



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

# JUDGMENT

Case no: 572/08

<b>THE MINISTER OF SAFETY AND SECURITY</b>	First Appellant
<b>THE CHARGE OFFICE COMMANDER OF THE HAMMARSDALE POLICE STATION</b>	Second Appellant
<b>MUSAWAKHE MORRIS MWANDLA</b>	Third Appellant
and	
<b>LORAINE CRAIG</b>	First Respondent
<b>LORAINE CRAIG NO</b>	Second Respondent
<b>LORAINE CRAIG NO</b>	Third Respondent
<b>LORAINE CRAIG NO</b>	Fourth Respondent

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**Neutral citation:** *Minister of Safety and Security and others v Lorraine Craig*  
(572/08) [2009] ZASCA 97 (17 September 2009)

**CORAM:** Navsa, Brand, Ponnann, Mlambo and Mhlantla JJA

**HEARD:** 27 August 2009

**DELIVERED:** 17 September 2009

**CORRECTED:**

**SUMMARY:** Delict - wellbeing of arrested persons – duty of police officers discussed – examination by district surgeon prior to detention at police station – cause of death delayed rupture of descending aorta – in totality of circumstances police not negligent.

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ORDER

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**On appeal from:** High Court, Pietermaritzburg (Koen J sitting as court of first instance).

1. The appeal is upheld with costs, such costs to include the costs of two counsel.
2. The order of the court below is set aside and substituted as follows: 'The plaintiffs' claims are dismissed with costs, such costs to include the costs consequent upon the employment of two (2) counsel.'

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JUDGMENT

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NAVSA JA (BRAND, PONNAN, MLAMBO and MHLANTLA JJA concurring):

[1] At approximately 21h00 on Saturday 19 July 2003, 34 year-old Mr Andre Vincent Craig, who was heavily under the influence of alcohol, drove in a southerly direction and into the face of oncoming traffic on the northbound carriageway of the N3 national freeway. He drove his Toyota motor vehicle into the path of an oncoming BMW motor vehicle, with disastrous consequences. The BMW caught alight and two children within that car burnt to death. Other passengers in the BMW were seriously injured. The collision occurred near Hammarsdale, in the province of Kwa-Zulu Natal.

[2] Mr Craig survived the collision. He was arrested at the scene by two members of the South African Police Service. At approximately 21h40, another policeman, the third appellant, Detective-Inspector Musawakhe Mwandla,<sup>1</sup> transported Mr Craig to Camperdown, to the rooms of the district surgeon, Dr Richard Thompson, to have blood drawn for the purpose of a blood-alcohol test.

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<sup>1</sup> Hereafter referred to as Inspector Mwandla.

[3] They arrived at Dr Thompson's rooms at approximately 23h50. Dr Thompson conducted an examination and blood was drawn. Tests later revealed that Mr Craig's blood-alcohol content was five times over the legal limit. The official form completed by Dr Thompson at that stage noted small cuts and bruises on Mr Craig's body, recorded that he had a painful shoulder blade, but stated that he was otherwise 'well'.

[4] After the blood sample had been taken, Inspector Mwandla transported Mr Craig to the Hammarsdale police station as he had received radio instructions that members of the latter's family were waiting there to attempt to secure his release on bail.

[5] Mrs Craig's mother, his wife Loraine and her nephew, Mr Russell Everton, were all waiting at the Hammarsdale police station. After Mr Craig's arrival the family requested that he be released on bail, but this was refused. Inspector Mwandla left the police station shortly thereafter.

[6] Mr Craig's family then urged the police to allow them to take Mr Craig to hospital but this too was refused. However, the police, in order to appease them, summoned paramedics to examine him. The paramedics arrived during the early hours of Sunday morning.

[7] There is a dispute about whether Mr Craig allowed the paramedics to examine him. I interpose to state that there are other material disputes about: (a) the nature and extent of the district surgeon's examination of Mr Craig; (b) whether he had given Inspector Mwandla specific instructions concerning further treatment or hospitalisation; (c) the nature of the complaints made by family members to the police concerning Mr Craig's condition and (d) whether Mr Craig was in obvious physical discomfort at the police station. These disputes will be addressed in due course.

