

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 4739/2021

In the matter between:

THOBELA THABISANG

PLAINTIFF

And

POLOKWANE MUNICIPALITY

DEFENDANT

JUDGEMENT

KGANYAGO J

[1] The plaintiff has instituted an action against the defendant claiming damages he allegedly suffered when he was allegedly electrocuted. According to the plaintiff's particulars of claim, on 18th October 2018 he was walking along corner Jorrison and Church streets in Polokwane when he was electrocuted or electrically shocked by live wires that the defendant had left uncovered and exposed at the traffic lights which the defendant was doing maintenance or fixing it. The plaintiff has further stated that the defendant was negligent in that it had failed to warn the public especially the plaintiff about the danger of the traffic lights and/or live wires or to exhibit the warning signs or danger markings in the vicinity of the traffic lights that were being maintained.

- [2] The defendant had defended the plaintiff's action. The defendant in its plea had denied any negligence on its part or on the part of any of its officials. The defendant had further denied that the plaintiff or any other person was electrocuted on the day in question. In the alternative, the defendant had pleaded that the electrocution of the plaintiff was due to the plaintiff's own negligence. The defendant has also pleaded that when it conducts maintenance works on the street lights, the defendant's officials or technicians put in place reasonable measures to caution members of the public about the maintenance taking place.
- [3] The parties during their pre-trial conference have agreed on separation of the aspects of merits and quantum. This court is therefore called upon to determine the issue of liability first. At the time of the alleged incident the plaintiff was still a minor. The action against the defendant was instituted by Thobela Ditumisho Pheladi who was acting in her personal and representative capacity as the legal and natural guardian of the plaintiff. On attaining the age of majority the plaintiff has substituted his guardian.
- [4] The plaintiff was the only witness to testify for his case. He testified that on 18th October 2018 he was walking from school to the taxi rank. On arrival at the robots of corner Church and Jorrison streets in Polokwane, he stopped at the robot as it was red. Whilst he was standing waiting for the robot to turn green, he touched one of the pole of the robot. When he touched the pole he got electrocuted and fell down. He thereafter could not walk, and was assisted by his fellow school mates who carried him to the taxi rank. From the taxi rank his school mates accompanied him to his homestead. On arrival at his homestead, his parents took him to the hospital. He sustained head and chest

injuries as a result of the electrocution. He was admitted to hospital for 6 days. His parents had reported the incident to the defendant.

[5] The plaintiff was cross-examined and he stated that at the time of the incident he was 15 years of age. The plaintiff stated that when he was electrocuted he was walking alone and he does not know the names of the school mates who have assisted him, but they were wearing the same school uniform as his. The plaintiff stated that there were live wires which were lying around the pole of the robot. The plaintiff further stated that he did not touch the wires, but the wires looked like they were connected to the robot, and some of them were cut. Further that it appeared as if those wires were coming from the robot and were not covered, and that they were lying on the pavement. The plaintiff also stated that there was a hole that was dug next to the robot and the wires were not covered. That he fell next to the robot. Further that there was no sign put to warn people that there was work which was being done, despite the street been busy. That concluded the evidence of the plaintiff and he closed his case.

[6] The defendant called Masenyane James Kekana as its only witness. He testified that he has been employed by the defendant as the installation inspector. His work entails inspecting new houses to see whether the work was done properly. He remembers the alleged incident of the 18th October 2018 which allegedly took place at corner Church and Jorrison streets in Polokwane town. On that date it was reported to him by his senior Mr Pienaar who has since passed away that a child has been electrocuted by electricity. He went to the scene and on arrival he found that the child was no longer there. When he checked the area, he found that there was no maintenance

that was taking place there. What he saw was the bricks of the pavement that have been removed and even up to date, it is still like that. He did not see anything that could have caused the electrocution.

