



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Case Number: 1334/2017

In the matter between:

MASENGEMI PUSELETSO

Plaintiff

and

MEC FOR POLICE, ROADS AND TRANSPORT

Defendant

HEARD ON: 27-28 February 2024, 15-17 July 2024

CORAM: JORDAAN, AJ

DELIVERED ON: 27 March 2025

INTRODUCTION

[1] This is a merit trial, as certified in a pre-trial by Naidoo J held on the 03rd of April 2023, in respect of a delictual claim for damages instituted by the Plaintiff, Mrs Puseletso Masengemi, against the MEC of Police, Roads and Transport, the Defendant, arising from injuries sustained in a collision which occurred on the 29th of March 2014 on the R34 between Vrede and Memel, when the Plaintiff as the driver of a motor vehicle with registration numbers and letters, BH00HP GP collided into potholes on the road.

THE PLEADINGS

- [2] The Plaintiff alleges in her summons that the Defendant had a duty of care to ensure that there were adequate warning signs on the R34 road between Vrede and Memel to warn the Plaintiff and other road users of the dangers in the road and particularly of the potholes on the road.¹
- [3] The Plaintiff further alleges that the Defendant wrongfully and negligently breached his duty of care and that as a result of that breach, the motor vehicle collision occurred resulting in the injuries sustained by the Plaintiff.²
- [4] The particular basis that the Plaintiff alleges the Defendant and/or its employees, acting in the course and scope of their duty with the Defendant were negligent, are the following:
- 4.1 The Defendant failed to ensure that there were adequate warning signs on the R34 between Vrede and Memel, to warn road users, and more particularly the Plaintiff of the dangers on the road and more particularly,
 - of the existence of potholes on the said road;
 - 4.2 The Defendant failed and/or neglected to properly maintain the R34 between Vrede and Memel;
 - 4.3 The Defendant failed and/or neglected to take reasonable steps to avoid accidents on the said road in circumstances where it could and should have done so, in the exercise of reasonable care.³
- [5] The Defendant, in its plea, admitted that it was responsible for the planning, design, construction, operation, control, rehabilitation and maintenance of the provincial roads infrastructure.⁴ The Defendant also admitted that the R34 road between Vrede and Memel was a provincial road.⁵

¹ Paginated Bundle 1: Particulars of Claim page 9 paragraph 5

² Paginated Bundle 1: Particulars of Claim pages 9-10 paragraphs 6, 7 and 8

³ Paginated Bundle 1: Particulars of Claim page 9 paragraph 6

⁴ Paginated Bundle 1: Plea page 21 paragraph 4.1 and 5.2

⁵ Paginated Bundle 1: Plea page 21 paragraph 5.1

- [6] The Defendant pleads that at all material times it reasonably, competently and adequately discharged its responsibility for the planning, design, construction, operation, control, rehabilitation and maintenance of the provincial roads infrastructure.⁶
- [7] The Defendant, in response to the Plaintiff's allegation that the Defendant at all material times had a duty of care to ensure that there were adequate warning signs on the R34 between Vrede and Memel, to warn road users, and in particular also the Plaintiff of the dangers in the road and more particular of the potholes in the said road, to maintain the said R34 between Vrede and Memel and to take reasonable steps to avoid accident on the said road, admitted the allegation.⁷ The Defendant pleaded that it duly discharged this duty and further pleaded that there were adequate warning signs of the dangers in the road, more particularly that the defendant displayed signs warning motorists of the potholes in the road.⁸ The Defendant further pleaded that it duly discharged its responsibility in respect of the planning, design, construction, operation, control, rehabilitation and maintenance of the provincial roads infrastructure.⁹
- [8] The Defendant denied that it breached its duty of care as alleged and pleaded that:
- 8.1 it took all reasonable steps to maintain the road;
 - 8.2 adequately warn motorists using the road to be warned of the dangers of potholes on the road; and
 - 8.3 cautioned motorists using the road to limit the speed at which they travelled on the road to 60 kilometers per hour.
- [9] While the Defendant admitted that the Plaintiff was involved in an incident and the occurrence of the incident on the 29th of March 2014, it denied that the incident occurred in the manner pleaded by the Plaintiff.¹⁰ It pleaded a general denial that it breached its duty of care and pleaded that the Plaintiff was the