[8] According to Mrs Loraine Craig, the paramedics conducted a most cursory examination of her husband and then pronounced that there was nothing wrong with him. According to a paramedic and the police, Mr Craig was obstructive and refused to be examined.

[9] A short while after the paramedics had left the police station, Mr Craig's family departed. At approximately 03h45 that Sunday morning, because Hammarsdale police station had no holding facilities, Mr Craig was transported by the police to the holding cells at Mpumalanga Police Station. At approximately 10h35 Mr Craig complained that he was feeling unwell.

[10] Inspector Mwandla was summoned and instructed to take Mr Craig to Dr Thompson for treatment. Acting on his own initiative Inspector Mwandla instead transported Mr Craig to Grey's hospital. Shortly after his arrival there, and despite the hospital staff's best efforts to resuscitate him, Mr Craig died at approximately 13h45.

[11] The cause of death was diagnosed as a delayed rupture of the descending aorta. Although not a frequent occurrence, it is a well-known result of high-impact collisions. It is necessary to describe the relevant physiology and the nature of this injury.

[12] The aorta is the main artery that transports oxygenated blood from the heart to the rest of the body. The descending thoracic aorta — as the name suggests — is where the aorta turns to supply blood to the thoracic wall and then the abdomen and the lower limbs. That part of the aorta is partially fixed. The rest of the aorta and the heart are mobile and that is why there is a predisposition to rupture, particularly where a person is involved in a high-impact collision. The victim's body stops as a result of the collision but the heart, the ascending aorta and the aortic arch continue to move. At the point where the descending aorta

begins it is relatively immobile and has a propensity to tear. This explains how the rupture occurred in the present case.

[13] Most of these ruptures are lethal at the scene of the collision because the rupture is usually such that the injured person bleeds to death almost instantly. In rare cases where this does not occur, victims experience what is referred to as a contained rupture, which consists of a blood clot within the outer lining of the aorta. This has a fair amount of resistance, but with the passage of time and without surgical intervention, it ultimately gives way and death ensues. Where there is a contained rupture there are pointers and tell-tale signs to assist in a diagnosis.

[14] The first indicator is a high-impact collision, which would alert a medical practitioner to the need for x-rays. A clinical examination would reveal either unusually high or unusually low blood pressures. There will usually be blood pressure differentials between arms and legs. Rib fractures, particularly of the first, second or third ribs, are usually associated with this condition. These fractures are indicative of direct significant physical trauma best detected by x-rays. Such fractures are usually associated with a high degree of pain.

[15] In Mr Craig's case the post-mortem examination revealed such fractures. During the trial in the court below there was a debate about what could have caused the fractures, including a suggestion that they might have been caused by attempts at Grey's hospital to resuscitate Mr Craig. This aspect will be dealt with later in the judgment. I shall hereafter refer to Mr Craig as the deceased.

[16] Whilst there was some expert evidence indicating that state hospitals such as Grey's were not geared to deal with the kind of injury sustained by the deceased, it appears however, that one can, on the totality of the expert evidence, accept that had the police transported the deceased to hospital shortly

after his arrival at the Hammarsdale police station, surgical intervention would in all probability have saved his life.

[17] Towards the end of June 2006 Mrs Loraine Craig, the first respondent, instituted action in the Pietermaritzburg High Court against the three appellants, the Minister of Safety and Security, the Officer commanding the Hammarsdale police station and Inspector Mwandla. Mrs Craig instituted the action both in her personal capacity and as legal guardian of her three minor daughters, claiming delictual damages for loss of support. In her particulars of claim she asserted that police at the Hammarsdale police station were under a legal duty to ensure the well-being of an arrested person, such as the deceased, and that they had negligently breached that duty in relation to him.

[18] According to Mrs Craig the police were negligent in the following respects. They had detained the deceased without ensuring that he had immediate medical attention. Furthermore, they had failed to ensure that he was transported to hospital immediately and only did so some 16 hours later. In addition, they failed to heed complaints concerning recurring pain made by the deceased to the officer commanding and they had ignored an instruction by Dr Thompson that the deceased should be transported to hospital.

