IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 5820/2015

In the matter between:

M. M. P. obo

T. M. P. Plaintiff

and

ROAD ACCIDENT FUND Defendant

HEARD ON: 06 MARCH 2017

JUDGMENT BY: RAMPAI, J

DELIVERED ON: 11 MAY 2017

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[1] The plaintiff sues the defendant in her representative capacity as mother and natural guardian. She claims delictual damages. The claim arises out of the fatal injury sustained by M. S.

E. P., her partner and father to her minor child, in a road accident. The action is defended.

[2] The parties held a pre-trial conference on 9 September 2016. The minutes thereof were filed on 12 September 2016. They mutually agreed to have the merits and quantum separately adjudicated. At the commencement of the hearing on 14 February 2017 I granted the separation order in accordance with their prior agreement. Accordingly the issues relative to the quantum of the claim were shelved and I preceded to hear evidence pertaining to the issues relative to the merits only.

[3] The version of the plaintiff was narrated by a single witness, namely:
Ms M. M., described as the plaintiff. I shall return to the plaintiff's papers.

[4] The defendant called no witness. Its case was closed after the closing of the plaintiff's case.

[5] Certain facts were undisputed vide "exi a". I shall henceforth refer to the deceased P. as the victim. He and the plaintiff were seemingly involved in an intimate relationship. One minor child, T. M.P. was born of such a relationship. He was born on […] 2008.

[6] The plaintiff and the victim were on their way to Mafeteng m Lesotho from Kroonstad on the fateful day. He was the driver of a sedan, a Toyota Yaris with registration [...]. She was a front

seat passenger. They were the only occupants of the car. At Senekal they preceded towards Marquard. It was raining at Senekal that evening. As they were nearing Marquard, the victim lost control over the car. It swerved from side to side, veered off its correct side of the road, crossed the centre line and, on the wrong side of the road, ultimately crashed into a stationary truck. It was drizzling at the time of the accident. The wet road had potholes.

[7] The accident took place at Marquard on Thursday 28 February 2013. The time was approximately 14:15. The actual scene of the accident was a short distance outside Marquard on the main road from Senekal.

[8] The victim sustained fatal bodily injuries in the accident. He instantly died. An inquest was held at Marquard on 19 June 2013. Mr S van der Merwe, the district magistrate, made the following findings in terms of sec 16 Inquest Act 58/1959:

8.1 that the deceased was M. S. E. P., an adult male born on […] 1961;
8.2 that he died on 28 February 2013;
8.3 that the cause or likely cause of his death was multiple internal injuries and profuse internal bleeding following a motor vehicle accident and
8.4 that his death was not brought about by any act or omission *prima facie* involving or amounting to an offence on the part of anyone. vide p25 plaintiff's discovery bundle.

The plaintiff survived uninjured.

[9] The cardinal question in the case is whether the insured driver, in leaving the insured truck unattended on the verge of the roadway, foresaw the possibility of harm to other road users caused by the stationary truck so parked.

[10] On the one hand Ms Tlelani, counsel for plaintiff, submitted that the answer to the question must be affirmative. The submission was based on the contention that the accident was caused by the negligence of the truck driver, B Radebe.

[11] On the other hand, Mr Lechwano, counsel for defendant, submitted that the answer to the question must be negative. The submission was based on the contention that the accident was caused by the exclusive negligence of the sedan driver M. S. E. P..

[12] I deem it necessary to make a cursory overview of some applicable principles of law.

[13] It is trite that the plaintiff bears the onus of proof. She is required by law to prove that the death of the victim was occasioned by an act or omission amounting to delictual negligence on the part of the defendant's insured driver, Bongani Radebe. In determining whether or not she has discharged the onus, the measuring civil standard is proof on a balance of probabilities. There is no room for the measuring criminal yardstick - proof beyond reasonable doubt. Therefore, it goes without saying, that where the balance

of probabilities favours the plaintiff, I would be inclined to accept her version as probably true - **National Employers General Insuarnce Co. Ltd v Jagers** 1984 (4) SA 437 (E).

