

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: HCAA23/2024

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED: YES/NO

Naude – Odendaal J

SIGNATURE

DATE

11/09/2025

In the matter between: -

FREDERICK JOHANNES WIESE

APPELLANT

And

CALYN D'ALTON N.O. obo HEIDE-LENE JONCK

1st RESPONDENT

CORNELIUS JOHANNES STEPHANUS COETZEE

2nd RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

- [1] What should have been a pleasurable day to remember, quickly turned into an unforgettable nightmare! This is an appeal against the judgment and order handed down by the court *a quo* on 19 January 2024, with leave to appeal by the court *a quo* given on 31 May 2024.
- [2] The parties hereinafter are referred to as during the trial. The 1st Defendant in the court *a quo* did not appeal the judgment of the court *a quo*, only the 2nd Defendant did. The 2nd Defendant is the Appellant before this court.
- [3] The Appellant applied for condonation for the late filing of the appeal record and application for a trial date in the appeal. The application for condonation was not opposed and consented to. Therefore condonation was granted without any further argument.
- [4] On the 11th of March 2018 on the Albasini Dam near Louis Trichardt, the 1st Defendant was the owner of a red-motor powered vessel skippered by the 1st Defendant. The 2nd Defendant (Appellant)'s wife, alternatively the Appellant himself, was the owner of a white motor-powered vessel skippered by the Appellant. Both vessels carried other passengers. The Defendants and other persons went for a pleasure ride. An air-inflated tube was attached with a rope, approximately 30m long, to the red vessel. The vessel would tow a person, lying on his/her stomach, on the tube, while holding onto rubber handles on the tube, at a relatively high speed creating a skiing experience for the person lying on the tube. In the present matter, the second vessel, being the white vessel, would move in wide circles in front of the vessel that towed the person on the tube, and by doing so, created waves that would ensure a more pleasurable ride for the person on the tube.
- [5] Neither the 1st Defendant, nor the Appellant, nor his wife had a certificate of competence to skipper the vessels on the dam. However, the mere fact that neither had a certificate of competence or skipper's license does not make either party negligent.

- [6] The patient was initially riding on the vessel of the Appellant, during trial referred to as the white vessel. With the last cruise of the day, the patient wanted to have a last ride on the tube. She climbed from the white vessel onto the red vessel and from there onto the tube towed by the red vessel.
- [7] The red vessel pulled away with the tube in tow, the patient was flung out of the tube and collided with the white vessel. The patient, as a result of the collision, sustained severe head injuries that prevented her from testifying during trial.

The Appellant's (2nd Defendant in the court *a quo*'s) submissions:-

- [8] The Appellant submitted that the court *a quo* adjudicated the liability of the Appellant based on the common cause facts, and based on a certain rejection of testimony by the Appellant, but without making any definitive finding as to exactly how the incident took place.
- [9] It was submitted that the court *a quo* erred to approach the adjudication of the evidence in this way. According to the Appellant, the court *a quo* erred by failing to further take into account that the recreational activities took place on open water of the dam. A shallow water cove protruding from the open water section of the dam exists, into which vessels move once they are finished with their recreational activities on open water. On the day in question, the two vessels finished their open-water recreational activities and moved into the shallow water cove. At that stage, the patient was in the vessel skippered by the Appellant, the white vessel. While both vessels were completely within the shallow water cove, the patient requested to be taken on one further pleasure ride. The rope and the tube was attached to the vessel skippered by the First Defendant and the patient had to leave the white vessel and move over to the tube which was attached to the red vessel. In order to enable the patient to disembark from the white vessel, the two vessels moved very close to one another and the patient disembarked and got onto the tube.