[19] At the commencement of the trial and after the parties had reached agreement in this regard, the court below made an order in terms of Uniform rule 33(4), that the trial proceed first on the question of liability, the issue of quantum to stand over for determination at a later stage, if necessary.

[20] After hearing evidence the High Court (Koen J) gave judgment in favour of Mrs Craig and the three appellants were held liable, jointly and severally, for such damages as Mrs Craig and her children may prove to have suffered.

[21] It is that order, with the leave of the court below, against which the appellants presently appeal. Before us the parties were agreed that the appeal turns on whether the assessment of the evidence by the court below was correct. It is thus necessary to examine more closely the findings of the court below and to consider them against the recorded evidence and then to decide whether intervention by this court is justified.

[22] On a crucial aspect - one in dispute - Dr Thompson testified that he had issued an instruction that Inspector Mwandla should take the deceased to the police station to enable his family to transport him to hospital as soon as possible. The court below did not find Dr Thompson an impressive witness. It held that, although Dr Thompson was not a party to the litigation, he was guilty of a dereliction of duty in not arranging for the immediate summoning of an ambulance and the hospitalisation of the deceased. Koen J said the following concerning Dr Thompson:

'His guarded evidence in this regard made him less than a reliable witness, but it also does not mean that his evidence must be rejected *in toto*.'

[23] The court below then proceeded to accept Dr Thompson's evidence, in preference to Inspector Mwandla's denial that no such instruction was given by the former. For this the court found corroboration in the telephonic report Dr Thompson had made to Captain van Zandten, the Hammarsdale Station Commander, on the morning of Monday 21 July 2003, as recorded in the latter's diary. During the telephonic discussion Dr Thompson had complained to Captain van Zandten that Inspector Mwandla had ignored his instruction. The court below found further corroboration in a letter authored by Dr Thompson dated 24 July 2003, which according to him he had sent to Captain van Zandten, and which repeated the complaint.

[24] Of course, if Dr Thompson had in fact issued the instruction, as testified to by him, and if one can conclude that it was ignored by Inspector Mwandla, liability on the part of the appellants would unarguably ensue.

[25] In order to arrive at a decision in the present appeal, it is necessary to consider in some detail the material parts of the evidence adduced and its assessment by the court below, particularly in relation to the disputes referred to in paragraph 7. I proceed to do so.

[26] First, Dr Thompson. Notwithstanding a paucity of information on the official form that he had completed during his examination of the deceased, and even though he recorded the deceased as being 'well', Dr Thompson testified that the deceased had complained of severe pains at the back of his chest. He had consequently instructed Inspector Mwandla to take the deceased to the Hammarsdale police station, to enable family members to take him to hospital for observation and that this should be done as soon as possible. Dr Thompson was unable to explain why these instructions had not been included in the official form. Nor, why no written referral for medical observation and, if necessary, for treatment was directed by him to the medical staff of the hospital concerned.

[27] Dr Thompson testified that, in light of the instruction given by him, it was likely that he would have written a letter of referral to Grey's hospital, which presumably would have been handed to Inspector Mwandla. He did not have a copy of such a letter nor is it clear from his evidence that he did in fact write such a letter. It is unclear what such a letter would have instructed or requested the doctor in charge at Grey's hospital to do.

[28] In a letter written to the State Attorney, more than three years after the collision referred to above, Dr Thompson stated that, when he saw the deceased on the night in question, the latter was in a lot of pain and possibly in 'early shock'. He wrote further: 'My definite impression was that he needed to go for x-



rays and further medical assessment.’ This letter was written after the present litigation commenced and the material impressions recorded therein do not appear on the official form completed at the time that Dr Thompson examined the deceased.

[29] During his testimony, Dr Thompson accepted that Inspector Mwandla is a well-respected policeman whose word he had no cause to doubt.

[30] Under cross-examination Dr Thompson accepted that it was necessary to complete the official form with all the accompanying details. He recalled that the deceased had walked into his rooms unaided. He could not recall whether he was told that the deceased had been involved in a head-on collision. Dr Thompson failed to note the deceased’s blood pressure on the official form and could not recall whether it had been taken by him. He testified that it was his usual practice to note a patient’s blood pressure on the form. He also did not record the necessary details in relation to the deceased’s pulse. Surprisingly, he could nevertheless, more than three years after the event, recall that he had taken the deceased’s pulse and that it had been a ‘normal strong pulse’. Alongside the words: ‘Signs of shock’, where they appear in the official form, Dr Thompson wrote the word ‘well’. When this was pointed out to him he responded as follows:

‘I am trying to convey that he is a normal person who is generally fit and well.’

