



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Member of the Executive Council, Education, North West Province v Izak Boshoff Foster & Others (Case no 471/2021) [2023] ZASCA 11 (13 February 2023)

Today the Supreme Court of Appeal (SCA) dismissed an appeal from the Gauteng Division of the High Court, Pretoria (high court). The appellant, the MEC of Education, North West, was found liable in terms of s 60 of the South African Schools Act 84 of 1998 (the Act) for damages suffered by the first respondent as a result of the negligence and incompetence of a third party (first aid personnel) appointed by Hoër Volksskool Potchefstroom (Volksskool) to administer emergency medical service at a rugby tournament taking place at Volksskool premises.

On 6 May 2006, the first respondent part took in a rugby tournament representing his school, Hoërskool Lichtenberg (Lichtenburg) against Volksskool, which was hosting the tournament. The first respondent was injured during the match when another player fell on top of him subsequent to a tackle and he sustained a primary injury to his neck. The first respondent however, sustained a secondary injury when he was negligently carried off the field by the first aid personnel, without his neck being stabilized with a spine board or a solid neck brace, despite his protestations. The first respondent was subsequently informed that he would not be able to walk again.

After being released from hospital, the first respondent issued summons in the high court against the MEC for the damages he had suffered. The high court held the MEC liable for the totality of damages suffered by the first respondent as well as all costs associated with the action on a punitive scale.

In the majority judgment per Mocumie JA (Van der Merwe JA, Carelse JA and Goosen JA), the SCA found that the high court correctly applied its mind when it held the MEC liable for damages that the

first respondent suffered based on the unrefuted expert medical evidence. The expert medical evidence supported the conclusion that his damages were caused by the manner in which he was carried off the field by the first aid personnel and the consequences which flowed therefrom. The SCA held further that Volkskool failed to take reasonable steps to ensure that the first aid personnel it employed were competent, properly equipped and available to deal with the clearly foreseeable possibility of serious injuries and their consequences which are inherent to the sport of rugby.

The MEC was liable for the wrongful conduct of the school because rugby was found to be an activity connected to an educational activity as defined in s 60 of the Act. Section 60 brought about a legal duty to avoid delictual harm based on the principle of *in loco parentis*, in which the school or an educator assumes the role of a parent when learners are under their care and custody during sport and school activities.

In the result, the SCA confirmed that the MEC was liable for the damages the first respondent had suffered and the appeal succeeded only to the extent of overturning the costs order from punitive to the ordinary scale.

The minority judgment per Masipa AJA, was of the view that the Volkskool had acted reasonably in meeting the requirements set out for rugby matches by the South African Rugby Union (SARU) by ensuring that emergency medical staff were available, that the proper equipment was available prior to the tournament starting and that it contracted an independent third party to act as referee. She held further that once the SARU requirements were satisfied the responsibility shifted from the school to the referee to ensure that all requirements were met before the matches could even start and found accordingly that the first respondent failed to prove negligence on the part of the appellant.

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