- [10] According to the Appellant, it is against this common cause facts noted that the questions which need to be answered are firstly how exactly did the incident occur and secondly, whether the Appellant was negligent or not.
- [11] It was submitted that it seems that the court *a quo* accepted the entire testimony of the single witness testifying in favour of the patient. The court *a quo* erred in doing so since the testimony of Mrs. Coetzee was contradictory and utterly confusing when it came to how the incident occurred.
- [12] It was submitted that had the incident occurred in the way as described by the court *a quo* in that the two vessels drifted close to one another, and had the red vessel commenced with an immediate right turn away from the white vessel, the incident could not have occurred in the way as described by all the witnesses.
- [13] According to the Appellant, the court *a quo* should have found that, for the incident to have occurred in the way as was described by the witnesses, the Appellant had to move out of the way of the First Defendant, after which the incident occurred, in that the First Defendant, who skippered the red vessel, accelerated substantially while still in the shallow water, without keeping a lookout, and without taking cognizance of the distances between the red vessel and the white vessel, and the implication of that distance for the safety of the patient on the tube.
- [14] The Appellant submitted that the court *a quo* should have found that the acceleration was of such a speed, and took place over such a distance that it created the slingshot effect, effectively flinging the patient on the tube right onto the white vessel, while during this time the white vessel was stationary and the Appellant was attending to the petrol tank of the white vessel.
- [15] According to the Appellant it should have been found that he was attending to the petrol tank of his vessel, while stationary, and did not have a lookout at that stage to observe other vessels. According to the Appellant, the court *a quo* should have instead found that the First Defendant, skippering the red vessel, accelerated

suddenly and without keeping a proper lookout and without guarding against the consequences of such a sudden acceleration.

- [16] The Appellant submitted that the court *a quo* erred in not finding the reasonable skipper in the position of the Appellant would not have been expected to keep a lookout for other vessels, while his vessel was stationary and while he was attending to the petrol tank of his vessel. Further, any reasonable skipper in the position of the Appellant would have expected any reasonable skipper, skippering the red vessel to slowly move out of the shallow water cove, onto the open water portion of the dam, before substantially accelerating.
- [17] It was submitted further by the Appellant that the court *a quo* erred in not finding that any reasonable skipper in the position of the Appellant would have been entitled to assume that any reasonable skipper skippering on the open water, but especially within the shallow water cove, would have taken extra care to keep a lookout for vessels moving in and out of the cove.
- [18] The Appellant further submitted that the court *a quo* erred in not finding that no reasonable skipper in the position of the Appellant, would have been able to take any preventative steps to have prevented the occurrence of the incident. The court *a quo* should have found that there was no act or omission of the Appellant that can be causally linked to the damages suffered by the patient.
- [19] It was further submitted that the court *a quo* erred with regard to the defence of *volenti non fit iniuria*, by not clearly distinguishing between the two species of the *volenti non fit iniuria* defence, viz firstly consent to participate in inherently risky activities, and secondly consent to the unlawful actions of the Defendant. It was submitted that by conflating the two distinct species of the *volenti non fit* defence, the considerations applicable in each instance was also conflated. The court *a quo* should have found that the patient voluntarily participated in a risky activity, and apart from that was in a good position (even a much better position than the

Appellant), to prevent the incident from occurring by simply letting go of the handles and dropping off the tube.