⁶ Paginated Bundle 1: Plea page 21 paragraph 4.2

⁷ Paginated Bundle 1: Plea page 22 paragraph 7.1

⁸ Paginated Bundle 1: Plea page 22 paragraph 7.2

⁹ Paginated Bundle 1: Plea page 22 paragraph 8.1

¹⁰ Paginated Bundle: Plea pages 23 paragraphs 10.1- 10.3

sole cause of of the incident, in that the plaintiff was negligent in one or more of the following respects:

- 9.1 she drove at an excessive speed in the circumstances;
- 9.2 she failed to heed the signs warning of the presence of potholes;
- 9.3 she failed to keep a proper lookout; and
- 9.4 she failed to avoid the incident when by the exercise of reasonable skill

and care she could and should have done so.¹¹

EVIDENCE FOR THE PLAINTIFF

[10] The Plaintiff testified that on the 29th of March 2014 her husband drove herself and their two daughters from Van der Bijl Park in Gauteng to Newcastle to visit family. While enroute, her husband stopped the vehicle for her, the Plaintiff to drive while he and their two daughters remained as passengers in the vehicle.

[11] It was the Plaintiff's testimony further that as she was driving on the R34 Vrede to Memel, her husband alerted her that there were potholes on the road and she should thus drive carefully. Her evidence was that her visibility was clear.

[12] The Plaintiff testified that as she travelled uphill with a curve in the road she found potholes on the road-surface which she was able to navigate. It was her testimony that she travelled at a speed of 60 kilometres per hour though there were no road signs indicating the speed limit and no signs indicating the presence of potholes.

[13] The Plaintiff's evidence proceeded that she successfully negotiated the potholes, coming out of the curve, the road then declined. As she travelled downhill she noticed a pothole, slowed the vehicle down further and successfully negotiated around the pothole with the front wheels of the vehicle, however the vehicle's left rear wheel hit a pothole. It was her testimony that because there were many potholes she cannot definitively say

¹¹ Paginated Bundle: Plea pages 23-24 paragraphs 10.3.1- 10.3.4

whether the left rear wheel of the car hit the same pothole that she averted with the front wheels of the car or another pothole. This propelled her vehicle to veer to the right lane, but she controlled the vehicle back into the left lane.

- [14] It was her testimony further that on return to the left lane the motor vehicle immediately hit a second pothole with the right front wheel. The steering wheel spun uncontrollable, she lost control of the vehicle and the vehicle moved to the right side of the road and from the road onto the gravel downwards until it landed with its front in a ditch and the rear of the vehicle facing upwards towards the sky. She testified that they were transported to hospital by an ambulance.
- [15] During cross-examination the Plaintiff testified that she obtained her drivers' license in 2013. They travelled the road during December 2013 when they visited family, but her husband drove the vehicle. He was familiar with the road conditions. She testified that it was the first time that she drove on the road and was not familiar with the road conditions.
- [16] The Plaintiff refuted the presence of any road signs indicating the presence of potholes or any warning and refuted the presence of any speed limit signs. The Defense confronted the Plaintiff that their expert witness will testify that from the point of the accident, if there were any potholes, it would have been visible to a driver who would have been able to stop prior to hitting the pothole to which the Plaintiff replied that she saw the pothole, reduced her speed and successfully manoeuvred around the potholes with the car's front wheels, but because there were so many potholes, the car's rear wheel hit a pothole, whether it was the same or a different pothole she could not say.
- [17] The Plaintiff during cross-examination testified that the vehicle came to a standstill five minutes after the second pothole was hit. During re-examination she replied that she could be wrong about the estimated time.
- [18] Mr. Ernest Masengemi, the Plaintiff's husband, testified confirming her evidence that she drove on the R34 Vrede to Memel road. He forewarned her

to drive carefully as it was treacherous road due to the potholes. He testified that the collision with a pothole occurred in the curve of the road. The Plaintiff managed to control the motor vehicle back into the lane, when the second impact with a pothole occurred and the steering wheel spun out of control.

- [19] It was his testimony that the vehicle came to a standstill in open water drainage pipes in the field, approximately 50 to 80 meters from the point of impact. He testified the Plaintiff as the driver, can say at what speed she drove the vehicle. He can only estimate 60 to 80 kilometers per hour.

