there were steps next to the landing is suggestive of the Plaintiff's unreasonable conduct for not using same. This they argued is to be viewed against the uncontroverted evidence that there had never been a similar incident previously despite the landing being unsecured.
- [95] The Plaintiff testified that he did not see the steps to the right on the landing. Although he conceded that if he had looked down and to the right, he would have seen the steps, he maintained that the steps were in the shade and would not have been noticed. He stated that had he seen the steps he would have used it. The steps were not in his purview and it was the first time that he had accessed that particular environment, hence he was unfamiliar with the layout of the police precinct and was following instructions to go straight, relying on the directions provided to him.
- [96] Even if the Defendant's reasoning were to be followed that the area where the Plaintiff had fallen was off limits to the public, the uncontroverted evidence on record is that that particular door was open and he was sent into unknown territory unaccompanied. As previously stated, the Plaintiff was in essence authorised to go to the back of the police station. Furthermore, the fact that the door was open was never placed in issue. It wasn't a scenario where the Plaintiff was accused of opening a door to a prohibited access area. The unrefuted evidence was that the door leading to the
- landing was already open and according to the Plaintiff he was being watched as he walked down the corridor in the direction of the tap.
- [97] It is a fundamental legal principle that the Plaintiff bore a responsibility to act reasonably at all times by exercising maximum awareness of his surroundings. To my mind, the reasonable person test in the context of the Plaintiff in casu must be viewed in the context of the unique factual matrix of this matter within the context of whether such risk was reasonably foreseeable.
- [98] The Plaintiff, when asked why he did not use the steps responded by saying he did not see the steps and because he was told to go straight to the tap, he did exactly that. During cross-examination, it was put to the Plaintiff that he did not look where he was going. To this, he responded that he looked but was focused on the tap to get the "muck" off his hands. The Plaintiff disagreed with the proposition put to him that he was in fact negligent. Furthermore, in following the instructions given, the Plaintiff orated that he was not told to look for steps, he was proceeding towards the tap.

- [99] The only evidence adduced by the Defendant was that of W/O Booysen who did not witness the actual incident. The Defendant challenges the Plaintiff's assertions on the Plaintiff's own version as tested during cross-examination. The Defendant argued that the Plaintiff was an evasive witness who refused to respond to the proposition that had he looked where he was walking or stepping, he could have seen the steps right in front of him and not have fallen over the edge of the landing.
- [100] The manner in which the Plaintiff skirted the issue when fielding the question cannot be disregarded. However, the proposition of the Defendant that the Plaintiff deliberately ignored the steps and chose to go over the edge of the landing is not based on any objective evidence.[42] Someone cannot be seen as ignoring something if they are not aware of its existence and there was no evidence to suggest that the Plaintiff in fact saw the steps. In my view, this can best be described as a speculative hypothesis, much the same as the suggestion that the Plaintiff jumped from the landing. Having rejected the notion that the Plaintiff jumped from the landing, I am not satisfied that the Plaintiff has proved on a balance of probabilities that the incident occurred as pleaded which aligns with the Plaintiff's narration of the incident that he had fallen off the landing.
- [101] However, the Plaintiff, despite being directed to move forward, should have, in my view, looked where he was going on not blindly proceed in the direction of the tap. The evidence together with the photo exhibits provides a clear landscape of the area. Firstly, the Plaintiff walked down a passage. Secondly, he goes through a doorway. At that point, he is no longer inside the building. Thirdly, he then walks onto the landing. This change in my view, ought to have triggered an automatic caution, especially in circumstances where it is his first time accessing the building. Fourthly, the tap is positioned against the opposite wall, which is roughly 6 meters away, bearing in mind that he stated on the court's question that he was walking briskly. In my view, had he looked down in time, he would have noticed that the landing had come to an end. In my view, logic would dictate that there had to be another way to exit the landing to get to the tap. The Plaintiff suggested that he should have been told that he must take the steps to the right when he exits through the door.
- [102] The directions, on the Plaintiff's version were not clear. This is the very reason why he turned around for reassurance. Immediately he ought to have been cautiously navigated the rest of his journey to the tap precisely because it was unfamiliar territory.
- [103] It is trite that the mere possibility of harm is not enough. The legal position is that the law does not set any extravagant demands upon a person. The authority cited earlier clearly establishes an assumption that the Plaintiff should have taken reasonable care of herself. The Plaintiff's fall could have been avoided if he looked or focused on where he was walking. The Plaintiff had ample allowance of space before reaching the edge of the landing. On his version, he walked briskly. To my mind, the Plaintiff clearly failed to keep a proper look-out. In my view, the unreasonable failure to focus on where he was walking is the proximate cause of the fall and attendant injuries this despite the absence of a barrier. As such the Plaintiff ought to have kept a proper look out and should, as a reasonable