[14] The real claimaint in this matter is T. M.P., the victim's minor child. He was neither a passenger nor a driver in the sedan. He was an innocent third party. Because he was not a wrongdoer or a co-wrongdoer, the principle of apportionment does not apply to him. In order to succeed all that he has to establish is a proverbial one percent degree of negligence on the part of the truck driver, Bongani Radebe. See **Mfomadi & Another v Road Accident Fund** [2016] JOL 36438 (GNP) par [32].

[15] About innocent third party claimants such as the plaintiffs son the court, per Kuny AJ, articulated the salient principle as follows in **Odendaal v Road Accident Fund** 2002 (3) SA 70 (W) at 75D-F:

> [11]*(a)* The plaintiffs are 'innocent third parties' and, for them to succeed, they bear the *onus* of establishing on the balance of probabilities that Dlamini was guilty of **some negligence which was causally connected to the collision** and therefore to the damages suffered by them. No question of apportionment of fault or of damages arises here since there was no contributory negligence on their part.
>
> *(b)* Thus **any causal negligence** on the part of Dlamini, ***whatever the degree thereof,*** in relation to the collision **would render the defendant liable,** as the insurer under the Road Accident Fund Act, for the *full amount* of the damages suffered by each of the plaintiffs.
>
> *(c)* The fact that the deceased may have been negligent and may even have had the 'last opportunity' of avoiding a collision would not exonerate the defendant from liability if Dlamini was causally negligent."

The court went on to say:

> *"(d)* Cooper *Motor Law* 1st ed vol 2 at 141 and cases cited therein suggests that, to determine **whether conduct was a factual cause of the collision** and therefore of the damages claimed, **the *conditio sine qua* non test is applied. This term embraces**
>
> **'all things which have so far contributed to the result that without them It would not have occurred.** . . . **Accordingly, the test for factual causation is whether but for the defendant's conduct the alleged harm would not have occurred'.**
>
> {my emphasis)

[16] In considering whether the conduct of the defendant's driver was a factual cause of the collision, the applicable delictual test is that of a *diligens paterfamilias* in the position of Bongani Radebe, the driver of the alleged offending truck. It has been authoritatively held that for the purposes of delictual liability a *paterfamilias* in the position of the defendant must have foreseen the reasonable possibility of his conduct injuring another and causing patrimonial loss and would have taken reasonable steps to guard against such occurrence but the defendant had failed to take such preventative steps **Kruger v Coetzee** 1996 (2) SA 428 **(A).**

[17] In applying the diligens *paterfamilias* test, the conduct of the defendant must be assessed according to the objective conduct of a reasonable driver bearing in mind the prevailing factual circumstances, statutory regulations and traffic obligations of road users.

[18] Traffic Regulation 305(3) reads:

> "(3) No person shall park a vehicle on any portion of the roadway (excluding the shoulders) of a public road outside an urban area or **with any part of such vehicle within one metre of the edge of such roadway** except in a parking place demarcated by an appropriate road traffic sign." (my emphasis)

See: The National Road Traffic Act 93 of 1996 read with the National Road Traffic Regulations of 1999, Chapter X, Rules of the Road and Matters Relating thereto.

See: *Sand and Company Limited v SA Railways* & *Harbours* 1948 (1) SA 230 (W) Sand and Company Limited v SA Railways & Harbours (1948] 1 All SA 249 (W).

[19] A reasonable driver takes all reasonable steps to prevent harm to other road users irrespective of the direction in which they may be travelling. A reasonably diligent and careful road user realizes that, in certain circumstances a stationary motor vehicle may create a hazardous situation on the road. Consequently he would take appropriate steps to prevent such harm or to reduce the risk of such foreseeable harm. In taking reasonable steps or precautions to guard against foreseeably harmful occurrence, a reasonably careful driver would make provision for unexpected lateral movements by other road users. He anticipates that, at times, motorists do lose control over their vehicles for a variety of reasons such as tyre-burst, excessive speeding, driver's fatigue, being stung by a bee, slippery or potholed conditions of the road

surface, or any other sudden emergency. A reasonable driver is alert and mindful that strange things do happen on the roads.