[31] With reference to the official form Dr Thompson accepted that he had not identified any problems with the deceased’s heart, lungs, extremities or his abdomen. No complaint by the deceased about pain in the chest area was recorded on the official form. However, Dr Thompson did record that, at the time of the examination, the deceased was strongly under the influence of alcohol and that it was probable that, at the time of the incident, he had been under the influence of alcohol.

[32] When Dr Thompson was asked which of his observations on the official form would have alerted him to the need for the deceased to be hospitalised, he replied that the pain in the shoulder area is what would have required observation. He attempted, during cross-examination, to shift the area of concern from the shoulder to the right-hand side chest area to tie in with what we now know is a rupture of the descending aorta.

[33] Later, Dr Thompson was asked if he had suspected that the deceased had sustained internal injuries. He replied that he suspected nothing other than fractured ribs. This suspicion does not appear on the official form nor did Dr Thompson testify that he had in fact performed a clinical examination to detect, at the very least superficially, whether the deceased had sustained fractures of his ribs.

[34] The doctor further testified that he had not considered it 'absolutely essential' that the deceased be transported to hospital immediately. According to him the details he supplied in the letter he wrote to the State Attorney (referred to in para 28 above), were gleaned from the official form. This, of course, cannot be so. Asked where he had sourced the information concerning the 'early shock' he described in the letter, Dr Thompson stated that it could be accepted that he had speculated about this.

[35] Strangely, Dr Thompson's letter to the State Attorney records that his instructions to Inspector Mwandla had been relayed by the deceased to members of his family at the Hammarsdale police station. When it was put to him that he could not have known this as he had not been present at the police station, he replied that it could be accepted that this too was speculation on his part. Dr Thompson was singularly unimpressive in this regard and conceded that this part of his letter to the State Attorney was misleading.

[36] It will be recalled that the court below found corroboration for Dr Thompson's testimony in the telephonic report he had made to the Station Commander, Captain van Zandten as recorded in the latter's diary, complaining that his instruction to Inspector Mwandla had not been followed. According to Captain van Zandten, he had ascertained that the instruction which Dr Thompson alleged he had issued had not been in writing. Dr Thompson, however, could not recall that telephone conversation.

[37] A curious feature of Dr Thompson's testimony is the letter he produced, which he said he had sent to Captain van Zandten, complaining that the police had ignored the instruction given to Inspector Mwandla. It will be recalled that the court below found corroboration for his testimony in the letter he supposedly wrote. The copy of the letter produced by Dr Thompson was not under his letterhead and he could not recall how he had sent it. Captain van Zandten denied receipt of the letter. However, he testified that during a subsequent visit to Dr Thompson's rooms, he had requested that the complaint be put in writing, but that as far as he was concerned this request had gone unheeded.

[38] Dr Thompson could not recall that Captain van Zandten had paid him a visit. According to Captain van Zandten, he and Dr Thompson knew each other very well and the latter was well aware of the fact that he was the Station Commander. The doctor's denial that he knew that Captain van Zandten was the Station Commander at the relevant time, even though the latter was one of his patients, is therefore very strange.

[39] Next, I turn to consider the relevant parts of Inspector Mwandla's testimony and the manner in which the court below dealt with it.

[40] Koen J considered that Inspector Mwandla's decision to transport the deceased to Grey's hospital, rather than to Dr Thompson's rooms, indicated that he must have had a prior inkling that the deceased had been unwell and that this

supported Dr Thompson's testimony that he had expressed 'some *caveat*' to the policeman. This, of course, ignores Inspector Mwandla's testimony to the effect that, in his experience, Dr Thompson was not a doctor who performed thorough examinations and that he certainly did not dispense medication. Dr Thompson himself confirmed that, at the relevant time, district surgeons were precluded by the Department of Health from administering treatment.