[7] When the defendant does maintenance, they will make sure that the area was safe by cordoning it. After they are done with the maintenance they will remove the danger tapes. On that area he did not see anything that could have electrocuted the plaintiff. On 19th October 2018 the witness went to the family of the plaintiff in Seshego in order to see the condition of the plaintiff, and also to notify them to report the incident at the offices of the defendant. On arrival at the plaintiff's homestead he was told that the plaintiff had gone to seek medical attention. The witness stated that he did not go to the plaintiff's homestead to admit liability, and further that he did not have authority to do such a thing.

[8] The witness was cross-examined and he stated that he went to the family of the plaintiff in a representative capacity as he was sent by his seniors. The witness conceded that if a robot is damaged, they sometimes dig a hole in order to repair it if the stand was damaged. The witness also conceded that companies like Telkom sometimes dig holes next to the robots without the knowledge of the defendant, but that the procedure is that they must first consult with the defendant so that they can show them where to dig in order to avoid damaging the cables. The witness stated that after visiting the area of the alleged incident, he did not write any report as he was not dealing with robots, but had reported to his manager to report it to the maintenance people. He did not know whether the family of the plaintiff had reported the

incident to the defendant after he had advised them to do so. That concluded the evidence of the defendant and it closed its case.

- [9] The plaintiff's claim is arising out of the alleged electrocution when he allegedly touched the pole of the robot at corner Jorrison and Church streets in Polokwane town. The robots in Polokwane town uses electricity which is being supplied by the defendant. The defendant is therefore the undertaker as defined in section 1 of the *Electricity Act*¹ (Act), and licensee in terms of section 26 of the *Electricity Regulation Act*² (Regulation). In terms of section 26 of the Regulation, there is a presumption of negligence that operates in favour of the plaintiff. Section 26 of the Regulation provides:

“Liability of licensee for damage or injury

In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary”.

- [10] There is a dispute as to whether the injuries which the plaintiff had sustained were caused by electrocution from the pole of the robot at corner Jorrison and Church streets in Polokwane. The defendant in their plea had disputed that an incident took place on 18th October 2018 in which the plaintiff was electrocuted, and further denied that there was any maintenance of the robots that was taking place on that date at the spot where the plaintiff was allegedly

¹ 41 of 1987

² 4 of 2006

electrocuted. Before determining the issue of negligence, it must first be determined whether such an incident took place on the date in question, and on that spot.

[11] The defendant is obliged to compensate the plaintiff for bodily injuries caused by or arising out of electrocution by the robot if it is found that the defendant was negligent. The casual link that is required is essentially the same casual link that is required for Aquilian liability. There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm.

[12] In *Grove v The Road Accident Fund*³ Tshiqi JA said:

“12. Courts have in the past grappled with choosing a criterion to be applied to determine legal causation. In *S v Mokgethi & others*, Van Heerden JA held that there is no single and general criterion for legal causation which is applicable in all instances. He suggested a flexible approach where the court has the freedom in each case to apply a theory which serves reasonableness and justice, in light of the circumstances, taking into account considerations of policy. The basic question is whether there is a close enough relationship between the wrongdoer’s conduct and its consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on reasonableness, fairness and justice.

[13]. A useful guide is found in *Wells & another v Shield Insurance Co Ltd & others*, where Corbett CJ stated:

³ [2011] ZASCA 55 (31 March 2011) at paras 12 and 13

'In searching some limit lying between direct causation and the vast and unrestricted field of the *causa sine qua non*, the Court must, I think be guided by consideration of the object and scope of the Act and by notions of common sense...

The death or bodily injury for which compensation is claimed must be causally related to this negligent or otherwise unlawful act and also to the driving of the vehicle. Where the direct cause from culpability is the same act or omission on the part of the driver in the actual driving of the vehicle then it would generally be found that the death or injury was "caused by" the driving. Where the direct cause is some antecedent or ancillary act, then it could not normally be said that the death or injury was "caused by" the driving; but might be found to arise out of the driving. Whether this would be found would depend upon the particular facts of the case and whether, applying ordinary, common-sense standard, it could be said that the casual connection between the death or injury and the driving was sufficiently real and close to enable the Court to say that the death or injury did arise out of the driving. I do not think that it is either possible or advisable to state the position more precisely than this, save to emphasise that, generally speaking, the mere fact that the motor vehicle in question was being driven at the time death was caused or injury inflicted or that it had been driven shortly prior to this would not, of itself, provide sufficient casual connection. Thus the injury suffered by a passenger aboard a bus as a result of being assaulted by a bus conductor could not be said to arise out of the driving of the bus, even though the bus was being driven at the precise moment when the assault was committed. Similarly, in the illustration already given of X who stepped off the bus into a hole in the