[20] In **Mokgadi Moletsane v Road Accident Fund** [2015] JOL 34855 (FB) par [15] the court held; per Lekale J:

"[15] As correctly submitted by Mr Pohl, the accident herein could have been easily avoided had the driver of the insured truck taken steps to warn other road users about the danger posed to them ... "

[21] In **Manderson v Century Insurance Co Ltd** (1951] 1 ALL SA 401 (A) par [14] the court held, per Van den Heever JA, that the driver's omission to remove his stationary car from its dangerous position was the cause of the accident which operated right up to the moment of impact. I pause to point out that, in that case, the stationary car was stopped some 10 - 13 feet from the roadway but on the correct side of the road - the left hand side. The standard width of a traffic lane is approximately 12 feet. In the instant matter the position of the stationary truck, on the right hand side of the road, was hardly one foot from the edge of the roadway.

[22] In stopping the truck in such a dangerously obstructive manner, the truck driver tacitly accepted the risk of foreseeable injury to others for he was prepared to stop or leave a potentially dangerous obstacle within such a hazardously narrow margin from the centre line. **Manderson,** *supra.*

[23] The test for negligence entails an enquiry whether the conduct of an alleged wrongdoer complies with the normalised and standardised conduct of a reasonable person. If it does, a delictual claim fails. If it does not, a delictual claim succeeds. For a defendant to be held delictually liable as a wrongdoer, the harm resulting from the negligence attributed to him must be foreseeable and preventable. Applied to bodily injury claims arising out of road accidents, these principles require that a court has to objectively determine how a reasonable driver would have conducted himself or herself in the circumstances that were prevailing at the time of the accident and also to objectively determine whether the driver in question had acted as a reasonable driver would have. **Harvest Corporation (Pty) Ltd v Duncan Dock Cold Storage (Pty) Ltd** 2000 (1) SA 827 (SCA).

[24] As regards the first element of the test, the question is whether a reasonable driver would have foreseen the reasonable possibility that his conduct, whether positive or negative act, would injure another's person and cause such victim to suffer patrimonial loss.

[25] The truck was stationary on the main public road between the two towns at the time of the accident. It was facing in the direction of Senekal. Its wheels on the right hand side were fractionally off the road tarmac for the Senekal bound stream of traffic. The particular section of the rural road, consisted of one traffic lane in each direction. The victim's sedan was in motion seconds before the disaster. It was travelling towards Marquard. In other words it was approaching the stationary truck from the front. See police accident report - p20 Index: Plaintiffs Discovery Bundle as well

as the plaintiff's rough sketch - "exi b". The speed limit was 100km per hour. The road surface was in poor conditions. It was potholed and wet.

[26] I am still in the dark as to a number of things. For instance I am clueless as to why the truck was parked as it was, as to where its driver was at the crucial moment, as to how long it had been parked on the scene, as to whether its red emergency lights were on or not, as to whether a danger triangle was placed anywhere in its vicinity to warn other road users of a potentially hazardous situation it posed, as to why it could not have been completely removed from the precincts of the public roads without delay or as to why it was not, at least, parked farther away from the tarmac.

[27] Although the onus rested on the plaintiff to prove the alleged negligence or culpable conduct on the part of the truck driver, it has to be borne in mind that a mere violation of a statutory rule, designed to enhance the traffic safety of road users in general, by itself may be conclusively indicative of a driver's negligence. **Sand** *supra* and **B & B Eiendomme (Edms) Beperk v Find A-Load** [2016] ZAFSHC (2535/16) FB per Nicholson AJ.