[41] According to Inspector Mwandla, Dr Thompson's examination of the deceased had lasted approximately ten minutes, rather than half an hour as testified to by the doctor. The paucity of information in the official form supports Inspector Mwandla in this regard. Furthermore, Inspector Mwandla's testimony that the deceased had walked into the rooms unaided is supported by Dr Thompson. Inspector Mwandla was adamant that he had not received the instruction testified to by Dr Thompson. As indicated in the preceding paragraph, the court below described the instruction as 'some *caveat*' because Dr Thompson's evidence mutated in this regard. He was inconsistent in his description of his concerns about the deceased and the concomitant 'instruction', particularly when he was confronted with the contents of the official form, the letter he wrote to the State Attorney and the letter allegedly sent to Captain van Zandten.

[42] The court below held it against Inspector Mwandla that, en route to Mpumalanga police station to collect the deceased, he had stopped at the Hammarsdale police station to pick up official forms, which were required to be completed when an arrested person was to be transported to hospital. The court below reasoned that this supported Dr Thompson's assertion that he had issued the instruction to Inspector Mwandla to see to it that the deceased was transported to hospital. Koen J stated that Inspector Mwandla's explanation that he did this to save time had a hollow ring to it. According to the learned judge, a further negative feature was that, instead of having the Station Commander sign the official form, Inspector Mwandla signed it himself, indicating that the

importance of what had been communicated to him by Dr Thompson had dawned on him and he was now taking urgent remedial steps to redress the situation.

[43] These conclusions by the court below ignore Inspector Mwandla's testimony that, when he had received a radio instruction to collect the deceased and transport him to the district surgeon, he was informed that the deceased was experiencing chest pains and that, in the light of his experience of Dr Thompson's manner of examining patients and not treating them, he realised that he would have to transport the deceased to hospital instead. The nature of the deceased's complaint, relayed to him, suggested that the deceased would need to be taken to hospital and he would have had to complete the official forms to enable him to do so.

[44] In the sequence of events referred to above, there is nothing inherently sinister in Inspector Mwandla completing the form himself and not obtaining the Station Commander's signature, as was officially required. Furthermore, a detailed examination of the record reveals that Inspector Mwandla was a much more satisfactory witness than Dr Thompson and his testimony much more reliable.

[45] It is necessary to record that, in the short time that Inspector Mwandla had been in the deceased's presence, during the time that he transported him to and from the district surgeon and at the police station, the latter had shown no signs of distress, nor complained. Inspector Mwandla's testimony that the deceased walked into the Hammarsdale police station unaided was unchallenged.

[46] After his arrival at the police station, Inspector Mwandla telephoned the branch commander to ascertain whether the deceased should be released on bail. He was told by the branch commander that, because people had died as a result of the collision caused by the deceased's intoxicated condition, he should

not be released on bail. Inspector Mwandla relayed this to Sergeant Mthembu, who at the time was on duty at the Hammarsdale police station. Inspector Mwandla had no communication with the deceased's family and left the police station shortly thereafter.

[47] I now turn to deal with the treatment by the court below of the evidence of Inspector Mkhulise, another policeman who was at the Hammarsdale police station at the time that the deceased was brought there. The judgment of the court below states that Inspector Mkhulise testified that the deceased had complained to him at least once about experiencing chest pain and that his family had complained at least once about his condition. An examination of the record shows that, on the contrary, Inspector Mkhulise repeatedly testified that the deceased had never complained. When it was put to him that, according to the first respondent, the deceased had complained that he was experiencing pain, Inspector Mkhulise responded as follows:

'It is untrue, he never complained of anything.'

Two lines later in the record this denial is repeated.

[48] According to Inspector Mkhulise, he had informed the deceased's family that bail would not be granted. They were unhappy about this and immediately thereafter asked if they could take him to hospital, saying that he was unwell. The deceased himself made no such complaint. Inspector Mkhulise told them that the deceased had just come from Dr Thompson and it did not appear that there was any need for him to go to hospital. The family repeated the request to take the deceased to hospital. After the second request, Sergeant Mthembu asked Inspector Mkhulise to summon paramedics to appease the family.