- [20] During cross-examination, he testified that his wife saw the first pothole and manoeuvred around the approximately one meter in sized pothole. He testified that he is from Newcastle, that he is familiar with the road conditions and could forewarn his wife of the road conditions. It was his testimony that between December, when he drove on the road and March 2014 when the Plaintiff drove on the road, that the road had further deteriorated.

- [21] It was his evidence that he usually drove them to Newcastle and could therefore not say whether the Plaintiff drove on the road previously. It was further his evidence that when he visited the scene of the accident during July 2014 he took photographs of the road which was significantly repaired.

- [22] He denied that the second pothole was visible. It was his testimony that he did not caution his wife not to exceed the speed limit, but rather informed her to drive carefully due to the road conditions.

- [23] Constable Richard Nhlaphu testified that he attended the scene of the accident in March 2014 and found that the vehicle had left the road. He testified that he is a police officer in that area and that the road condition was poor. He was not sure of the speed limit, but testified that he thinks that there is a speed limit sign of 120kilometers per hour at the T-junction. It was his testimony that he did not recall seeing any signs warning the public about the presence of potholes.

- [24] During cross-examination he testified that he regularly attended accident scenes on that road. He works four day shifts and this accident occurred on the second day of his shift. He testified that he attended to another accident on the 4th day of his shift on the same road. It was his evidence further that he avoided collisions during his patrols because he drives 40 to 60 kilometers per hour and he drives a 4 x 4 sports utility vehicle. When pushed it is because he drove diligently, he asserted it was because he drove a 4 x 4 sports utility vehicle.
- [25] He further testified that he drew the sketch-plan of the accident, but did not measure the size of the potholes as LCRC do measurements. It was his testimony that there were potholes on both sides of the road. It was put to him that the Defendant's witness would testify that the potholes are visible, to which he answered that he will not dispute his evidence as it would be his version.

EVIDENCE FOR THE DEFENDANT

- [26] Mr. Barry Grobbelaar testified that he has obtained Mechanical Engineering degree from the University of Pretoria in 1993. He visits accident scenes, consult witnesses, drafts reports and testifies thereon in court. He drafted a report in the instant case and testified in accordance with his report.
- [27] It was his testimony that he received instructions in this case in approximately 2018 or 2019 and visited the scene in June 2019 with Constable Nhlapho and the State Attorney and took photographs of the scene. The road surface was smooth then, five years after the collision, and the actual collision point was not known. Thus in 2019, it was a repaired road surface. In 2024 he was asked to draft a report, which he did.
- [28] He testified that the road is a slight uphill and a gentle curve downwards. He testified that he had no witness statements about the accident, did not have the benefit of inspecting the damaged motor vehicle and Constable Nhlapho could not explain the dotted line on the AR report. He thus could not say whether the Plaintiff did or did not hit a pothole.

- [29] He further testified without a photograph of the potholes showing its size, shape and depth, he cannot give an opinion how the potholes effected the collision. He could also not calculate the speed the vehicle was traveling when approaching the pothole due to insufficient information and no photographs of the vehicle.
- [30] The witness testified that it is possible that the Plaintiff travelled between 60 to 80 kilometers per hour and ended in an embankment 50 to 80 meters away as without evidence of the speed at which the vehicle collided with the embankment, whether the vehicle was traveleling sideways or slightly sideways, he cannot give an opinion at what speed the vehicle was traveling.
- [31] It was his testimony that had there been no potholes, it is improbable that an accident would have occurred.
- [32] During cross-examination the witness conceded that even if there is a 100 meter visibility, it does not mean that potholes and other debris on the road are visible and furthermore, the 100 meters is an estimation it was not measured.

COMMON CAUSE FACTORS

- [33] At the conclusion of the case the Defendant submitted the following as common cause between the Parties:¹²
- 33.1 that the plaintiff was involved in a motor vehicle accident on the 29th of
March 2014 on the R34 road between Vrede and Memel;
 - 33.2 that the plaintiff was driving a white Renault Megane;
 - 33.3 that the Plaintiff was driving at a speed of 60 to 80 kilometers per hour;
 - 33.4 that when the Plaintiff saw the first pothole she slowed down and was able to reduce her speed from traveling 60 to 80 kilometers per hour;
 - 33.5 that the left rear tyre of the vehicle which was driven by the Plaintiff

¹² Defendant's Heads of Argument page 2-3 paragraph 3

- collided with a pothole; and
- 33.6 that the Plaintiff sustained injuries on the day of the accident.