person have foreseen a reasonable possibility of harm which presented in the circumstances of this case. Put plainly, he had a duty to watch where he walked. Furthermore, there are steps next to the landing for the very purpose of descending off the landing. Therefore, I am satisfied that the principles of novus actus interveniens find application.

Apportionment of Damages

[104] It is trite that the court may apply Apportionment of Damages in circumstances where the Defendant has denied negligence and has made allegations pointing to the negligence of the Plaintiff.[43] Section 1(1) of the Apportionment of Damages Act[44] stipulates that:

‘(a) Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.

(b) Damage shall for the purpose of paragraph (a) be regarded as having been caused by a person’s fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.’

[105] Therefore, Section 1(1)(a) of the Apportionment of Damages Act[45] permits a court to exercise a discretion to reduce a Plaintiff’s claim for damages suffered on a just and equitable basis and to

apportion the degree of liability. [46] Where apportionment is to be determined, the court is obliged to consider the evidence as a whole in its assessment of the degrees of negligence of the parties. In this instance, in order to prove contributory negligence, it was necessary to show that there was a causal connection between the Plaintiff’s falling from the landing and the Defendant’s negligence and/or breach of duty of care.

[106] For reasons already given earlier in this judgment, I have found the Defendant and/or its members acted negligently and breached its duty of care to ensure the safety of the public, in particular the Plaintiff. I have also found, for reasons earlier provided that the Plaintiff’s conduct given the prevailing circumstances of his case was negligent. Therefore, triggering the application of the Apportionment of Damages Act. Consequently, I find that the Plaintiff’s claim falls to be reduced by the application of the Apportionment of Damages Act.

[107] Upon considering the case authorities on point it is manifest that fault is the golden thread upon which damages are reduced relative to the degree of the fault of the Plaintiff and the Defendant.

[108] It is apposite to mention that the Defendant pleaded in the alternative that the Plaintiff was also negligent, thus relying on contributory negligence. The Defendant did not however specifically plead an appropriate relief in the form of apportionment of damages. Notwithstanding, it was still incumbent on the Defendant to prove that the Plaintiff was negligent and that his negligence was causally connected to the loss suffered by the Plaintiff in this regard.[47] Counsel for the Plaintiff conceded during argument that the Plaintiff had a duty to watch where he walks.

[109] In considering the probabilities, having found that the Plaintiff's negligence was causally connected to the damages he suffered, it follows that his damages fall to be limited in terms of the Apportionment of Damages Act. On a conspectus of the evidence in its entirety, in the exercise of my discretion, I am of the view that the Plaintiff was 20% contributorily negligent in comparison to the standard of care expected from a reasonable person in similar circumstances. Consequently, I am of the view that the Defendant is liable to pay 80% of the Plaintiff's proven damages

Ad Quantum

Common Cause Issues

[110] The following issues were agreed to by the parties at the commencement of the trial:

- (a) That the past medical expenses as tabulated in the schedule as per Exhibit "A" amounted to R59 585.41;
- (b) The Defendant admitted that the future medical expenses amount to R5000;
- (c) The findings and opinions expressed in the report of Dr Theo Le Roux, marked Exhibit "B", are both true and correct, more specifically his opinion expressed therein that:
 - (i) 'The suprapatellar haematoma, because of the fall, affected the extensor mechanism of the knee and the quadriceps muscle, hence resulting in atrophy and weakness. This is why he needs a knee brace when walking long distances to prevent pain for the following days' [48] and
 - (ii) Future treatment for a knee brace would amount to R1000 once a year.[49]
- (d) That the photographs as per Exhibit "J", is in line with the injuries sustained by the Plaintiff.

