FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 4767/2007

In the matter of:-

O. STRAUSS Plaintiff

and

HILFORT PLASTICS (PTY) LTD 1st Defendant

M.A. MOKHETHI 2nd Defendant

HEARD ON: 5 MAY 2009, 6 MAY 2009, 8 MAY 2009, 20 JULY 2009, 15 FEBRUARY 2011, 16 FEBRUARY 2011

JUDGMENT BY: NXUSANI, AJ

DELIVERED ON: 17 MARCH 2011

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[1] The facts which brought the Plaintiff to Court occurred on the evening of 27 October 2004. It rained incessantly. The wind whirled around. The sky darkened. On the Fochville/Parys road stood a lonely figure, the Plaintiff, hoping to catch a lift from one of the many vehicles passing by a mine in the Carletonville area. The Plaintiff was there because he knocked off later than he usually did. He had completed some private electrical work in the area.

[2] The Plaintiff usually travelled from his home, in Parys, to the mine, in Carletonville, in a lift club with others. On the day in question the members of his lift club had already departed.

[3] Just after 19h00 a white unmarked truck pulled up next to the Plaintiff. The driver, the Second Defendant, opened his window and asked the Plaintiff where he was going. The Plaintiff told him that he was on his way to Parys. The Second Defendant enquired whether he had any money. The Plaintiff replied that he had. He was then invited into the truck.

[4] The Second Defendant demanded R20,00. The Plaintiff paid the amount.

[5] The Second Defendant drove for a very short distance. He was speeding. The Plaintiff told him to reduce speed, but the Second Defendant replied that he had been a driver of many years and did not need to be taught how to do his job. The Plaintiff asked to disembark because he was scared. The Second Defendant told him that he should wait until he reached the Parys/Fochville/Potchefstroom/ Vanderbijlpark

intersection, some ten kilometres away, before he could disembark.

[6] The Plaintiff knew the road fairly well. He had been travelling on this road for a considerable period of time. The condition of the road was not very good. There were many potholes and there was considerable traffic on the single carriage way. In addition, it was not a straight road and the shoulders were not in a good condition.

[7] The Plaintiff described how he noticed the speedometer. The Second Defendant drove between 110 and 120 km/h. He considered that this was too fast for the condition of the road. He said that the weather was wreaking havoc at the time. The Plaintiff asked the Second Defendant to drive more carefully, on more than one occasion but he was met with the same initial response.

[8] The vehicle was travelling down a steep bend (and shortly after the Plaintiff had asked the Second Defendant to drive carefully), the Second Defendant lost control of the vehicle. The truck landed on its left-hand-side. Just before this, the

Second Defendant sprang from his seat and jumped onto the sleeping cabin behind the seating compartment.

[9] The Plaintiff's arm became lodged between the road surface and the truck.

[10] The Second Defendant ran away whilst he lay in the darkness of night.

[11] An ambulance was dispatched and rescued the Plaintiff. He was taken to the Fochville Hospital where the medical staff considered amputating his arm. Naturally, the Plaintiff refused to consent to such a procedure. He now has no function in the arm.

[12] The Plaintiff issued a summons where he cited the First Defendant in its capacity as the employer of the Second Defendant, who he alleged, was the sole cause of the collision resulting in bodily injuries and consequent damages.

[13] The Plaintiff also issued proceedings against the Road Accident Fund. Since the Second Defendant was the sole

cause of the collision, the Plaintiff only recovered R25 000,00 in respect of special damages.

[14] The Plaintiff seeks the balance of his damages from the First and Second Defendants.

[15] The Second Defendant died before these proceedings were instituted, but unbeknown to the Plaintiff. The Plaintiff has not been able to establish whether an executor was appointed to deal with the Second Defendant's estate. The proceedings in regard to the Second Defendant were simply adjourned *sine die*.

[16] The First Defendant defended the action. The First Defendant initially admitted the allegation, in the Plaintiff's Particulars of Claim, that the Second Defendant, its erstwhile employee, acted within the scope and duties of his employment. This plea was filed on 27 November 2007.

[17] In July 2009 the First Defendant brought an application to amend its plea so as to plead that the Second Defendant acted in contravention of an express instruction not to pick

up and transport passengers; that he was engaged in a frolic of his own for his private benefit and that he had acted without the First Defendant's permission or knowledge. This was naturally opposed by the Plaintiff.