The 1st Respondent's (Plaintiff in the court *a quo*'s) submissions:-

- [20] The 1st Respondent submitted that having regard to the common cause facts, the only question to be answered by this court is whether the 1st Defendant or the Appellant or both jointly were negligent in causing the injuries sustained by the patient.
- [21] According to the 1st Respondent, on their own evidence, both the 1st Defendant and Appellant were negligent and contributed to the patient's harm. In addition, they both breached the provisions of Regulation 8(2)(c) of the Merchant Shipping (National Small Vessel Safety) Regulations, 2007, by operating their vessels in a careless manner, without reasonable consideration for other persons or without due care and attention, taking into account the presence of persons and vessels in the body of water, including concentrations of persons and vessels in the immediate vicinity of the vessel.
- [22] Whereas the patient's account stood on a firm foundation, the Defendants' and/or Appellant's versions were porous and noticeably fabricated to escape liability. Their versions presented to the court *a quo* were not pleaded and mutually destructive.
- [23] The 1st Respondent submitted that she called an independent young witness, Jennifer Rose Coetzee, who did not have any personal interest in the matter. Her testimony was lucid and forthright. She testified that she was on the white boat and facing the patient. The Appellant was behind the wheel of the white vessel and its engines were running but the boat was stationary in the water. The 1st Defendant piloting the red boat pulled away very fast and turned sharply to the right. She said that initially the towrope was loose in the water but as the red vessel pulled off the rope tightened. As the red vessel turned to the right the tube went to the left straight into the rear end of the white vessel. As a result, the patient was injured.

[24] It was submitted that Ms. Coetzee further testified that while one is on the tube one has no idea which way one is going. If one let go of the handles of the tube, one would fall very hard. From Ms. Coetzee's evidence the following appears:-

24.1 The vessels could not have been more than thirty meters from one another, being the length of the towrope;

24.2 The 1st Defendant did not take into consideration the presence of the white vessel within its near vicinity when he moved off fast and turned sharply to the right;

24.3 The Appellant in the white vessel took no steps to move away from the potential dangerous situation – on the contrary he remained stationary and took no steps to move away;

24.4 There were very little, if anything, that the patient could do to avoid the collision.

[25] It was submitted that Ms. Coetzee's testimony was not shaken in any way. She confidently parried every question put to her in cross-examination.

[26] The 1st Respondent further submitted that the 1st Defendant presented a wholly improbable version to court. He testified that he ensured that the patient climbed onto the tube and saw to it that the towrope was on the tube. He instructed the patient to keep the rope on the tube. He then went to take his place behind the steering wheel and pulled away at a reasonable speed. He did not keep an eye on the patient on the tube. The patient then threw the towrope into the water. The towrope then drifted to the white vessel and got entangled between the engine and the hull of the white vessel. As a result, when he pulled off with the red vessel, the patient was pulled into the rear of the white vessel.

[27] It was submitted by the 1st Respondent that from the testimony of the 1st Defendant, the following appears:-

27.1 The two vessels were so close to one another that the towrope that is only 30m long could get entangled in the white vessel.

27.2 He did not take into consideration the near proximity of the white vessel;

27.3 He failed to realize that as he steered his vessel to the right that the patient might collide with the white vessel;

27.4 He did not have a lookout on the vessel to keep an eye on the patient to warn him of the looming danger.

[28] The 1st Respondent submitted that the 1st Defendant was a poor witness. His version was not corroborated by any other witness. Therefore, it must be seen as a last gasp attempt to avoid being held negligent. It was submitted that his attempt to mitigate the blame for not avoiding the collision in some way to the patient must be deprecated. There was no evidence confirming that the patient was in any way capable to see that she was in danger and to let go of the tube's handles. In this regard, this court pauses to state that this court is in agreement with the submissions made by the 1st Respondent.

[29] The evidence and facts proves on a balance of probabilities that the 1st Defendant was negligent in one or more ways and that the injuries sustained by the patient, was as a direct result of the 1st Defendant's negligence. Be that as it may, the 1st Defendant chose not to appeal the judgment and order of the court *a quo* and therefore without further ado, we proceed to deal with the 1st Respondent's submissions in respect of the Appellant.

[30] The 1st Respondent further submitted that the Appellant's testimony was equally outrageous. His oral version was that after the patient had climbed off the white vessel, he travelled forward 50 meters to swop his vessel's fuel tank. He was on his knees with his back to the red vessel when he saw out of the corner of his eye a black object come flying over the white vessel. He then turned around and saw the red vessel to his left as he was facing backward. He never heard or felt the collision of the patient on his vessel. According to him, he was well out of harm's way at the time when he stopped his vessel and turned off the engines to swop the fuel tanks.