[111] The Plaintiff testified that he went to Medi Clinic after the fall. He was admitted to theatre and received 50 stitches in his face. He described the injury to his knee which he sustained as a consequence of hitting the concrete path. The haematoma on his knee was swollen. He was advised by the doctor to return after a week to drain the fluid. He described how the orthopaedic surgeon tried to bleed the build-up in the knee using a pump but was unsuccessful. He then had an operation.

- [112] The Plaintiff explained the level of discomfort to the extent that he could not put his foot down or do any driving, he walked with difficulty. He explained that it took 6 weeks for his leg to heal to be able to walk. Furthermore, the Plaintiff testified that he now has to wear a knee brace when he walks in order to keep it straight. He orated that he still experiences difficulty with walking.
- [113] He testified that he has facial scarring of 3cm. This visible mark on his chin was shown to the court during evidence. The Plaintiff explicated that it would bleed when he nicked it whilst shaving and being on blood thinners, it would bleed profusely.
- [114] Dr Le Roux gave a detailed exposition of the extent of the injury sustained by the Plaintiff, as recorded under “opinion” in his report. In this regard, Dr Le Roux stated that that the suprapatellar affected the extensor mechanism of the knee and the quadriceps muscle. He explained that the injury itself would have caused moderate pain but because there was bleeding into the joint there must have been more pain.

Legal Principles

- [115] The fundamental considerations pertaining to assessment of damages were aptly restated in *Kumar and Another v Mpai* [50] namely that:

[27] Damages is a monetary equivalent damage awarded to a person with the object of eliminating as fully as possible his past as well as future patrimonial as well as non--patrimonial damage. The non-patrimonial damage is the diminution because of a damage-causing

event in the quality of the legally recognized personality interests, namely; physical-mental integrity, liberty, reputation, dignity,

privacy etc. The injured person may claim compensation for all pain, suffering and discomfort flowing from the injury. It includes both physical and mental pain and suffering in the past and in the future. The aim of the award is to enable the injured party to achieve the object of compensation or satisfaction. It provides some psychological satisfaction for the injustice done. The nature and extent of the injustice must balance with the quantum of damages awarded. (Neethling, Potgieter, Visser *Law of Delict* 4th ed Chap 6 para ·5; Joubert (ed) *The Law of South Africa* 2nd ed. Vol 7 para 104).

- [28] The onus is on the respondent to prove on the balance of probabilities that he has suffered the damage and if so to what extent. Evidence may come from the defendant adding to the evidence adduced by the plaintiff. The plaintiff having placed the relevant evidence before the court, it becomes the duty of the court to assess the award to be made. The court exercises its judicial discretion to arrive at a fair award to compensate for the negative impact of the delict on the life of the injured party. The amount of the award is not susceptible of precise calculation. Assessing the quantum is acknowledged to be clearly difficult. (*Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194 at 199). It is arrived at in the exercise of a broad discretion, it depends on the judge's view of what is fair in all the circumstances

of the case. (Sandler v Wholesale Coal Suppliers Ltd supra 199; Road Accident Fund v Marunga 2003 5 SA 164 (SCA) 169)...

[116] The considerations for compensation were appositely summarised in Minister of Safety & Security v Tyulu[51] it was stated inter alia that:

‘In the assessment of damages ...it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some such solatium for his or her feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted...I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy...The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts.’[52]

[117] It is trite that a particular case is to be assessed in totality and on its own merits considering both the injury and its impact on the plaintiff's life.[53] Additionally, it is a settled principle that the discretion which the court has in when considering an appropriate award for non-pecuniary

damages should be exercised fairly and objectively.[54]

[118] While there is no fixed formula for determining compensation, courts typically consider awards in similar cases. Thus, previous awards, as encapsulated in a plethora of case law, serve as a useful guide on current judicial thinking regarding compensation amounts which other courts have considered appropriate. Awards for severe facial injuries and scarring can vary widely but often range in significant amounts to account for both physical and psychological harm.