[18] The First Defendant explained in its application that when it purported to admit that the Second Defendant was its employee and had acted within the cause scope of his employment with the First Defendant, it did not intend to thereby concede vicarious liability. First Defendant explained in its application, that, in the telephonic pre-trial conference, the Plaintiff's attorney contended that the question of vicarious responsibility had been conceded. It then realised the erroneous admission.

[19] It then consulted counsel to advise it. In consequence, it prepared a notice of amendment.

[20] The matter came before me during May 2009. I was advised by counsel that the First Defendant did not intend to prosecute the amendment at the commencement of the trial but reserved the right to do so later.

[21] The Plaintiff gave evidence. During cross-examination, counsel for the First Defendant, purported to attack the Plaintiff's evidence arising out of a report drawn by, one Dr. Oelofse, an orthopaedic surgeon, consulted by the Plaintiff. Dr Oelofse recorded that the truck in which the Plaintiff sat, "fell off the road because of the windy conditions".

[22] This aspect was hotly disputed between the parties. Mr. Van Niekerk, who appeared for the First Defendant, then sought an adjournment to consult Dr. Oelofse and to consider whether it was prudent to call him as a witness to prove the veracity of the allegation in this report.

[23] The matter came before me again in July 2009. On this occasion the First Defendant indicated to the Court that it wanted to prosecute the amendment. I heard argument and, disinclined to shut the doors of the Court, I granted the First Defendant leave to amend its plea.

[24] When the matter resumed on 15 February 2011, the Court was told that the First Defendant would concede negligence

and seek to lead evidence on the issue relating to the Second Defendant's duties as its employee.

[25] The First Defendant called the evidence of Mr. James Balkwill, a director and manager of the First Defendant's Bloemfontein operations.

[26] Mr. James Balkwill ("Balkwill") testified that the First Defendant had been established by his family in Cape Town. In 1998 the First Defendant established operations in Kimberley. His family asked him to join the business and to run the Kimberley factory. He was in charge of the technical side to the business. The business's administration was controlled and managed out of Cape Town.

[27] Balkwill remained in Kimberley for some two and a half years before it was decided to move the operations to Bloemfontein. The business, manufactures plastic bottles. The Bloemfontein operations have some 25 to 30 employees. Of this number there were two drivers, the Second Defendant and another.

[28] The First Defendant began transporting its finished products to its customers because it wanted to retain its competitive edge. Its competitors were offering such a service to their clients and the First Defendant did not want to loose its market share.

[29] Balkwill was effectively in charge of the day to day operations of the Bloemfontein operations. The First Defendant had a factory manager. Balkwill described himself as a hands on type person.

[30] The drivers at the Bloemfontein operations perform more long haul transport duties than the drivers of the Cape Town operations. Whereas the Cape Town factory, required drivers to travel between 30 and 60 kilometers to customers, the Bloemfontein drivers travelled as far afield as Port Elizabeth, East London, Johannesburg, Durban and De Aar.

[31] From time to time the Second Defendant would travel overnight to a customer where he delivered empty plastic bottles. He returned with empty plastic bottles.

[32] Balkwill testified that he had a good relationship with the drivers. He stayed in touch with them through their cellular telephones.

[33] When the drivers were required to leave in the early hours of the morning he would make arrangements for their vehicles to be packed; the necessary funds to be made available to them, and, the drivers, who had a duplicate key to the vehicles, would depart to their respective destinations.

[34] The operations ran on a 24-hour basis save that over the weekend the factory shut down.

[35] There were instances when drivers did not return on time. In these situations he would put pressure on them to maintain their schedules so as to minimise the knock on effect on all the office and factory staff.

[36] The Second Defendant was employed on 6th September 2004 as a temporary worker until 15 December 2004 when he became a permanent employee.

[37] Balkwill testified that he introduced the Tracker Satellite System to track the movements of the trucks. He did so because the company had experienced theft of diesel and had to dismiss two drivers. The Second Defendant and the other driver in the First Defendant's employ were new drivers.

[38] The Tracker System afforded the First Defendant an hourly report which displayed the speed and distance travelled by the truck. This was a good tool to monitor the driver's hours of work. He noticed that on trips to Cape Town, where drivers were scheduled to leave on Sunday, they would arrive more than 24 hours after their scheduled time. The company, he believed was being abused.

[39] From time to time he downloaded the information from the Tracking System and discovered that it was possible that the drivers were picking up female paramours. He felt that this was detrimental to the company. He "banned" the drivers from picking up any passenger and from making any detours of whatever kind.