ISSUES FOR DETERMINATION

- [34] The Court is required to determine:
- 34.1 the manner in which the accident occurred; and
- 34.2. whether the defendant is liable for damages allegedly suffered by the Plaintiff as a result of the accident that occurred on the 29th of March 2014.

ONUS OF PROOF

- [35] The Plaintiff bears the onus to proof on a balance of probabilities that the Defendant negligently breached its duty of care, as the Defendant admitted that it owes a duty of care to members of the public using provincial roads, to reasonably monitor, inspect and maintain the R34 road, to ensure that members of the public, road users and specifically the Plaintiff be warned of the dangers in the road and more particularly of the potholes in the said road.
- [36] The Defendant having pleaded that the occurrence of the incident was caused by the sole negligence of the Plaintiff, bears the onus to proof that the Plaintiff:
- 36.1 drove at an excessive speed in the circumstances;
- 36.2 that she failed to heed the signs warning of the presence of potholes;
- 36.3 she failed to keep her proper look out; and
- 36.4 she failed to avoid the incident when by the exercise of reasonable skill
- and care she could and should have done so.

THE LAW

- [37] It is trite that a Plaintiff must establish the five elements of delict, on a balance of probabilities, to hold a defendant liable for delictual damages and if a Plaintiff fails to establish one of these elements, the claim cannot succeed.¹³

¹³ Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA)

- [38] The five elements to be proven by a Plaintiff in a delictual claim were restated in *MTO Forestry (Pty) Ltd v Swart NO*¹⁴ as: (1) the conduct (either act or *omission*); (2) wrongfulness; (3) fault (typically negligence); (4) causation; and (5) that harm was suffered. Without the convergence of all these elements delictual liability will not ensue.
- [39] It is appropriate to have a short exposition of these elements which I embark on, fortified by authority. In *Steenberg v De Kaap Timber Pty Ltd*¹⁵ it was stated that conduct can take the form of a *commission*, where the defendant actively did something like starting a fire or an *omission*, e.g. the failure to do something like the failure to exercise proper control over a fire. In *Minister of Forestry v Quathlamba (Pty) Ltd*¹⁶ it was held that an omission can also be committed where the defendant was under a legal duty, by virtue of its ownership or control of the property to take preventative action but failed to do so. A negligent *omission*, is only wrongful if it occurs in circumstances that the law regards as sufficient to give rise to a legal duty to avoid negligently causing harm.¹⁷
- [40] The issue of wrongfulness was considered in *Kruger v MEC*¹⁸, which concluded that when a court considers the issue of wrongfulness, the question is always whether the defendant ought reasonably and practically to have prevented harm to the plaintiff. It emphasised that in every case a court must consider and balance *inter alia* the following factors: the foreseeability and possible extent of harm; the degree of risk that the harm will materialise; constitutional obligations; the breach of a statutory duty; the interests of the defendant and the community; who has control over the situation; the availability of practical preventative measures and their prospects of success; whether the cost of preventing the harm is reasonably proportional to the harm; and whether or not there are other practical and effective remedies available.

¹⁴ 2017 (5) SA 76 (SCA)

¹⁵ 1992 (2) SA 169 (A)

¹⁶ 1973 (3) SA 69 (A)

¹⁷ *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA)

¹⁸ [2015] ZAWCHC 158

[41] The negligence element of delictual liability was in the case of *Butise v City of Johannesburg and Others*¹⁹ held to normally resolves itself by embarking on a threefold enquiry. Firstly is whether the harm was reasonably foreseeable, secondly is whether the *diligens paterfamilias* would have taken reasonable steps to guard against such occurrence, and thirdly is whether the *diligens paterfamilias* failed to take those steps. The answer to the second enquiry is frequently expressed in terms of a legal duty. In the case of *Loureiro and Others v Invula Quality Protection (Pty) Ltd*²⁰ it was stated that in respect of the element of negligence a plaintiff must also establish that the negligent conduct was such that the law recognises it as wrongful.