Case law considered

[119] The Plaintiff referred the court to Methule obo minor v Road Accident Fund[55] (“Methule”) wherein the court awarded general damages in the amount of R500 000 for similar injuries sustained. The court in Methule referred to a number of case authorities one of which concerned the matter of Phasha v Road Accident Fund [56] which concerned a 49-year-old male. The injuries sustained included head injuries with loss of consciousness and amnesia;

lacerations of the head and abrasions on both hands. He had also sustained compound fractures of the left tibia and fibula, including

scars, deformities and disfigurement. He developed a non-union of fibula fracture with displacement of bone fragments which resulted in a 2cm shortening of his left lower leg. As a consequence, he could not walk or stand for a lengthy period of time and was unable to lift heavy objects without experiencing pain in his left ankle joint. He was dependent on pain killers. He was awarded compensation for general damages equivalent in 2021 terms or value of R623 000.00. [57]

[120] In *Mgudlwa v Road Accident Fund*[58], an award of R300,000 was made to a 34-year-old teacher who suffered fractures to the femur and the tibia. He was in traction for three and a half months. There was a deformity at the end of the femur with a leg shortening of five centimetres. He had a diminished range of motion of the leg, hip and knee. He also had scoliosis of the spine. He was compelled to use a crutch. He was no longer able to play soccer.

[121] The Plaintiff, was 72 years old at the time of the incident, who after receiving 50 stitches now has a residual 3cm visible scar. Compensation for the agony, suffering, and loss of life's necessities is frequently the result of this type of injury. The accident also impacted daily life and resulted in a suprapatellar haematoma, which affected the knee's extensor mechanism and quadriceps muscle, resulting in atrophy and weakness, as per Dr. Theo Le Roux's report. This requires the utilisation of a knee brace when strolling for extended periods of time in order to mitigate discomfort.

Conclusion

[122] The Plaintiff's initial claim for general damages was in the amount of R500 000 which based on the sequelae which included inter alia, that the Plaintiff suffered a loss of amenities of life, experienced pain, suffering and disfigurement and disability. During argument this amount of compensation was reduced to R450 000, given the Plaintiff's injuries.

[123] After carefully considering the proposed compensation amount for general damages, established guidelines, the circumstances of the Plaintiff, the unique merits of this case, the applicable legal principles and previous awards made in similar matters, it is my view that the proposed amount is on the upper end of the scale.

[124] Consequently, I am of the view, flowing from the sequelae and factual matrix of this matter, that an award of R375 000 for general damages would be fair and reasonable compensation. Therefore, the total damages before apportionment is applied are as follows:

(a) Past loss medical expenses as per schedule – Exhibit “A” R 59 585.41

(b) Future medical expenses

R 5 000.00

(c) Future treatment (annual knee brace)

R 1 000.00

(d) General Damages

R375 000.00

Costs

[125] I can find no good reason to depart from the trite legal principle that costs should follow the result. In the exercise of my discretion, I order that Counsel's fees be taxed on a Scale B given the clearly identified features of this case that were complex, important and valuable to the Plaintiff.

Order

[126] In the result, I grant the following orders:

- (a) The Defendant is liable for 80% of the Plaintiff's proven or agreed damages arising from the incident which occurred on 10 August 2016.
- (b) The Defendant is ordered to pay the Plaintiff's costs on a party and party scale, including the cost of Counsel to be taxed on a Scale B.

P D ANDREWS

Acting Judge of the High Court,

Western Cape Division

CASE NO: 21884/2017

APPEARANCES

Counsel for the Plaintiff:

Advocate L Joubert

Instructed by:

Simpsons Attorneys Inc.

Counsel for the Defendant:

Advocate D M Nyathi

Instructed by:

The Office of the State Attorney

Hearing dates: 9 – 10 October 2024; 4 & 28 November 2024

Judgment

Delivered date: 28 February 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.

[1] Plaintiff's Amended Particulars of Claim, para's 2 – 5, pages 22 – 23.