[40] Asked what the consequences were for breaching this instruction, Balkwill testified that at the very least he would have been entitled to issue, for a first offence, a final written warning. He testified that in the beginning he drew reports and questioned the drivers on why they had stopped at a particular juncture. He testified that it was difficult to show if the drivers were collecting passengers. If he did find out he would have instituted disciplinary proceedings.

[41] He was away in Cape Town when the accident occurred on 27 October 2004. He received a telephone call from the factory manager. He returned to Bloemfontein after a day or two. The Second Defendant was on sick leave. A claim for workmen's compensation had been lodged on his behalf.

[42] He confronted the Second Defendant because he had heard from the factory manager that a passenger was in the vehicle at the time of the collision. Balkwill asked the Second Defendant to give a full explanation.

[43] He remembers completing an insurance claim. He believed that there was provision in the insurance claim form for

details of and about any passengers upon the vehicle. Before completing the form, he asked the Second Defendant why he had a passenger in the vehicle. The Second Defendant told him that "it was a dreadful day". The wind was "howling and it was wet". He had "noticed a passenger who was soaked and had no protection". He "took pity" on the pedestrian and gave him a lift. Balkwill said he was not entirely happy about what the Second Defendant had done but felt that he had acted as "a good Samaritan".

[44] He decided not to institute any disciplinary proceedings. He did not realise the "full effects of the accident", because the Second Defendant only sustained "a few minor cuts". He only learnt much later that the passenger had sustained severe injuries and was seeking to recover damages from the First Defendant.

[45] Balkwill testified that he asked the Second Defendant whether he had received payment from the Plaintiff and was told that he had not been paid. He believed that if money had exchanged, the driver would nonetheless have been disciplined because he considered this to be an aggravating

feature in the matter.

[46] He has since resigned from the family business. It has been sold to a larger group. He believed that a breach of the rule could be ratified but that a driver would not know if such a ratification was going to be granted beforehand. Asked if a driver had telephoned him to tell him that a passenger needed a ride Balkwill said he was unlikely to have granted permission but that if he was present when such a request was made he was more likely to acquiesce to such a request. He recalls an occasion when one of the drivers wanted to transport his son. On that occasion the driver was required to sign an indemnity form.

[47] He confirmed that there was no signage on the vehicle. There was no indication on the vehicle that the driver was not permitted to pick up any passengers or to transport them in the vehicle.

[48] The details of and about the payment for the Tracker System are generated out of the Cape Town offices. They ought to have the documentation for each of the vehicles. Although

he could not recall when the satellite was installed he was certain that this occurred before the collision. He could not explain why the details relating to the Tracker operations were not discovered.

[49] Santam repudiated the claim. Balkwill could not explain the reason for the repudiation.

[50] Balkwill testified under cross-examination, that after the collision and the repudiation, he continued to employ the Second Defendant as a driver. He did not take any disciplinary action. He assumed that the passenger was not injured. He ratified the conduct of the Second Defendant because he acted out of compassion for the Plaintiff.

[51] He accepted that it might have been sensible to have put up signage on the vehicle and issued written instructions to the drivers but that this was not done.

[52] There were empty cardboard boxes stacked 1½ meters on the trailer but they were covered with a white tarpaulin. A person would not have been able to establish what was

being conveyed.

[53] After the repudiation of the claim the company required drivers to sign an indemnity form on each trip accepting liability for any damage caused to a passenger. The business was not a substantial one. He did not believe that it was economically sensible to have written instructions in a disciplinary code or reminders in their letters of appointment.

[54] The Constitutional Court has, in **K v MINISTER OF SAFETY AND SECURITY** 2005 (6) SA 419, clarified that the test which our Courts are required to apply in relation to the determination of vicarious liability, is that:-

> "…there are two questions to be asked. The first is whether the wrongful act was done solely for the purposes of the employee. This question requires a subjective consideration of the employee's state of mind and is a purely factual question. Even if it is answered in the affirmative, however, the employer may nevertheless be liable vicariously if the second question, an objective one, is answered affirmatively. That question is whether, even though the acts done have been done solely for the purpose of the employee, there is nevertheless a sufficiently

> close link between the employee's acts for his own interests and purposes and the business of the employer. This question does not raise purely factual questions, but mixed questions of fact and law. The questions of law it raises relate to what is 'sufficiently close' to give rise to vicarious liability. It is in answering this question that a court should consider the need to give effect to the spirit, purport and objects of the Bill of Rights."

