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

Date: 27 October 2022

Status: Immediate

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

MEC for Health, Limpopo v L W M obo D M (502/2021) ZASCA 146 (27 October 2022)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal brought by the Member of the Executive Council for Health, Limpopo Province (the appellant) against the decision of the Gauteng Division of the High Court, Pretoria (the high court). The appeal was dismissed with costs, including the costs occasioned by the employment of two counsel.

The appeal concerned a medical negligence claim in terms of which a mother (the respondent), acting on behalf of her minor child (D M), claimed damages in the high court arising from the brain injury which D M suffered during the birth process at Dilokong Hospital (the hospital) in Limpopo Province. The claim was lodged against the appellant, who would have been vicariously liable for damages caused by the negligent conduct of the hospital staff.

The facts of the matter were as follows. The respondent was admitted at the hospital in the early hours of 17 July 2010. She was in the early stages of labour. An examination at 14h00 revealed that she was still in the latent phase of labour with no risk factors having been noted. Her vital signs were noted as normal, as were those of the foetus. Labour progressed normally. Some concerns relating to the slow progression of labour were noted in the entry made in the partogram at 01h20 on 18 July 2010. The notes reflected that the doctor was summoned at 01h30 and he undertook to attend to the respondent. The respondent's examination at 01h50 revealed that the amniotic sac membranes had ruptured, and meconium-stained liquor, grade 2, was observed. She was fully dilated and was thus in the second stage of active labour. At 02h00, the attending midwife again summoned the doctor who was on call. The clinical notes recorded that the doctor promised to make an attendance. It further recorded that the plan was to monitor the foetal and maternal condition. The note made at 02h00 was the last entry made in the clinical notes. There was no indication of any monitoring whatsoever having taken place between 02h00 and the delivery of the baby at 03h35. The clinical notes pertaining to D M's birth recorded, inter alia, a diagnosis of hypoxic-ischaemic encephalopathy (HIE). It was common cause that D M developed severe asymmetrical mixed-type cerebral palsy, predominantly dystonic.

The crisp question that the SCA had to determine was whether it was more likely than not that, but for the wrongful and negligent conduct of the appellant's employees, D M would not have suffered a brain injury during the birth process, as a result of hypoxic ischemia. The appellant had conceded that the hospital staff had been negligent.

The SCA found in respect of the respondent's delictual claim that it was clear from the conspectus of all the medical evidence that there was a lack of adequate monitoring at the most critical stage of the respondent's labour. This conduct fell far short of the very guidelines intended for public hospitals and clinics in South Africa. In the face of slow progress in labour and the presence of thick meconium, there was no intervention on the part of the hospital staff to expedite the delivery of D M to avoid the eventuation of harm. Based on the evidence, the SCA found that it was more probable than not that had the doctor who had been summoned for the first time at 01h30 arrived, he would, upon noting the unfavourable maternal and foetal conditions and the fact that the respondent was fully dilated, have delivered D M by forceps within 20-25 minutes of that doctor's arrival. The SCA found that this meant that D M would probably have been delivered by 02h15. It followed that D M's brain injury would not have eventuated if her delivery had been expedited, which was the intervention spelt out in the maternity guidelines and confirmed by Dr Murray.

The SCA found in respect of the expert evidence that the findings of Prof Smith's article found a clear correlation between the poor management of D M's labour and the brain injury suffered by D M. The SCA found further that it was noteworthy that both Dr Murray and Prof Lombaard agreed that insufficient monitoring of labour could have resulted in foetal distress being missed. It was uncontested that no steps were taken to exclude foetal distress despite poor progress of labour having been noted. The SCA found that Prof Smith's opinion that, in the absence of a sentinel event, it was more probable than not that this substandard intrapartum obstetric management was the cause underlying the sequence of events that culminated in D M being subjected to a hypoxic ischaemic insult that led to her brain injury, was therefore persuasive. Expressed differently, the SCA found that the most probable cause of D M being asphyxiated during labour and consequently suffering cerebral palsy was the failure of the hospital staff to monitor the maternal condition during the most critical time of labour, the failure to monitor the foetal heart rate and the consequent failure to intervene by expediting D M's delivery. The SCA thus held that the high court's reliance on Prof Smith's evidence could not be faulted.

The SCA found further that the conspectus of the evidence had shown on a balance of probabilities that the harm suffered by D M was closely connected to the omissions of the hospital staff in relation to their inadequate monitoring of the respondent's critical stage of labour. Consequently, the causal link between the negligence and the harm that ensued was undeniable.

~~~~ends~~~~
~~~~