[2] Joint Witness Bundle, Exhibit J, page 85.

-
- [3] Pillay v Krishna 1946 AD 946 952 - 953.
- [4] Medi-Clinic Ltd v Vermeulen 2015
- (1) SA 241 (SCA) at para 16 ‘The plaintiff bore the onus of proving that the defendant’s nursing staff were negligent.’ See also Goliath v MEC for Health, Eastern Cape 2015
- (2) SA 97 (SCA) [8] The general rule is that she who asserts must prove’, Arthur v Bezuidenhout and Mieny 1962
- (2) SA 566 (A) at 574H and 576G; Sardi v Standard and General Insurance Co Ltd 1977
- (3) SA 776 (A) at 780CH and Madyosi v SA Eagle Insurance Co Ltd [1990] ZASCA 65; 1990
- (3) SA 442 (A) at 444D-G.
- [5] Ocean Accident and Guarantee Corporation Ltd v Koch 1963
- (4) SA 147 (A) at 159D.
- [6] Schwikkerd and Van Der Merwe, ‘Principles of Evidence’ (4th Ed.) page 627.
- [7] 1984 (4) SA 437 (E) at 440E-G, ‘Where there are two mutually destructive versions the party can only succeed if he satisfies the court on a balance of probabilities that his version is true and accurate and therefore acceptable, and the other version advanced is therefore false or mistaken and falls to be rejected. In deciding whether the evidence is true or not the court will weigh up and test the plaintiff’s allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with the consideration of the probabilities of the case, and if the balance of probabilities favours the plaintiff, then the court will accept his version as probably true.’
- [8] 2003
- (1) SA 11 (SCA).
- [9] Santam Beperk v Biddulph 2004
- (5) SA 586 (SCA) at para 5 and 20; De Beer v Road Accident Fund ZAGPJHC 124 (28 March 2019). Ntsele v Road Accident Fund (2017) ZAGPHC (1 March 2017) at paras 13-14.
- [10] 1956
- (1) SA 577 (A).
- [11] At para’s 585B-D.
- [12] Loubser M. et al, ‘The Law of Delict in South Africa’ (2017) Oxford (3rd Ed.), page 187.
- [13] 1966
- (2) SA 428 (A) at 430E-F.

[14] See also *Sea Harvest Corporation v Ducan Dock Cold Storage* 2000 (1) SA 827 (SCA); *Alberts v Engelbrecht* 1961

(2) SA 644 (T) at 646D; *Gordon v Da Mata* 1969

(3) SA 285 (A) at 289H; *Ibid*, 'The Law of Delict in South Africa', para 8.5.1 -2, page 154 & 166: In order to establish negligence, the following requirements must be met:

- (a) the reasonable foreseeability of harm and;
- (b) whether reasonable precautionary measures were taken where harm was reasonably foreseeable.

[14] See also *Sea Harvest Corporation v Ducan Dock Cold Storage* 2000 (1) SA 827 (SCA); *Alberts v Engelbrecht* 1961

(2) SA 644 (T) at 646D; *Gordon v Da Mata* 1969

(3) SA 285 (A) at 289H; *Ibid*, 'The Law of Delict in South Africa', para 8.5.1 -2, page 154 & 166:

In order to establish negligence, the following requirements must be met:

- (a) the reasonable foreseeability of harm and;
- (b) whether reasonable precautionary measures were taken where harm was reasonably foreseeable.

[15] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006

(1) SA 461 (SCA) at para 12 crystallises the distinction between negligence and wrongfulness as follows: 'But the fact that an act is negligent does not make it wrongful, although foreseeability of damage may be a factor in establishing whether or not a particular act was wrongful. To elevate negligence to the determining factor confuses wrongfulness with negligence and leads to the absorption of the English law tort of negligence into our law, thereby distorting it.' See also *Premier, Western Cape v Faircape Property Developers (PTY) Ltd* 2003 (6) SA 13 (SCA); *Gouda Boerdery BK v Transnet Ltd* 2005 (5) SA 490 (SCA) at para 12.