The Supreme Court of Appeal had in **BEZUIDENHOUT NO v ESKOM** 2003 (3) SA 83, concluded, that in determining whether an act fell within the scope of employment, it was dealing with a question of fact. The Court was effectively seeking to strike a balance and had to have regard to all relevant matter. A relevant consideration would have been that the driver was aware of the prohibition and nonetheless invited a passenger thereunto. An innocent passenger who could not demonstrate a reason for believing that he was in a vehicle with the consent of the owner could consequently not expect the owner to owe him any duties. The Supreme Court of Appeal held that it was necessary for the Court to draw a line around an employer's liability in favour of an employer because it would be unfair to hold the employer liable to a passenger who had associated himself perhaps even innocently with the forbidden conduct and who in effect assumed the risk of the association.

See **<u>BEZUIDENHOUT</u>**, *supra*, at 94, para [23].

[55] The Constitutional Court jettisoned the reasoning of the Supreme Court of Appeal in **BEZUIDENHOUT**. It held in **<u>K</u>**'s case [page 432, para 22] that the fact-based nature of the Supreme Court's determination of the issue in **BEZUIDENHOUT** amounted to an attempt "to sterilise the common-law test for vicarious liability and purge it of any normative or social or economic considerations".

See **<u>K v MINISTER OF SAFETY AND SECURITY</u>**, *supra*, 432 at para [22].

> "[22] Despite the policy-laden character of vicarious liability, our Courts have often asserted, though not without exception, that the common-law principles of vicarious liability are not to be confused with the reasons for them, and that their application remains a matter of fact.
>
> If one looks at the principle of vicarious liability through the prism of s 39(2) of the Constitution, one realises that

characterising the application of the common-law principles of vicarious liability as a matter of fact untrammelled by any considerations of law or normative principle cannot be correct. Such an approach appears to be seeking to sterilise the common-law test for vicarious liability and purge it of any normative or social or economic considerations. Given the clear policy basis of the rule as well as the fact that it is a rule developed and applied by the courts themselves, such an approach cannot be sustained under our new constitutional order. This is not to say that there are no circumstances where rules may be applied without consideration of their normative content or social impact. Such circumstances may exist. What is clear, however, is that as a matter of law and social regulation, the principles of vicarious liability are principles which are imbued with social policy and normative content. Their application will always be difficult and will require what may be troublesome lines to be drawn by courts applying them."

[56] The Constitutional Court held that the rules developed by the Supreme Court of Appeal in **BEZUIDENHOUT**, to draw a line around the employer's liability, was not sustainable under the new Constitutional Order. The Constitutional Court held that

the principles relating to vicarious liability were imbued with social policy and normative content.

See **K v MINISTER OF SAFETY AND SECURITY**, *supra*, at page 432 at para [22] and the authority's cited at footnote 26.

[57] The Constitutional Court recognized [see **K v MINISTER OF SAFETY AND SECURITY** *supra* at 434 at para [25]], that it was difficult to always establish whether an employee who had deviated from his chores was there and then still acting within the course and scope of his duties with his employer. The more problematic instances related to those where the employee perpetrated an intentional wrong or where his deviation was substantial.

K v MINISTER OF SAFETY AND SECURITY *supra* 434, para[25].

[58] The fact however that an employee had intentionally deviated did not necessarily afford an employer a shield of defence.

[59] In **VILJOEN v SMITH** 1997 (1) SA 309 (A) an employee

trespassed onto his employer's neighbour's farm to relieve himself. There were clear instructions issued to the employee that the entrance onto neighbour's property was strictly prohibited and punishable by the issuance of fines. The employee travelled some 300 meters from where he had worked. He relieved himself and thereat lit a match, the head whereof, broke off and caused a fire resulting in considerable damage to the neighbour's property. The Appellate Division, as it then was, held that:

> "Die vraag of 'n werknemer sy diens inderdaad laat vaar het, 'n feite vraag was wat in enige bepaalde geval op die waarskynlikhede beslis moes word hoofsaaklik, indien nie uitsluitlik nie, aan die hand van die graad van afwyking."

See: **VILJOEN** *(supra)* at 316 J – 317 A/B

After evaluating the employees subjective state of mind the, Appellate Division held that on an objective evaluation of the employee's conduct, his digression was only a few minutes and he had done nothing additional on the neighbouring farm that he was not allowed to do on his employer's farm and that the digression was immaterial in the circumstances. It found that the employee had been acting within the course of his employment.