[42] The Appellate Division in the matter of *International Shipping Co (Pty) Ltd v Bentley*²¹ set out the position in regard causation in the following terms:

“As has previously been pointed out by this Court, in the law of delict causation involves two distinct enquiries. The first is a factual one and relates to the question as to whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as 'factual causation'. The enquiry as to factual causation is generally conducted by applying the so-called 'but-for' test, which is designed to determine whether a postulated cause can be identified as a causa sine qua non of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; aliter, if it would not so have ensued. If the wrongful act is shown in this way not to be a causa sine qua non of the loss suffered, then no legal liability can arise. On the other hand, demonstration that the wrongful act was a causa sine qua non of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part.”

¹⁹ 2011 (6) SA 196 (GSJ)

²⁰ 2014 (3) SA 394 (CC)

²¹ 1990 (1) SA 680 (AD) at 700 to 701

- [43] The Plaintiff must prove harm or damages. In this regard the Plaintiff has to prove that personal injuries were suffered and this realised into losses in form of example medical expenses, loss of earning capacity, or general damages for pain and suffering.

EVALUATION

- [44] The Court had the opportunity to observe the four witnesses as they testified before Court and the Court found that their evidence was delivered chronologically, clearly and without any indication of bias for or against any Party before Court.
- [45] All three witnesses for the Plaintiff testified that the road surface was not in a good condition and was littered with potholes. The Defence witness, Mr. Grobbelaar, testified that he only saw the road surface five years after the collision, by which time the road surface and potholes were repaired. The Defence in their heads of argument raised that the accident report drafted by Cst Nhlapho depicts only one pothole contrary to the witnesses' evidence, however the author of the accident report was not confronted with this so that he could answer why he drew only one pothole when his own evidence was that there were many potholes.
- [46] The photographs in Bundle 4 and 5 show the degraded road surface with potholes, however the photographs were not taken during the incidence of the accident, these are photographs of February 2010 and July 2015. The photographs of July 2015 depict that the road is being resurfaced and tarred and part of the road which has not been resurfaced yet, show the state of potholes and degradation. None of the photographs show any road signs warning of potholes or the dangerous road conditions. This is in accord with the evidence of the Plaintiff's witnesses. No evidence to the contrary was presented by the Defense, notwithstanding their plea.

- [47] The evidence of Mrs Masengemi and Mr. Masengemi with regard to the presence of multiple potholes is corroborated by Constable Nhlapho who testified that the R34 is part of the route that he patrols and the road surface is not good with many potholes and regular accidents, citing that during his four day shift in March 2014 he attended to two accidents on the same road. The Defence admitted that the Plaintiff drove through a pothole with the car's left rear tyre and did not present contrary evidence that the car went through a second pothole.
- [48] This Court is thus satisfied that on the evidence presented, the Plaintiff proved the presence of potholes on the R34 between Vrede to Memel on the 29th of March 2014.
- [49] The Defendant in their submitted common cause factors admitted that the Plaintiff drove through a pothole. This evidence, in conjunction with the evidence of Mrs Masengemi and Mr. Masengemi's that the Plaintiff's vehicle indeed collided with two potholes in circumstances where the Defendant failed to present evidence to the contrary, satisfied this Court that the Plaintiff indeed proved that her vehicle collided with two potholes on the 29th of March 2014.
- [50] The three witnesses in the Plaintiff's case testified that there are no road signs warning road users and members of the public and the Plaintiff in particular, of the dangers on the road and the presence of potholes. The Court bears in mind that Cst Nhlapho patrols that road on a regular basis and is an independent witness, corroborating the Plaintiff and Mr. Masengemi in this regard. The Defence witness presented no evidence of the presence of road warning signs. This Court is thus satisfied that the Plaintiff proved the absence of any road signs warning road users of the presence of potholes or dangerous road conditions on the R34 between Vrede and Memel.
- [51] The evidence of the Plaintiff is that she travelled between 60 to 80 kilometres per hour and reduced her speed when she noticed the first pothole and this is

admitted as a common cause fact by the Defendant. This Court thus accepts that the Plaintiff travelled below the speed of 60 to 80 kilometers per hour.