[28] The prohibition contained in the aforesaid traffic rule 305(3) is peremptory. In the absence of any innocent explanation by the transgressor concerning the circumstances which led him to violate the traffic rule, his violation must be regarded as culpable conduct. Consequently such an act of neglect attracts delictual liability. The evidence given by the plaintiff revealed that the truck was parked in such a manner that it occupied virtually the entire

prohibited one meter zone from the edge of the tarmac roadway. There was no evidence which indicated that the particular portion of the road where the truck was actually parked was demarcated by an appropriate sign as a parking place. I am, therefore, inclined to determine the first leg of the inquiry in favour of the plaintiff.

[29] A diligent driver must not only be capable of reasonably foreseeing harm which may possibly flow from his act. He must also be able to take reasonable steps to prevent such foreseeable harm from possibly occurring. **Kloppers: Law of Collisions in South Africa 7th ed. 2003 at p11.** Failure to do so will constitute negligence. To this second element of the test, I turn now.

Travelling on a country road, a reasonable driver, aware of the hazard posed by potholes, foresees a reasonable possibility of another driver encountering an animal, cyclist, pedestrian or a pothole anywhere at any time. Moreover, he foresees a reasonable possibility that a motorist who encounters such a situation would take one or other evasive action and that in the process of doing so he might lose proper and effective control of the vehicle.

[30] Once a motor vehicle goes out of control, there is no telling which course of motion it would follow to its equally unpredictable position of final rest. It may, after spinning all over the show, finally come to rest in the middle of the road or on the incorrect traffic lane or on the correct traffic lane or off the road on either the wrong side or the correct side of the road. A diligent driver

takes preventative steps by removing his motor vehicle from the roadside where it may aggravate the plight of a driver in such a crisis. The victim's panic exclamations showed that he had lost control of his motor vehicle.

[31] Before it ultimately reaches the position of its final rest, it may or it may not collide with any object on the way. Where there was no intervening collision, the factual scenario does not concern us. I am grappling with the factual scenario where the fateful route of the victim's sedan was tragically halted by its collision with the stationary truck. Now between that actual point of fatal obstruction and the imaginary point of the sedan's final rest the fatal result might not have occurred had the stationary truck not prematurely put to an end the free and uncontrolled motion of the sedan. There were two possibilities in the factual scenario, had the truck not been on the fateful path of the sedan. The one was that the victim might still have died, anyway. The other was that the victim might have survived, just as the victim did in **Mokgadi's case,** *infra.*

[32] Those were two alternative possibilities of the end result of the uncontrolled motion of the sedan which were more or less equally open on the balance of probabilities. The result of the obstructed motion was death. The result of the unobstructed motion might have been different. The chain of events which together constituted a factual cause of the collision and the ultimate fatal result was a material consideration. Such events included the speed of the victim's sedan, the potholes on the road, the position of the stationary truck, the possible damage to the sedan, the

victim's inability to slam the brakes, to control the sedan and to avoid the collision. Without all these things the collision would not have occurred and death would not have resulted.

[33] Among all things which have so far causally contributed to the fatal result, was the hazardous position of the truck without which it would probably not have occurred. But for the truck driver's conduct the harm would not have occurred. That is what the *condictio sine qua* non test embraces - **Cooper: Motor Law,** *supra.* The insured driver failed to take preventative steps to guard against the occurrence of such foreseeable harm. To that extent, he was negligent. His negligence commenced from the moment he parked the truck and operated right up to the moment of impact - **Manderson,** *supra.*

[34] In **Mokgadi Moletsane v Road Accident** Fund [2015] JOL 34855 (FB) the plaintiff was one of several passengers in a bus. The dual road was straight and tarred. It had a fair number of some uphills and downhills but no potholes. A stationary truck was spotted on the road ahead of the bus. Its wheels on the right hand side were occupying a greater portion of the traffic lane on which the bus was travelling. It was, therefore, physically obstructing the flow of traffic especially those vehicles approaching it from behind, such as the bus. The emergency lights of the truck were not flickering. However, there was a danger warning triangle placed about 2 metres behind it.