- [31] The 1st Respondent submitted that the problem with the Appellant's versions was that the version he gave in court 5 years after the accident differed in material aspects from the version he presented SAMSA in an email barely a month after the incident. In that email he said that he had heard the red vessel pull away while still stationary in the water after his white vessel had drifted away to the front left of the red vessel. In the mail he had not mentioned anything about sailing away 50 meters to swap fuel tanks. He also stated that he observed the red vessel turning away from the white vessel, still accelerating and not yet at full speed. This differs completely from his version in court that he had his back turned to the red vessel working on the fuel change. He then saw the patient swinging toward the back of the white vessel where she hit the right rear of the white vessel – another completely different version to the version presented to the court in oral argument.
- [32] The 1st Respondent submitted that the testimony of the Appellant in the court *a quo* was an obvious concocted story designed to minimize his role in the incident. His tale of sailing away to change fuel tanks, of the tube flying over the white vessel, his failure to feel or hear the patient striking the vessel, was all just a fabrication in court to escape liability and must be rejected.
- [33] It was submitted by the 1st Respondent that the second version, the one in the email, must be his correct version. In the first place he was not under pressure of being sued for millions when he drafted the email and it was written about a month after the incident when the events were still fresh in his mind. The emailed version confirms the following, according to the 1st Respondent:-
- 33.1 He had not moved a safe distance away from the red vessel, giving the red vessel a clear water body to pull the patient;
 - 33.2 He took no steps to avoid being hit by the patient on the tube;
 - 33.3 He failed to keep a proper lookout for other water users;
 - 33.4 He created a dangerous situation in circumstances when it was incumbent upon him to do so.

- [34] The 1st Respondent further submitted that the Appellant was a poor and unreliable witness. His demeanour in court smacked of incredulity. His attempt to explain away the email as being an invitation by SAMSA officials to think (as if he did not know) what happened simply does not make sense. His version presented to the court *a quo* stands to be rejected out of hand. Further, the Appellant's decision to call his daughter in a transparent attempt to bolster his version was an unforgiveable error. It was submitted that she was clearly coached to repeat what the Appellant had testified but was quickly caught out when confronted with distances. Her testimony stands to be totally disregarded.
- [35] In respect of the *volenti non fit iniuria* defence raised by the Appellant, it was submitted by the 1st Respondent that the fact that the patient was made aware of the risk does not absolve the defendant from not acting negligently. The problem the Appellant faced is that he presented no evidence to prove the defence of *volenti non fit iniuria*. He cannot escape liability by presenting to court assumptions of what the patient had known or would have appreciated. It was submitted that the defence of *volenti non fit iniuria* therefore could not stand as was rightly dismissed by the court *a quo*.
- [36] In conclusion, the 1st Respondent submitted that the conduct of the 1st Defendant was clearly negligent. He manoeuvred the red vessel in an inappropriate manner and at an excessive speed and failed to avoid the occurrence of the incident by the exercise of reasonable care when he could and should have done so.
- [37] The conduct of the Appellant in the circumstances was also clearly negligent as he failed to ensure that the white vessel was clear of the path of travel of the tube and failed to maintain a proper and safe distance between the white vessel and the red vessel and the tube and failed to avoid the occurrence of the collision by the exercise of reasonable care when he ought reasonably to have done so under the circumstances.

- [38] Further, both the defendants contravened the provisions of Regulation 8(2)(c) of the Merchant Shipping (National Small Vessel Safety) Regulations, 2007 and the contravention thereof called for criminal sanction and the court *a quo* correctly referred the matter to the prosecuting authority for investigation.
- [39] Lastly, it was submitted that the *curatrix ad litem* was also entitled to her costs. She is a practicing counsel and member of the Pretoria Society of Advocates. She is eligible to receive her reasonable expenses and costs, to be paid by the parties that caused the injuries to the patient.