- [52] This only witness who testified on the possibility of a speed limit sign next to the road is Cst Nhlapho who testified that the speed limit sign is close to the T-junction of the R34 road, but he was not sure. It was his evidence further that the speed limit indicated is either 100 or 120 kilometers per hour, he is not sure. Except for the Defendant's allegation, no evidence of the presence of a speed limit sign was presented. The Court thus accepts the Plaintiff's evidence that there is no speed limit signs on the R34 between Vrede and Memel that the Plaintiff drove on.
- [53] The uncontroverted evidence of the Plaintiff is that she did not travel at an excessive speed and the Defendant presented no evidence to the contrary. Mr. Grobbelaar could not give an opinion on the speed at which the Plaintiff drove the vehicle and hit the potholes or embankment, due to lack of material and evidence provided to him. The Defendant also admitted that at the time of the collision the Plaintiff was traveling below 60 to 80 kilometres per hour. The Defendant thus failed to present any evidence in support of their allegations and prove that the Plaintiff drove the vehicle at an excessive speed when she collided with the potholes on the road surface.
- [54] The Defendant admitted that at all material times it had a duty of care to ensure that there were adequate warning signs on the R34 between Vrede and Memel, to warn road users, and in particular the Plaintiff of the dangers on the road and more particular of the potholes on the said road, to maintain the R34 road between Vrede and Memel and to take reasonable steps to avoid accidents on the said road. The Defendant pleaded that it duly discharged its duty to display warning signs of the dangers on the road and the presence of potholes on the road and further pleaded that it duly discharged its responsibility in respect of planning, operation, control, rehabilitation and maintenance of the provincial roads infrastructure. In the circumstances this Court is satisfied that a legal duty has been established through the Defendant's admission. In addition, having regard to the evidence

Cst Nhlapho of the incidence of road traffic accidents on the R34 and all the *viva voce* evidence including Mr. Grobbelaar who testified that absent the potholes it is improbable that an accident would have occurred, this Court is satisfied that wrongfulness has been acknowledged. The photographs in Bundle 4 and 5 and the evidence of the three witnesses for the Plaintiff however provide a visual depiction and oral evidence that belies these pleadings of the Defendant who presented no evidence to prove the veracity of their pleadings that they indeed fulfilled their duty in this regard.

[55] In applying the test for negligence as established in the authorities herein above, it is clear that a reasonable man in the position of the Defendant would have foreseen the reasonable possibility that its conduct in failing to properly maintain and repair the road on which the Plaintiff travelled, and in allowing that road to deteriorate to the condition depicted in the photographs contained in Bundles 4 and 5 of the trial Bundle, would result in a person, being the Plaintiff in the instant case, being injured and suffering patrimonial loss in consequence thereof. The reasonable man would have taken the appropriate steps to guard against the occurrence of an accident, especially one as serious as that which the Plaintiff was involved in. It is patent that the Defendant and/or his employees failed to take the necessary steps to prevent the damage and losses suffered by the Plaintiff, in circumstances where the Defendant had a legal duty to perform by the Defendant's own admission and judicial determination, having regard to the criteria of public and legal policy consistent with constitutional norms. This Court holds the view, that the accident was caused as a result of the poor condition of the road, which can be attributed to the negligence of the Defendant in failing to maintain the road and to ensure the reasonable safety of road users and in particular of the Plaintiff in the instant case.

[56] This Court is satisfied that the Plaintiff proved their case in regard to the manner of occurrence of the accident, that the Defendant was negligent and that was the cause of the accident. This Court holds the view that the Plaintiff is entitled to recover 100% of her agreed or proven damages against the Defendant.

COSTS

[57] This Court sees no reason to depart from the general rule that costs follow the cause, hence the plaintiff is entitled to a cost order in her favour.

ORDER

[58] In the circumstances, the following order is granted:

58.1 The Court orders separation of merits and quantum in terms of Rule 33(4)

of the Uniform Rules of Court;

58.2 The defendant is liable to the plaintiff for 100% of her agreed or proven damages, arising out of the injuries sustained in the motor vehicle accident which occurred on the 29th of March 2014 on the R34 road between Vrede and Memel;

58.3 The Defendant is ordered to pay the plaintiffs costs of the action on a party and party scale, including costs of Counsel on Scale B as well as reasonable traveling and accommodation costs of the plaintiff and two witnesses;

58.4 The Plaintiff, Mr. Masengemi and Constable Nhlapo are declared to have been necessary witnesses in respect of this trial.

M.T. JORDAAN

ACTING JUDGE OF THE HIGH COURT, BLOEMFONTEIN

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