



**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:** 26 July 2021

**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*

*The Member of the Executive Council, Department of Health, North West v N A M obo T N (138/2020) [2021] ZASCA 105 (26 July 2021)*

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Today the Supreme Court of Appeal (SCA) upheld the appeal against an order of the North West Division of the High Court, (Hendricks ADJP, (Gura J and Oosthuizen-Senekal AJ concurring) and ordered each party to pay its own costs.

This case concerned a claim by N A M (plaintiff) for vicarious delictual damages on behalf of her minor child (TN) against the Member of the Executive Council for Health, North West (the MEC) as the employer of the nursing staff at the clinic at the time the plaintiff gave birth. The central issue to be determined was the claim for damages based on failure to monitor the plaintiff and foetus during labour, whether the clinic nursing staff were negligent in their treatment of the plaintiff and TN, whether their negligence caused TN's hypoxic ischemic injury and the resultant cerebral palsy and whether the nursing staff could have taken steps to prevent the harm suffered.

The SCA held that the High court correctly concluded that there was no evidence that pointed to what steps the nursing staff could have taken but failed to take under the circumstances and the plaintiff did not establish that the conduct of the nursing staff at the clinic was the probable cause of TN's brain damage which resulted into cerebral palsy. The late diagnosis of brain damage which resulted in cerebral palsy coupled with the many years that elapsed before medical experts could put the pieces together, worsened by the loss of critical medical records resulted in this case being one of the most unfortunate cases to establish negligence and any causal link between the two and the injury TN suffered. The balance of probabilities favoured the nursing staff as it pointed that they did what they could do and as expected of a reasonable person in the circumstances.

The SCA further held that even in circumstances where hospital staff have acted negligently by not monitoring the condition of a woman in labour and the foetus and acting appropriately on the results, their wrongful conduct does not, in and of itself, suffice to found delictual liability.

As a result, the SCA upheld the appeal and ordered each party to pay its own costs.

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