The Law and Application of the Law:-

- [40] The test for establishing negligence remains the locus classicus **Kruger v Coetzee 1966 (2) SA 428 (A)** at p 430 E – F, the court stating as follows:-

“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.”

- [41] Negligent operation of a motor boat, is generally defined in South African law as a driver's failure to exercise the care, skill, and diligence expected of a reasonable person in the circumstances, which would include actions like driving too fast, failing to keep a proper lookout, failing to keep a vessel under control, or failing to take action to avoid a collision, all potentially leading to liability for damages.

[42] A boat operator has a legal duty to operate its vessel with reasonable care to prevent harm to others or their property. Failure to exercise reasonable care can manifest in several ways, for example operating at a high speed that is inappropriate for the conditions, failure to keep a proper lookout by not paying sufficient attention to other boats, swimmers, obstacles, or other potential hazards, lack of control in failing to maintain proper control of the boat, leading to unsafe manoeuvres or collisions, failing to act in that reasonable steps and/or actions to avoid an accident when there was a clear opportunity and ability to do so and further, violations of regulations in not adhering to boating safety regulations or maritime laws.

[43] The Merchant Shipping (National Small Vessel Safety) Regulations 2007, Regulation 36 Supplementary Requirements for water-skiing, Boat Safety Requirements for all towing sports stipulates as follows:-

"Including Water skiing, Wake Boarding, Knee Boarding and Tubing:

(1) Waters in which water-skiing is allowed must be so indicated by the regulating authority.

(2) No person may water-ski –

- a. In any waters other than those contemplated by the regulating Authority;*
- b. Between the hours of dusk and dawn (or as prescribed by the local authority);*
- c. While under the influence of intoxicating liquor or any substance having a narcotic effect.*

(3) A water-skier –

- (a) must wear a suitable flotation aid of the type and quality prescribed in regulation;*
- (b) must have knowledge of the standard hand signals;*
- (c) may not purposefully let go of the rope in a congested area; AND*
- (d) must comport themselves in such a way as not to create a nuisance or danger for other water users.*

(4) The owner or skipper of the towing vessel may not use a steel or other metallic rope or wire to tow a water-skier.

(5) The skipper of the towing vessel must ensure that there is a competent person in the vessel to observe the water-skier – Failure to keep a good lookout is one of the main causes of boating incidents.

- (6) *The skipper of the towing vessel must carry a 500 millimeter square red flag in the vessel and cause it to be clearly exhibited when the vessel is engaged in picking up a water-skier or dragging a tow.*
- (7) *As soon as the tow is dropped by a water-skier, the skipper of the towing vessel must either move to the nearest safe place, stop and pull the tow, or if the tow was accidentally dropped, reduce speed and return immediately to pick up the water-skier.*
- (8) *The skipper of a vessel may not follow closer than 100meters in the wake of another vessel towing a person, water-skier or a towable aquatic or airborne device.*
- (9) *The skipper of a towing vessel must at all times wear an operational kill switch. No person under the age of 16 may operate a towing vessel.*
- (10) *Skippers must resist the temptation to turn around and monitor the skier, the observer should be watching the skier to ensure the skier's safety and alert the skipper if any problems arise. Skipper to keep focused on the direction of travel and maintains a course which keeps the skier away from other vessels. Many accidents occur because the skipper was watching the skier and failed to see hazards ahead. Never back the boat up to a person in the water, approach with caution, from the driver's side, sot that the skier is always in view and on your side of the boat. Shut the engine off when the boat nears the skier so there is no danger from the propeller.*
- (11)
- (12)"

[44] In addition, it is stated that all boats must adhere to no wake zones, no go areas, boat operating times and any other rules determined by the regulating authority.