[35] When the bus suddenly loomed up, the stationary truck was dangerously close. The bus driver immediately swerved to the

right in an attempt to avoid crashing into the truck from behind. Although he succeeded, the bus was confronted by another bus which was travelling in the opposite direction. In yet another desperate attempt to avoid a head-on collision with an oncoming bus, the plaintiff's bus driver sharply swerved to the right, across the traffic lane for the opposite stream of traffic, completely veered off the road, ploughed into the adjacent field, hit a rock and eventually overturned.

[36] The plaintiff survived. He survived notwithstanding the fact that the bus went out of control, left the road, and hit a rock before it overturned. It may be argued by analogy, that the absence of a stationary truck on the other side of the road enhanced the chances of the plaintiffs survival. Consequently, it may be argued, again by analogy, that in the instant accident, the presence of a stationary truck on the other side of the road substantially diminished the victim's chances of survival. But for the dangerous position of the truck the victim might not have died.

[37] Indeed the instant matter is factually distinguishable from the cases of **Mokgadi** *supra* and **Manderson** *supra.* In those two cases, the offending vehicles were parked on the same side of the road on which the innocent vehicles were travelling. However, that by itself is not supposed to be the decisive consideration. It must be borne in mind that, although the stationary truck was parked on the other side of the road, it was no more than 3 metres away from the middle line demarcating the two opposite traffic lanes.

[38] The evidence of the plaintiff was that the road had potholes; that it had been raining; that the sedan was travelling at an average speed of 100km per hour seconds before the disaster and that she heard a strange sound seconds before the victim lost control over the car. The victim exclaimed: "Eish!" which was followed by another exclamation: "Shit!" He exclaimed in that way when he realized that the sedan was destined to crash into the stationary truck. Shortly after the second exclamation the sedan crashed into the truck. It is significant to note that the right front bumper of the sedan and the right front wheel of the truck were involved in the forceful impact.

[39] Mr Lechwano contended that the insured driver was not negligent as pleaded or in any manner whatsoever. The theme of counsel's cross examination and closing argument was that the victim, the sedan driver, was travelling at an excessive speed in the circumstances. He submitted that even the proverbial one percent negligence could not be imputed to the insured driver. The submission was informed by the contention that, in any event, there was no causal nexus between the alleged or imputed negligence and the ultimate collision.

[40] The essence of the plaintiff's pleaded case was encapsulated in par 4 of her particulars of claim. Among others she alleged that:

"4.1 He parked his motor vehicle at or within an area not designated or demarcated for parking motor vehicle by a road traffic sign.

4.2 He failed to act timeously and avoid the collusion by removing his car along the side of the road, where he was prohibited from parking/ or stopping.

4.5 He failed to adhere to traffic rules and regulations."

[41] However, the defendant barely denied those serious allegations. The general denials were not amplified at all. Consequently it was not open to the defendant to argue that the excessive speed of the sedan causally had everything to do with the ultimate collision. The evidence given by the plaintiff as regards the speed must be accepted. As a driver herself, she gave a reasonably informed estimate of the speed of the sedan. In its plea, the defendant alternatively prayed for apportionment of damages on the ground that the negligence of the sedan driver was the contributory cause of the collision. Such an alternative defence against an innocent claimant is bad in law - **Odendaal's** case, *supra.* Mr Lechwano, who was not the author of the defendant's plea, wasted no time to abolish such an unmeritorious alternative defence.

[42] In the course of his argument, Mr Lechwano also submitted:

"It could not have been possible for him to foresee that the deceased would lose control over his vehicle, at the time and place he did, and collide with the stationary truck on the other side of the road, which was in no way obstructing traffic flow for vehicles travelling on either lane of the road."