pavement, it could not be said that the injury arose out of the driving merely because driving (in the ordinary sense) had taken place immediately prior to this.'

[13] The plaintiff's version is that of a single witness. According to the plaintiff when he touched the pole his school mates were next to him, and they were the ones that have assisted him after he fell. These school mates have seen everything, but neither one of them have been called as a witness to corroborate the plaintiff's version. It is surprising that the plaintiff has testified that he did not know their names, even though these are the people who have taken him home. If indeed the plaintiff was taken home by his school mates, logic will tell that the plaintiff's parents would have wanted to know the names of those people who have assisted their child, and where they came from. Since people who have assisted the plaintiff were from the same school with the plaintiff, on his return to school they would wanted to know how the plaintiff was doing, and that would have let them knowing each other. It was not explained why none of the plaintiff's school mates were called as a witness. The only inference to be drawn is that had they been called they were going to contradict the plaintiff's version, or the possibility is that they don't exists.

[14] The plaintiff was allegedly injured in Polokwane CBD where it was testified that the streets were busy, but it seems that it was only the plaintiff's school mates who have assisted the plaintiff. The plaintiff has testified that after the alleged electrocution he was unable to walk, but it was not explained why an ambulance was not called to take him to the local hospital. As per the plaintiff's particulars of claim, the plaintiff sustained head injuries, lower and

upper limbs injury and chest injury. These were serious injuries which would have needed the attention of the paramedics to immediately take the plaintiff to hospital for medical attention and not just be taken away by school mates to the taxi rank to be transported home by taxi. There were shops next to the robot where the alleged incident took place and the shop owners would have assisted in summoning paramedics to the scene.

[15] The defendant has in its plea and throughout the evidence of its witness denied that the plaintiff was electrocuted on the day in question. The plaintiff has testified that his parents had reported the incident to the defendant, but no document was submitted as evidence to show that indeed the incident was ever reported to the defendant. The plaintiff's parents were also not called to explain as when and to whom was the incident reported. The defendant had denied that any maintenance was taking place at the robot in question and further that there was no hole that was dug on the day in question next to the robot. There are shops next to where the robot is situated, and the shop owners of those shops were best placed to verify whether on the day in question there was any maintenance that was taking place, but none of them was called as a witness to verify that.

[16] Except for the evidence of the plaintiff, there are no any other evidence to corroborate his evidence. According to the plaintiff's particulars of claim, he was electrocuted by live wires that were left uncovered and exposed. However, the plaintiff in court testified that he was electrocuted when he touched pole of the robot, and that the wires were lying on the ground around the robot. When the plaintiff was cross-examined on this discrepancy he was unable to explain, except to state that the correct version is that which he had

testified in court. In my view, the plaintiff's evidence was not credible and reliable. There is no sufficient evidence to prove that indeed the plaintiff was electrocuted on 18th October 2018 at the robots of corner Jorrison and Church streets in Polokwane. It is doubtful whether the alleged incident happened at those robots since the defendant's witness also testified that he could not find any traces of maintenance taking place at those robots. The plaintiff has therefore failed to prove that the defendant had caused any damage to him, and therefore, there can be no question of liability which the defendant can be held liable.

[17] In the result the following order is made:

17.1 The plaintiff's claim is dismissed with costs on party and party scale.

KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

Counsel for the plaintiff	: Moyo S
Instructed by	: Mashabela Attorneys Inc
Counsel for the defendant	: Adv Nemukula
	: Adv Tshitamba N7
Instructed by	: Kgatla Inc
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