[49] The paramedic, Mr Boy Nkabela, arrived and Inspector Mkhulise showed him the deceased so that he could examine him. The deceased, however, refused to be examined by Mr Nkabela, who then left shortly thereafter.

[50] The court below, having mistakenly accepted that the deceased had complained of chest pains to Inspector Mkhulise, reasoned that *this* fact, together with the latter's own observations, must have been the cause for him contacting the paramedics. Continuing the reasoning on this mistaken premise, the court below held that it would then have been highly unlikely that the deceased would have refused to be transported to hospital.

[51] These conclusions discount the reasonable explanation given for summoning the paramedics. It is highly likely that, given the deceased's highly intoxicated state, he would be unco-operative and refuse to be examined.

[52] Insofar as the paramedic, Mr Nkabela's evidence is concerned, the court below noted that he, like Dr Thompson, might potentially be exposed to a claim for damages. The court found it unlikely that Mr Nkabela could reliably recall incidents that occurred several years before. Koen J held it against Mr Nkabela that, whilst he was sketchy on details, he was nevertheless able to recall who his partner had been on the morning in question. The court below did however, find corroboration for his evidence that the deceased was unco-operative and argumentative, in the evidence of Dr Laubscher who had attended to the deceased upon his arrival at Grey's hospital, and had found him in an agitated and aggressive state.

[53] Insofar as the testimony of Mr Everton and Mrs Craig is concerned, the court below rightly found that they had cause to, and did, exaggerate and over-dramatise events. Both testified that the deceased was in constant and obvious excruciating pain. According to Mrs Craig, the deceased had vomited blood in a toilet at the police station. She testified that the paramedics had conducted the most cursory examination of the deceased, informed them that there was nothing wrong with him and then departed. She could not explain why she had not told the paramedics that her husband had vomited blood, an important indication that something was amiss.

[54] There is force in the submission on behalf of the appellants that, had the deceased been in obvious excruciating pain which raised his family's concerns, they would all have been intent on ensuring that he was properly examined by Mr Nkabela, the paramedic, and would have described in as much detail as possible the symptoms they had witnessed. Furthermore, all the family members would have ensured they were in attendance to see to it that the deceased received the necessary attention. Inexplicably, Mr Everton stood outside smoking whilst Mr Nkabela attempted to tend to the deceased.

[55] Inspector Emmanuel Zungu, who was also at the Hammarsdale police station on the night in question, corroborated in broad terms the evidence of Inspector Mkhulise and Mr Nkabela.

[56] There was expert medical evidence that the deceased's level of intoxication could very well have masked the pain usually attendant on the kind of injury he had sustained.

[57] The pre-trial conference minute recorded that the parties were agreed that all the injuries noted as a result of the post-mortem examination were sustained as a result of the collision. That notwithstanding, counsel explored whether the fractures of the ribs could have been caused by efforts to resuscitate the deceased at Grey's hospital. The medical evidence was that, as regards the fractures that would have been an indicator of the injury that caused the deceased's death, namely fractures of the second, third and fourth ribs (posteriorly), the likelihood was that they were caused by the collision

### *Conclusions*

[58] Although courts of appeal are slow to disturb findings of credibility, they generally have greater liberty to do so where a finding of fact does not essentially



depend on the personal impression made by a witness' demeanour, but predominantly upon inferences and other facts and upon probabilities. In such a case a court of appeal with the benefit of a full record may often be in a better position to draw inferences.<sup>2</sup>

[59] In the present case, as demonstrated above, the credibility findings are not borne out by the record. The reasoning of the court below in relation to the probabilities, is at times, based on incorrect facts and is flawed in the respects referred to above.

[60] In *Mtati v Minister of Justice* 1958 (1) SA 221 (A), this court (at 224) emphasised the duty of officials who have prisoners in their charge to see to their well-being. Courts should obviously be vigilant to ensure that officials who have in their charge those whose freedom of movement has been restricted, comply with the obligation to ensure their well-being.