[45] The safety and welfare of the person the skipper is towing is largely in the skippers hands. There is no room for horseplay within the operator's scope of responsibility. Tubers have no ability to steer and are completely dependent upon the skipper for safety. It is the skipper's duty to maintain a course that keeps the skier away from other boats, the shoreline, or any other hazards. The skipper is not allowed to accelerate until the skier is grasping the towline handle, with the ski or board in proper position, and signals readiness to be towed.

[46] In addition, the skipper is prohibited from making sharp turns with the boat, especially if the skier (tuber) is cutting sharply outside the wake on either side. If an approaching obstacle forces you into an unexpected turn, throttle back as you turn as it is better to dunk the skier (tuber) than risk an accident.

[47] The Appellant stated the following in his email to SAMSA on the 13th of April 2018:-

"Reporting of boat accident at Albasini Dam on 11/03/2018 about 12h00

Myself and Fanus Coetzee were at Albasini dam. Fanus Coetzee had a red boat and I was on a white boat. We were stationary on the water next to each other. so that we could exchange people. We were in fact on our way to pack up and went for last drive on dam, before we took the boats out of the water.

Miss Jonck was with me on the white boat and wanted to ride the tube and she climbed over from the white boat to the red boat. My boat (white) drifted to the front left of the red boat. I heard the red boat started to pull away while my boat were still stationary in the water.

The red boat was turning away from the white boat. The red boat was still speeding up and not at full speed. When I looked at the back, miss Jonk, that was on the tube, was swinging out towards the back of my boat. She hit the back right hand side of the boat while still on the tube.

When it happened Fanus Coetzee turned around immediately and dragged her out of the water onto the red boat and travelled to the side of the dam, where they unloaded her from the boat already when I arrived.

We then took her directly to hospital in Makhado as she was semi unconscious.

No one was drinking or was under the influence of alcohol on Sunday. All the people were wearing life jackets.

I know Fanus Coetzee and his wife a long time and met miss Jonck through them. You could see that they had a very good relationship (bond) with each other. It was like she was a daughter to them.

If you have any further questions please feel free to contact me directly."

- [48] The Appellant in his plea Ad Paragraph 10-12, paragraphs 16 to 18 pleaded as follows:-

"The content hereof is denied and the Plaintiff is put to the proof thereof. As pleaded herein before, it is denied that the 2nd Respondent had any control over the tube or its passengers since the tube was connected to the red vessel, of which 2nd Defendant had no control over.

17.

At the time of the incident, 2nd Defendant's white boat had moved way forward out of the direct line of travel of the red boat, which at the time was still stationary. After the 2nd Defendant's white boat came to a standstill and was no longer under engine power, the red boat set off towing the tube behind. The speed at which the red boat was traveling caused by way of momentum the tube to swing to the left, hitting the 2nd Defendant's boat, while stationary, from behind. At no stage did the 2nd Defendant have any control over the movements of the red boat or the tube towed behind it.

18.

It is denied that any action by the 2nd Defendant or lack thereof had any effect on the outcome of the accident, or in any event influenced the circumstance which resulted in the accident taking place."

- [49] Although the Appellant's versions differed from what he stated in his e-mail to SAMSA on the 13th of April 2018, what he pleaded and what he testified to, the fact of the matter remains that at the crucial time of the accident the Appellant's vessel was stationary, whether it was to check his petrol or for whatever reason, its neither here nor there. The red vessel accelerated and made a sudden unforeseen sharp turn in the water which the Appellant could not avoid under the circumstances and which caused the patient to swerve out on the tube and hit the white vessel.

- [50] From the facts, it is clear that the Appellant's vessel was steered away, the vessel was then stationary, after which the incident occurred because had the incident occurred without the Appellant having steered away, with the red vessel having accelerated and having flung the patient out of the tube, the red vessel and patient

would have been passed the white vessel. The First Defendant, skippering the red vessel, accelerated suddenly and without keeping a proper lookout and without guarding against the consequences of such a sudden acceleration and dangerous turn or manoeuvre.