[43] I was not persuaded by the submission. The public road concerned was a narrow road with one traffic lane in each

direction. It was not in good conditions. There were potholes on the road and in particular in the vicinity of the scene of the accident. The truck was parked no more than 3 metres from the middle line and virtually occupied the prohibited 1 metre zone on the verge of the external boundary of the opposite traffic lane. Given all those factors and the prevailing weather conditions, I was not persuaded by the argument that the stationary truck in no way obstructed traffic flow for vehicles travelling on either of the two traffic lanes.

[44] Quite apart from the aforesaid considerations, I have a more fundamental difficulty with Mr Lechwano's submission. The foreseeability test is satisfied in a case where the **general** and harmful consequences of a particular act are foreseeable. Harm is considered to be preventable if a reasonable driver would have weighed the seriousness, nature and extent of the harm or damage on the one hand against the benefit, expense or trouble resulting from practical steps necessary to prevent the impending harm. At the heart of the matter is prejudice. Consequently a driver is negligent if he is capable of reasonably foreseeing that his conduct is likely to cause damage or harm in general but fails to take reasonable steps to prevent such damage or harm from occurring. **Klopper,** *supra,* at p11-2.

[45] It follows, from the above, that it is not an elementary requisite of the foreseeability test that it must have been possible for the wrongdoer, to have foreseen the specific manner in which a harmful event would precisely occur before he can be held liable. All that the law requires is that a reasonable driver in the position

of the driver of the insured truck would have foreseen a reasonable possibility of harm in general occurring from the way he had parked the truck on the road.

[46] It is unknown as to how long the truck had been stationary on the edge of the roadway. The only person who had intimate knowledge about that point was the truck driver. In the absence of any evidence on behalf of the defendant, I have to assume in favour of the plaintiff that the truck had probably been parked there for some fairly long time; that the insured driver had reasonably adequate opportunity to remove it but that he, for no good reason, neglected to have it removed from its hazardous position. In view of all these considerations, I have come to the conclusion that he failed to take reasonable steps to prevent foreseeable harm. This completes the second leg of the test.

[47] The insured driver of the truck did not testify. No reasons were given on behalf of the defendant as to why he was not called. I take it, therefore, that he was available to do so and that there was no good reason as to why he was not called.

[48] It is alleged in the accident report that the insured vehicle, the truck, was parked outside the roadway and that the victim's sedan collided head-on with the truck. Both aspects were somewhat inconsistent with the evidence. During the course of the cross-examination the plaintiff specifically denied, as untrue, the suggestion that the truck was parked completely off the tarmac of the roadway. She also denied that the collision was head-on as depicted in the police accident plan. The defendant's abortive

attempt to shift the position of the truck further away was by itself a tacit acknowledgement that the driver had left a hazardously narrow clearance between the truck and the roadway. Judging by the diagonal motion of the sedan, there existed a reasonable possibility that the collision might never have occurred if the insured driver had parked the truck farther away from the edge of roadway. In my view he took no reasonable steps to give vehicles passing the truck in either direction an adequately and reasonably wide berth. The insured driver had , in my view, parked the truck in a potentially dangerous manner. Such careless conduct boiled down to negligence. A reasonable driver would have foreseen that leaving a stationary truck unattended in those circumstances could cause harm to other road users in general irrespective of whence they came.

[49] It is common cause that neither the insured driver, Mr Bongani Radebe, nor the police officer whose duties it was to compile the police accident report and to draw up the police accident plan were called to testify on behalf of the defendant. In such a situation, I am entitled to select out of those two alternative explanations concerning the cause of the accident, that one which favours the plaintiff as opposed to the defendant **Galante v Dickson** 1950 (2) SA 460 (A) at 65 par Schreimer JA. The essence of that authoritative decision is that in circumstances such as these the facts must be generously interpreted in a manner favourable to the plaintiffs tested evidence. **Dlangamandla v Road Accident Fund** 2011 (5) SA 565 (FB).