[61] In *Minister of Police v Skosana* 1977 (1) SA 31 (A), the policemen in question were negligent in not ensuring treatment expeditiously for an arrested person who had been drunk and had started showing obvious signs of pain after he had sobered up, and who had complained to the police about his condition. There was a further delay after an instruction by a medical doctor that he be taken to hospital immediately. The doctor concerned had written a note to the doctor in charge of the hospital and had handed it to a policeman. Police standing orders place an obligation on members of the police to whom it appears that detainees are in distress and are therefore injured or ill to obtain the necessary medical assistance for them. The police in *Skosana* were found to be negligent and the Minister was consequently held liable.

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<sup>2</sup> *Union Spinning Mills (Pty) Ltd v Paltex Dye House (Pty) Ltd & another* 2002 (4) SA 408 (SCA) para 24 and *Louwrens v Oldwage* 2006 (2) SA 161 (SCA) para 14.

[62] The well-known test for negligence is set out in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430:

‘For the purposes of liability *culpa* arises if –

- (a) a *diligens paterfamilias* in the position of the defendant –
  - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
  - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.’

[63] The primary question in the present case is whether the court below was correct in its conclusion that Dr Thompson had issued the instruction referred to above and that the police had been negligent in ignoring it.

[64] In my view the court below was manifestly wrong in accepting the evidence of Dr Thompson. He made the verbal report relied on by the court below to Captain van Zandten after the deceased’s death was reported in the media and was common knowledge in Camperdown, and after it must have become known to him at least that there was a concern about culpability.

[65] The court below was correct to initially approach his evidence with caution but erred in relaxing that reservation.

[66] Dr Thompson’s apparent subsequent concern about the deceased’s condition is not borne out by the notes he made on the official form. The form actually evidences the contrary. It notes that, save for the pain in the shoulder blade, the deceased was otherwise ‘well’. In my view this supports the conclusion that there was no referral letter. If there had been one I can think of no reason why Inspector Mwandla, whom everyone – Dr Thompson included – regarded as a dutiful policeman, would ignore it.

[67] Dr Thompson was clearly not candid concerning his knowledge of who the Hammarsdale Station Commander was. The difficulties he had in explaining the

source of the information contained in his letter to the State attorney directly affects his credibility. The unsatisfactory aspects in relation to the letter that he claims he sent to Captain van Zandten, referred to above, strongly suggest that his testimony in this regard was contrived.

[68] In light of its conclusion that Dr Thompson issued the instruction and that it was ignored, the court below did not deem it necessary to consider the conduct of other policemen during relevant times.

[69] As demonstrated above, the court below was right not to place reliance on the evidence of Mrs Craig and Mr Everton. I can see no reason to disbelieve the police version of events. If their version is accepted, the following picture emerges. The deceased had been seen by the district surgeon who had identified no medical problem that required further medical attention. The deceased walked unaided and had no ostensible signs of significant injury. At the Hammarsdale police station the deceased did not complain that he was unwell and did not show any obvious signs of distress. The deceased's family members requested that they be allowed to take him to hospital only after bail had been refused. When a second request was made Sergeant Mthembu issued an instruction that paramedics be summoned. Mr Craig refused to be examined. When the deceased himself complained at the Mpumalanga police station that he was unwell, that fact was noted and Inspector Mwandla summoned. There is no indication that the latter delayed unduly and that he did not transport Mr Craig to Grey's hospital expeditiously. In light of what is set out above it can hardly be said of the police that they were negligent.

[70] I am aware of the plight of the deceased's wife and daughters. They have lost a breadwinner and appear to be without means. If, of course, the police had behaved negligently and wrongfully, they should be held to account. On the other hand, good policemen who behave properly and execute their duties

conscientiously and often under trying circumstances, are entitled to have their reputations kept intact and should not be saddled with liability unjustifiably.

[71] For all the reasons set out above the following order is made:

1. The appeal is upheld with costs, such costs to include the costs of two counsel.
2. The order of the court below is set aside and substituted as follows:  
'The plaintiffs' claims are dismissed with costs, such costs to include the costs consequent upon the employment of two (2) counsel.'

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M S NAVSA  
JUDGE OF APPEAL

APPEARANCES:

For Appellant: R Seegobin SC  
T S I Mthembu  
  
Instructed by  
State Attorney Durban  
State Attorney Bloemfontein

For Respondent: J Marais SC  
V M Naidoo  
  
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Chetty Asmall and Maharaj Pietermaritzburg  
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