[15] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006

(1) SA 461 (SCA) at para 12 crystallises the distinction between negligence and wrongfulness as follows:

'But the fact that an act is negligent does not make it wrongful, although foreseeability of damage may be a factor in establishing whether or not a particular act was wrongful. To elevate negligence to the determining factor confuses wrongfulness with negligence and leads to the absorption of the English law tort of negligence into our law, thereby distorting it.'

See also *Premier, Western Cape v Faircape Property Developers (PTY) Ltd* 2003 (6) SA 13 (SCA); *Gouda Boerdery BK v Transnet Ltd* 2005 (5) SA 490 (SCA) at para 12.

[16] 2004

(6) SA 2011 (ECD).

[17] See also Cape Metropolitan Council v Graham 2001

(1) SA 1197 (SCA) at para 7; City Council v De Jager 1997

- (2) SA 46 (A) at 55H. ‘The Council was obliged to take no more than reasonable steps to guard against foreseeable harm to the public. Whether in any particular case the steps actually taken are to be regarded as reasonable or not depends upon a consideration of all the facts and circumstances of the case. It follows that merely because the harm which was foreseeable did eventuate does not mean that the steps taken were necessarily unreasonable. Ultimately the inquiry involves a value judgment. Nonetheless, over the years various considerations have been isolated which serve as useful guides, particularly in relation to the question whether any steps at all would have been taken by a diligens pater familias. Four such considerations are identified by Professor J.C. van der Walt in The Law of South Africa vol 8 para 43 as influencing the reaction of a reasonable man in a situation involving foreseeable harm to others. They are: ‘(a) the degree or extent of the risk created by the actor’s conduct;
- (b) the gravity of the possible consequences if the risk of harm materialises; (c) the utility of the actor’s conduct; and (d) the burden of eliminating the risk of harm’ (see Ngubane v South African Transport Services [1990] ZASCA 148; 1991 (1) SA 756 (A) at 776G-777J where reference is made to various cases and authorities in which one or more of these considerations have been considered). In general, the inquiry whether the reasonable man would have taken measures to prevent foreseeable harm involves a balancing of the considerations (a) and (b) with (c) and (d).’

[17] See also Cape Metropolitan Council v Graham 2001

(1) SA 1197 (SCA) at para 7; City Council v De Jager 1997

(2) SA 46 (A) at 55H.

‘The Council was obliged to take no more than reasonable steps to guard against foreseeable harm to the public. Whether in any particular case the steps actually taken are to be regarded as reasonable or not depends upon a consideration of all the facts and circumstances of the case. It follows that merely because the harm which was foreseeable did eventuate does not mean that the steps taken were necessarily unreasonable. Ultimately the inquiry involves a value judgment. Nonetheless, over the years various considerations have been isolated which serve as useful guides, particularly in relation to the question whether any steps at all would have been taken by a diligens pater familias. Four such considerations are identified by Professor J.C. van der Walt in The Law of South Africa vol 8 para 43 as influencing the reaction of a reasonable man in a situation involving foreseeable harm to others. They are: ‘(a) the degree or extent of the risk created by the actor’s conduct;

- (b) the gravity of the possible consequences if the risk of harm materialises; (c) the utility of the actor's conduct; and (d) the burden of eliminating the risk of harm' (see *Ngubane v South African Transport Services* [1990] ZASCA 148; 1991 (1) SA 756 (A) at 776G-777J where reference is made to various cases and authorities in which one or more of these considerations have been considered). In general, the inquiry whether the reasonable man would have taken measures to prevent foreseeable harm involves a balancing of the considerations (a) and (b) with (c) and (d).'

[18] 1913 TPD 374 at 376-7.