[50] The truck driver's negligence was further evidenced by his failure to switch the hazard lights of the truck on. to place any reflective triangle anywhere in the vicinity of the stationary truck or to take any other reasonably meaningful steps to prevent possible harm. On the facts I find it impossible to acquit the insured driver of negligence. He was, in my view. also negligent to an extent. Such negligence, however small one considers it to have been, was causally connected to the result. In a case of an innocent third party, as in this instance, any causal negligence on the part of the insured driver, whatever the degree thereof, renders the defendant liable for the full amount of the proven delictual damages - **Odendaal's** case, *supra.*

[51] The only true explanation why the father of the plaintiff's child was fatally injured as he was, is to be found in the insured driver's failure to foresee the possibility of harm in circumstances where a reasonably prudent and careful driver would have foreseen it and would have taken reasonable steps to prevent it.

[52] Before I pen off, I have to comment on the quality of the plaintiff's papers as a whole. As regards the plaintiff. she was cited as M. **P..** See the formal heading of the summons. Also see the notice of bar.

- She was also described as M. **P..**
  See par 1.1 particulars of claim.
  See also application for pretrial date.
  See further notice of pretrial.

- She was further described as **R. P..**
  See an index of pleadings.
  See also an index of notices.

- She was finally introduced and presented to me in court as **M. M..**

[53] As regards the victim, he was described as **E.** P..
See par 3 particulars of claims.

- He was also described as E. **S.** **M.** P..
  See index: discovery bundles

[54] As regards the minor child, he was described as T. **M.** P..
See the formal heading of the summons.

- He was also described as T. M.P.. See par 6.1 particulars of claim.
  See also
- He was further described as T. **M.** P..
  See the prescribed mva claim form, Road Accident Fund 1 p12 index: discovery bundles.

[55] Quite obviously, the plaintiff's pleadings and papers as a whole were riddled with multiple mistakes pertaining to personal particulars of the mother, the father and the child. They were not a model of good draftmanship. The pleadings must always be

meticulously and elegantly drawn up after all this is the high court and not a street committee forum. Let me point out that R. P. was not the plaintiff but rather the plaintiff's daughter. I say no more about this sorry state of the pleadings.

[56] The correct family surname appears to be P. according to official documents. The correct names of the child appear to be T. M.P., the father M. S. E. P. and the mother M. M. P. ex J. as would appear from the full birth certificate - vide p24 index: discovery bundles, - the inquest record p25 index: discovery bundle and the Kingdom of Lesotho passport RC012621 p23 index: discovery bundles.

[57] According to Basotho culture, a bride not only adopts the surname of the bridegroom but also a new marital name. For instance L. S. R. would become M. R.. She would even be issued with an official K.O.L passport in her new name and surname. Therefore, M. R. and L. S. R. would, in truth and in reality, be one and the same woman.

[58] In the instant matter I readily accepted that M. M. is, by virtue of culture, one and the same woman as M. M. P. ex J., the biological mother and natural guardian of the minor child, T. M.P.. Take it from me, I did many such mva claims during my heydays as an attorney. However, it remains incumbent upon an mva claimant's attorney to gather evidence to that effect in

order to, have it presented to the Road Accident Fund and ultimately to a trial court, if necessary.

[59] Accordingly I make the following order:

(a) The defendant is fully liable to the plaintiff in such an amount of damages as she may prove or as may be agreed upon.
(b) The defendant is directed to pay the costs of the trial.

MH RAMPAI, J

On behalf of plaintiff:	Attorney L Tlelai Instructed by: Moroka Attorneys Bloemfontein
On behalf of defendant:	Adv. A Lechwano Instructed by: Maduba Attorneys Bloemfontein

[59] Accordingly I make the following order:

(a) The defendant is fully liable to the plaintiff in such an amount of damages as she may prove or as may be agreed upon.

(b) The defendant is directed to pay the cost of the trial.

MH RAMPAI, J

On behalf of plaintiff: Attorney L Ttelai
Instructed by:
Moroka Attorneys
Bloemfontein

On behalf of defendant: Adv. A Lechwano
Instructed by:
Maduba Attorneys
Bloemfontein