[60] A similar approach was adopted in **GENERAL TYRE & RUBBER CO (SA) LTD v KLEYNHANS AND ANOTHER** 1963 (1) SA 533 (N). A tractor driver had been contracted to perform work for a neighbour and the First Defendant in a hay making field for the former's mutual benefit. The tractor driver was not licensed to drive on a road. He had been driven to the hay making field and was required to leave the tractor on the field and return to the homestead in due course. He received a message to return to the homestead and decided to drive the tractor on the main road where he collided with another vehicle.

[61] The Court held, relying on **FELDMAN (PTY) LTD v MALL** 1945 AD 733, that the employee was the servant of the First Defendant and had been acting within the course and scope of his employment when he deviated from his instructions.

[62] The Court held that the means of the tractor driver employee

from getting from the hay making field to the First Defendant's homestead was merely the manner in which the servant was going about his work and pursuing the ends of his master's in regard to the hay making and the other work to be done at the homestead.

GENERAL TYRE & RUBBER CO, *supra*, at 536 A.

[63] It will be remembered that where a driver was instructed to deliver parcels and to return and who deviated, went on a drinking spree and caused a collision killing the father of two minor children was held to be acting within the course and scope of his employment and his employer was held liable.

[64] It was held in **FELDMAN**'s case that where an employee:-

> "does not abandon his master's work entirely but continues partially to do it and at the same time to devote his attention to his own affairs, then the master is legally responsible for harm caused to a third party which may fairly, in a substantial degree, be attributed to an improper execution by the servant of his master's work and not entirely to an improper management by the servant of his own affairs."

FELDMAN, *supra*, at 742.

See also **MINISTER OF POLICE v RABIE** 1986 (1) SA 117 (A).

[65] In **RABIE** a policeman mechanic deviated from his work to wrongfully assault, arrest and detain the Plaintiff. He did so while pursuing his own interests and went on to wrongly charge the Plaintiff with attempted housebreaking. The Court formulated the subjective and objective test which has been approved by the Constitutional Court in **K v MINISTER OF SAFETY AND SECURITY**.

See: **K v MINISTER OF SAFETY AND SECURITY** *supra*, at 435 para [31] to 436 paras [32] to [33].

[66] In 2007 the Constitutional Court was asked in **MINISTER OF SAFETY AND SECURITY v LUITERS [2007 (2) SA 106]** to vary the test that it had formulated in **K**,'s case so as to regulate the situation of an off-duty policeman placing himself on duty so as to add an additional component to

render the Minister only liable if objectively the police officer's conduct pursued or promoted the interests of the Minister.

[67] The Constitutional court decided that such an approach would:-

> "have the effect of lessening the emphasis on the responsibility of the Minister to ensure that police officers are properly trained and carefully screened to avoid the risk that they will behave in a completely improper manner. What it would mean, is that the more improper the conduct of the police officer, the less likely the Minister will be held liable. This result is not one that accords with a constitution that seeks to render the exercise of public power accountable."

<u>MINISTER OF SAFETY AND SECURITY v LUITERS</u>, *supra*, at 116 par. [34].

[68] It is trite that:

> "a servant's indulgence in a frolic may in itself constitute a neglect to perform his master's work properly and may be the cause of the damage".

See **FELDMAN**, *supra*.

[69] The Second Defendant was, in my respectful opinion, akin to the servant postulated by Watermeyer CJ in **VELDMAN**'s case. He simultaneously committed a delict while on his own purpose and neglected to perform those required of him as an employee. Moreover, he did so even after he was repeatedly asked to allow the Plaintiff to disembark.

[70] Mr. Van Niekerk asked me to consider as part of the subjective enquiry the fact that Second Defendant requested money from the Plaintiff. This, he argued, was clear evidence that the Second Defendant knew that he was engaged in a frolic of his own. I do not agree.

[71] A conspectus of many of the judgments to which I have referred herein and dealt with in our Courts show that there was some additional eyewitness evidence which our Courts have used to identify the subjective state of mind of the employee. In this case the employee has died.

[72] We know that the Second Defendant appears to have acted with some impunity when he told the factory manager of the collision and that he was in the company of a passenger. No action was taken against him. On the contrary, the First Defendant conceded that it ratified his conduct.