[19] See also *Peri-Urban Health Board v Munarin* 1965

- (3) SA 367 (A). 'In general, the law allows me to mind my own business. Thus, if I happen to see someone else's child about to drown in a pool, ordinarily I do not owe a legal duty to anyone to try and save it. But sometimes the law requires me to be my brother's keeper. This happened, for example where the circumstances are such that I owe him a duty of care, and am negligent if I breach it. I owe him such a duty if a diligens pater familias that notional epitome of reasonable prudence, in the position in which I am in, would: (a) Foresee the possibility of harm occurring to him; and (b) Take steps to guard against this occurrence. Foreseeability of harm to a person, whether he be a specific individual or one of a category, is usually not a difficult question, but when ought I to guard against it? It depends on the circumstances of each particular case and it is neither necessary nor desirable to attempt a formulation which would cover all cases. For the purposes of the present case, it is sufficient to say, by way of general approach, that if I launch a potentially dangerous undertaking involving the foreseeable possibility of harm to another, the circumstances may be such that I cannot reasonably shrug my shoulders in unconcern but have certain responsibilities in the matter – the duty of care. In assessing the standard of care required a reasonable man should have foreseen the real possibility of harm and ex post facto knowledge is not sufficient. The mere possibility of harm is not enough; a reasonable person must foresee a reasonable possibility of harm.'

[19] See also *Peri-Urban Health Board v Munarin* 1965

- (3) SA 367 (A).

'In general, the law allows me to mind my own business. Thus, if I happen to see someone else's child about to drown in a pool, ordinarily I do not owe a legal duty to anyone to try and save it. But sometimes the law requires me to be my brother's keeper. This happened, for example where the circumstances are such that I owe him a duty of care, and am negligent if I breach it. I owe him such a duty if a diligens pater familias that notional epitome of reasonable prudence, in the position in which I am in, would:

- (a) Foresee the possibility of harm occurring to him; and
(b) Take steps to guard against this occurrence.

Foreseeability of harm to a person, whether he be a specific individual or one of a category, is usually not a difficult question, but when ought I to guard against it? It depends on the circumstances of each particular case and it is neither necessary nor desirable to attempt a formulation which would cover all cases. For the purposes of the present case, it is sufficient to say, by way of general approach, that if I launch a potentially dangerous undertaking involving the foreseeable possibility of harm to another, the circumstances may be such that I cannot reasonably shrug my shoulders in unconcern but have certain responsibilities in the matter – the duty of care.

In assessing the standard of care required a reasonable man should have foreseen the real possibility of harm and ex post facto knowledge is not sufficient. The mere possibility of harm is not enough; a reasonable person must foresee a reasonable possibility of harm.'

[20] (451/12)

[2015] ZASCA 2 (4 March) 2015 at para 97.

[21] At para 98.

[22] Footnote omitted.

[23] At para 326.

[24] At para 327.

[25] At para 328.

[26] Joint Witness Bundle, Exhibit "L", page 90.

[27] 1904 TS 340 at 344.

[28] *Lampert v Hefer* 1955

(2) SA 507 (A).

[29] [2000] 1 All SA 128 (A).

[30] *Ibid*, 'The Law of Delict in South Africa' para 6.1, page 101; *Fetal Assessment Centre* (2025) 2 BCLR 127.

[31] 2013

(2) SA 144 (CC) at para 28.

[32] *Ibid*, 'The Law of Delict in South Africa' para 7.5, page 134.

[33] *Ibid*, 'The Law of Delict in South Africa' para 5.5, page 134; See also *Mafesa v Parity Versekeringsmaatkapy Bpk (In Likwidasi)* 1968

(2) SA 603 (O).

[34] (214/2010)