- [51] In the present matter, a reasonable skipper in the position of the Appellant could not have foreseen the sudden dangerous turn of the skipper of the red vessel, further, any reasonable skipper, skippering the red vessel would have been expected to slowly move out onto open water without any objects of boats being in close vicinity before substantially accelerating to pull off and simultaneously making a dangerous turn.
- [52] In this court's view, there was not much the Appellant could do to avoid the accident. One must bear in mind that he was steering a boat and not a motor vehicle. Further, the boat was stationary. The incident happened in a split second and no reasonable skipper would have been able to take preventative measures in time to avoid the accident from a stationary position of the boat, as the skipper would have had to first put the boat motor into gear and then pull off, which are not sudden movements in water. There was no act or omission of the Appellant that could be causally linked to the damages suffered by the patient. No action of the 2nd Defendant or lack thereof had any effect on the outcome of the accident, and even if it did it was so minimal that it would not have made any material difference.
- [53] It is clear from the SAMSA Regulations as quoted above that the patient also could not have done anything under the present circumstances to avoid the accident. Had it been in open water and the red vessel not made a sudden turn which swung the tube outwards towards the white vessel, it might have been something different, but it wasn't. The patient was totally in the hands of the skipper of the red vessel and the skipper of the red vessel had the duty of care and responsibility for the patient and all occupants on his boat.

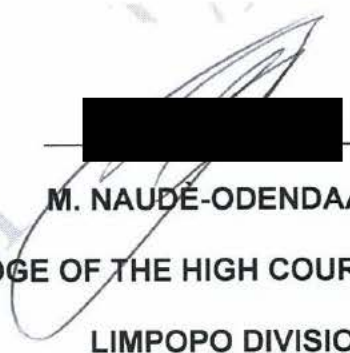
[54] The court *a quo* therefore erred in finding that the Appellant was negligent, which negligence caused the patient to suffer the injuries she did. In the result, the appeal stands to succeed.

[55] In addition, it was noted by this court that the court *a quo* made an order against the wife of the Appellant, in that the matter should be referred to the National Prosecuting Authority for investigations into the possible criminal prosecution of Appellant's wife. The Appellant's wife was not a party before court and the court *a quo* erred in making an order against her without having had due regard to the *audi alteram partem* rule. Therefore, although not raised by any party on appeal, a grave injustice would occur if the order against the Appellant's wife is not set aside, and necessitates this court to intervene in the order made against her.

[56] In the result, the following order is made:-

1. The appeal is upheld with costs.
2. The court *a quo*'s order is substituted with the following order:-
 - "1. It is declared that the negligence of the first defendant caused the injuries suffered by the patient, Heide-Lene Jonck on 11 March 2018;
 2. The patient is entitled to payment of such compensation from the first defendant, as in due course proven or agreed;
 3. The first defendant is ordered to pay the costs of the action to date, including the costs of two counsels;
 4. The first defendant is ordered to pay the costs to date of the *curatrix ad litem*;

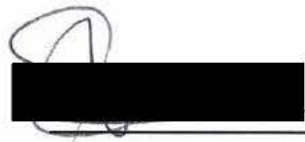
5. It is declared that the first defendant contravened Regulation 8(2) and 16 of the Merchant Shipping (National Small Vessels Safety) Regulations, 2007; and
6. The contravention of the Regulations as aforesaid is referred to the National Prosecuting Authority for investigations into the possible criminal prosecution of the first defendant."


[REDACTED]
M. NAUDE-ODENDAAL
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

I AGREE:


[REDACTED]
G.C. MULLER
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

I AGREE:



S. MATHABATHE
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

HEARD ON : **2 MAY 2025**
JUDGMENT DELIVERED ON : **11 SEPTEMBER 2025.**

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **11 SEPTEMBER 2025 at 10h00**

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FOR THE 2nd RESPONDENT:

No opposition and no appearance

POLOKWANE HIGH COURT