[73] But even if I am inclined to find in favour of the First Defendant on whether the Second Defendant was on a frolic of his own, I am not so inclined to hold in its favour insofar as the second leg of the test is concerned.

[74] The Second Defendant was employed to drive. Secondly, he did not in time deviate from the course required of him by his employer. Thirdly, he was performing the very type of work required by him of his employer. He used the vehicle allocated to him by his employer to perpetrate the delict. Fourthly, there was no way for the Plaintiff to know that the vehicle in question belonged to a corporate entity, amongst other things, because there was no signage on the vehicle and importantly no indication that the driver of the vehicle was not permitted to load and transport passengers.

[75] In my view, the fact that the First Respondent may or may not have issued an instruction to the Second Defendant not to transport a passenger, may have constituted a breach of his employment. The employer however did not consider visiting the breach with any consequences whatsoever. Indeed the employer accepted that [like the 20 year old woman, in K's case] the Plaintiff was stranded in the middle of nowhere during a torrential storm and was at risk.

K, *supra*, at 444 para [54].

[76] I am convinced that the Second Defendant would not have had the opportunity to commit the wrongful act but for the fact that he was issued with the motor vehicle when he met the Plaintiff under the extraordinary conditions. The Second Defendant was in my view still closely connected to the purposes of his employer, namely to deliver the truck to his employer's premises.

[77] In my view, this is the type of case where this Court ought to hold the First Defendant vicariously liable for the conduct of the Second Defendant.

[78] If I am wrong, then I find that there is another basis upon which to hold the First Defendant liable. Its conduct in the matter leaves much to be desired. Its explanation for having initially admitted that the Second Defendant was acting within the course and scope of his employment and its subsequent change in stance coupled with its failure to discover information relating to its satellite tracking programme, should in my view draw an adverse inference.

[79] In addition to the aforegoing, the company ratified the conduct of the Second Defendant. It failed to take any disciplinary action when, on its own version, it was obliged to do so. It failed to reprimand or admonish the Second Defendant. It retained the Second Defendant's services until he died. It made him a permanent employee in December 2004. Even after Santam repudiated the claim, Second Defendant continued with the services of the First Defendant. A reasonable employer would, in my respectful opinion, have made all the necessary enquiries to establish what happened to the passenger before acting as the First Defendant did.

[80] It knew or ought reasonably to have been expected to know

that the collision caused or could have caused severe injury to the passenger. After all the Second Defendant received medical treatment and was constrained to make a claim against the Workmen's Compensation Commissioner. There was, in my view, no basis to simply assume that the passenger had not been injured and that there would be no repercussions arising from the conduct of the Second Defendant.

[81] In all of the circumstances I rule that this is an appropriate case where the court should visit the employer with liability for the wrongful act of its employee.

[82] I was asked to make an order for costs at this stage. The First Defendant conceded that the facts and circumstances in this case were of such a nature that I should make an order for costs. The Plaintiff has been successful and is entitled to recover his costs.

[83] I was initially of the opinion that First Defendant unnecessarily prolonged the proceedings in the matter. It should have raised the question of the Second Defendant's

lack of authority of *ab initio* but failed to do so. It delayed the completion of the matter at the first hearing by cross-examining the Plaintiff to establish a precarious basis to avoid liability arising out of the report of Dr. Oelofse. It failed to prosecute the application for an amendment at the commencement of the hearing.

[84] Mr. Pohl, who appears for the Plaintiff, did not however press the issue. There are already two costs orders granted against the First Defendant, one of them on an attorney and client scale.

[85] Having adopted the initial stance relating to the scale of costs to be awarded, I have since reconsidered the matter. I believe that the Plaintiff should only be granted costs on a party and party scale applicable in the High Court.

[86] I therefore make the following order:

1. The First Defendant is vicariously liable for the negligence of the Second Defendant, whose conduct was the sole cause of the collision in which the Plaintiff was injured on 27 October 2004.

2. The First Defendant is liable to pay 100% of the Plaintiff's proven or agreed damages arising from the collision on 27 October 2004.

3. The First Defendant is directed to pay the costs of the action.

4. The action is adjourned to proceed in due course on the issue of quantum on a date to be determined by this Court.

J. NXUSANI, AJ

On behalf of plaintiff:	Adv. L. le R. Pohl Instructed by: Honey Attorneys BLOEMFONTEIN
On behalf of first defendant:	Adv. J.D. van Niekerk Instructed by: Vermaak & Dennis Inc. BLOEMFONTEIN