- [2011] ZASCA 32 (25 March 2011) at paras 19 – 20.
- [35] P Q R Boberg *The Law of Delict* 440-442; Neethling Potgieter and Visser *op cit* 189 *et seq*; J C van der Walt & J R Midgley *Principles of Delict* 3 ed paras 134-135.
- [36] See eg *Mafesa v Parity Versekeringsmaatskappy Bpk (in likwidasie)* 1968 (2) SA 603 (O) at 605D-E; *S v Mokgethi* 1990 (1) SA 32 (A) at 44B-47H; *Road Accident Fund v Russell* 2001 (2) SA 34 (SCA) paras 20-25; *Groenewald v Groenewald* 1998 (2) SA 1106 (SCA) at 1114.
- [37] *Johnson, Daniel James v Road Accident Fund Case Number 13020/2014* GHC paragraph 17, confirming *Solomon and Another v Musset and Bright Ltd* 1926 AD 427 and 435; *Nkateko v Road Accident Fund* 73865/17)
- [2022] ZAGPPHC 69 (9 February 2022) referred to *FOX vs RAF (A 548/16)* [2018] ZAGPPHC 285(26 APRIL 2018) at para 13 where the full bench held that : “Where the defendant had in the alternative pleaded contributory negligence and apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on the balance of probabilities, *Johnson, Daniel James v Road Accident Fund case Number 13020/2014* GHC paragraph 17, confirming *Solomon and Another v Musset and Bright Ltd* 1926 AD 427 and 435.”
- [38] 2000
- (3) SA 1049 (SCA) 1060 -1061, See also *Stewart v City Council of Johannesburg* 1947
- (4) SA 179 (W), where Price J said: “The ordinary pedestrian does not proceed along a sidewalk with his eyes glued to the ground. He does not expect to walk into excavations and obstructions on a paved sidewalk.” This was approved in *Wenborn v Cape Town Municipality* 1976 (1) SA 25 (C) at 29E.
- [39] *Hammerstrand v Pretoria Municipality* (supra) at 377; *Turner v Arding & Hobbs Ltd* (1949) 2 All ER 911 (KB); *Monteoli v Woolworths (Pty) Ltd* 2000 (4) SA 735 (W) at para [45].
- [40] *Hammerstrand v Pretoria Municipality* (supra) at 377.
- [41] *Ibid*, ‘The Law of Delict in South Africa’ para 7.6, page 135.
- [42] Defendant’s Heads of Argument, para 11.2, page 5.
- [43] *AA Mutual Insurance Association Ltd v Nomeka* 1976

(3) SA 45 (A); Gibson v Berkowitz and Another 1996(4) SA1029 (W).

[44] Act 34 of 1956.

[45] 34 of

1956. Section 1(1)(a): 'Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such an extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.' Section 1(1)(b): 'Damage shall for the purpose of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of

avoiding the consequences thereof and negligently failed to do so.'

[45] 34 of

1956. Section 1(1)(a): 'Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such an extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.'

Section 1(1)(b): 'Damage shall for the purpose of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.'

[46] Cool Ideas 1186 v Hubbard and Another 2014

(4) SA 474 (CC) at 484E-F and 492A-B and Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) at 603D-604D and 608E-F.

[47] South British Insurance co Ltd v Smit 1962

(3) All SA 548 (A) at page 835H.

[48] Joint Witness Bundle, page 3.

[49] Joint Witness Bundle, page 4.

[50] (AR551/16) [2017] ZAKZPHC 65 (16 November 2017).

[51] At 289-290.

[52] See also Mathe v Minister of Police 2017

(2) SACR 211 (GJ); Syed v Metaf Ltd Metro Cash and Carry [2016] 2A ECGHC 38 (31 May 2016).

- [53] Adams v Cape & Transvaal Printers (Pty) Ltd, 1990 (1) SA 661 (A); See also Minister of Safety and Security v Seymour 2006
- (6) SA 320 (SCA) at para 17 'It is trite that the assessment of general damages is a matter within the discretion of the trial court and depending upon the unique circumstances of each particular case...fraught with difficulty the facts of a particular case need to be looked at as a whole and few cases are directly comparable...they are a useful guide to what other courts have considered by they have no higher value than that...'
- [54] Protea Insurance Ltd v Lamb 1971
- (1) SA 63.
- [55] 2022 (8G4) QOD 1 (GNP).
- [56] Phasha v Road Accident Fund 2013 (6E4) QOD 21 (GNP).
- [57] Ibid as referred to in Methule at para 24; See also Mashigo v Road Accident Fund (2120/2014)
- [2018] ZAGPPHC 539 (13 June 2018).
- [58] Mgudlwa v RAF 2010 6 QOD E3-1 (ECM).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2025/72.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/stephens-v-minister-unknown-topic-awchc-2025--6a3ea50f3b1caa9129807d33>

Prepared on 12 October 2026 · Esheria