

HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 97783/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

15 OCTOBER 2025

In the matter between:

MARCELLE VAN VUUREN

Plaintiff

and

**SOUTH AFRICAN NATIONAL ROADS
AGENCY LTD**

First Defendant

ROAD ACCIDENT FUND

Second Defendant

WORLEY PARSONS RSA (PTY) LTD

Third Defendant

PENNY FARTHING ENGINEERS SA (PTY) LTD

Fourth Defendant

Summary: *Delict- joint wrongdoers. Plaintiff was involved in a motor vehicle accident in 2014. She claimed damages from the South African National Roads Agency Limited (SANRAL), its engineers, its*

contractors and from the Road Accident Fund (RAF) as joint wrongdoers. Found that there was no negligent breach of the obligations to maintain a rural road and that the plaintiff and the insured driver in terms of the Road Accident Fund Act 56 of 1996 had been contributory negligent. An equal apportionment of liability ordered as between the plaintiff and the insured driver. Claims against other defendants dismissed and appropriate costs orders made.

ORDER

1. It is declared that the Road Accident Fund is liable for 50% of the plaintiff's agreed or proven damages suffered as a result of the motor vehicle collision which had occurred on 20 December 2014.
2. The Road Accident Fund is ordered to pay the plaintiff's cost of the trial to date hereof.
3. The plaintiff is ordered to pay the costs of the first and third defendants.
4. The plaintiff is ordered to pay the fourth defendant's costs up to and including 23 April 2025.
5. The first defendant is ordered to pay the fourth defendant's costs incurred from 24 April 2025.

6. All costs shall be inclusive of the costs of senior and junior counsel, where employed.
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J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 15 October 2025.

DAVIS, J

Introduction

[1] On 20 December 2014, the plaintiff drove off the tarred portion of the road between Morebeng and Soekmekaar. Upon her attempt at returning from the gravel shoulder to the tarred surface, she lost control over her vehicle and thereafter collided with an oncoming vehicle travelling on the opposite side of the road. A passenger in each of the two vehicles lost their lives and the bodily injuries sustained by the plaintiff resulted in the above knee amputation of both her legs.

[2] The plaintiff sued the first, second, third and fourth defendants as joint wrongdoers.

[3] In terms of Rule 33(4), the issues of merits, liability and any apportionment thereof, were separated from the issues relating to quantum.

The parties

[4] The plaintiff instituted action as a natural person in her own name. She was already a major at the time of the accident.

[5] The first defendant is the South African National Roads Agency Ltd (SANRAL). The section of the road on which the accident occurred form part of the national road network and SANRAL is responsible for the maintenance thereof.

[6] The second defendant is the Road Accident Fund (the RAF). It is statutorily liable for damages suffered in road accidents as a result of the negligence of an insured driver.

[7] The third defendant is a civil engineering company Worley Parsons RSA (Pty) Ltd (Worley Parsons) who has been contracted by SANRAL to oversee the upkeep of some national roads, including the section of road where the accident happened.

[8] The fourth defendant is Penny Farthing Engineers SA (Pty) Ltd (Penny Farthing), another engineering company, who had been contracted by SANRAL to do the actual maintenance work on the section of the road in question.

Shortly before the trial, on 23 April 2025, the plaintiff withdrew her claim against Penny Farthing who then remained a party to the action, having been joined thereto as a third party by SANRAL.

The plaintiff's case

[9] The plaintiff's principal contention was that, at the place where the two left-hand wheels of her vehicle had left the tarred road, an "edge-drop" existed. This meant that the edge of the tarred surface was higher than the level of the adjacent gravel shoulder. She contended that this height exceeded the permissible height of 50 mm, causing her to lose control when she turned her wheels to the right in an attempt to regain her line of travel on the tarred road. This caused her vehicle to rotate to its right, into the opposite lane of travel, where she collided with an oncoming vehicle.

[10] The plaintiff claimed that SANRAL, as the custodian of the road, had failed to comply with its statutory duties to provide a safe road and road shoulder. She labelled the edge drop dangerous and claimed that it was allowed to continue to exist without warning signs.

[11] The plaintiff had no recollection of any aspect of the collision and her passenger at the time had tragically passed away on the scene.

[12] In summarizing the evidence put forward by the plaintiff, it is apposite to start by setting the scene of the collision. This was done at the commencement of the trial by the presentation of a video, taken by the attorney for SANRAL, which displayed the route taken by the plaintiff, as seen from the perspective of a driver, driving the same route. It depicted a tarred rural road leaving the town

of Morebeng with one lane of traffic in each direction. After leaving town, the road makes a gentle curve to the left, before it proceeds in a straight line and with the permissible speed thereafter increasing from 60km/h to 80km/h.

[13] The plaintiff largely relied on the evidence of an accident reconstruction expert, Mr Barry Grobblaar (Grobbellaar). This expert had met with the reconstruction expert consulted by SANRAL, Mr Lötter (Lötter).

[14] Grobbelaar and Lötter had produced a joint minute of their findings and opinions. It is apposite to refer to the contents of this joint minute as it assists with both the summation and evaluation of further oral evidence. The salient aspects of the agreement between the two experts (as adjusted by their evidence) were the following:

- The plaintiff's vehicle was out of control when the collision occurred and had probably yawed clockwise, pointing generally at a right angle across the lane of travel of the insured driver at the time of the collision.
- The collision itself occurred in the lane of travel of the insured driver.
- The road width was approximately 3,6m in the plaintiff's lane, travelling towards Tzaneen and approximately 3,8m in the insured driver's lane, travelling in the direction of Morebeng.
- After leaving Morebeng, and as the plaintiff was approaching the aforementioned curve to her left, there was a "yellow line section" of tar in her lane of travel. This narrowed from 1,3m in the curve, towards the end of the curve where its width was reduced to zero. The curve ended approximately 44m prior to the area where the collision occurred.

- On the left-hand side of the plaintiff's lane of travel, there was an edge drop of anything between 170mm to 230mm, with a later witness measuring it at 160mm.
- The left wheels of the plaintiff's vehicle were probably on the gravel shoulder of the road prior to it returning to the tarred surface of the road.
- The plaintiff was driving a Suzuki Swift motor vehicle at the time, with a ground clearance of 140mm in an unladen state.
- The underside of the Suzuki and/or its suspension would probably have scraped along the edge of the tarred surface of the road on the left edge thereof after the left wheels had dropped off the tarred surface of the road on to the gravel shoulder. This would probably have created an unstable situation on the dynamics of the Suzuki due to the pressure normally exerted on the wheel/s on the left side being relieved to a greater or lesser extent, depending on the height of the edge drop-off, by the underside or suspension of the vehicle now being supported by the edge of the tarred road.
- The experts agreed that the scrape marks on the left edge of the tar were probably caused by the Suzuki and indicate that the drop off was larger than the ground clearance of the Suzuki.
- For the driver of the Suzuki steering to the right to return to the tarred road once the left wheels had gone off the road, the large step/rise between the gravel shoulder and the edge of the tarred surface of the road would initially have prohibited the left front wheel from "climbing" up the step to return to the tarred road, with it sliding along this edge to a greater or lesser extent. This would either have resulted in the driver steering further to the right due to the vehicle not responding to the initial steering input to the right, which would

probably have resulted, at some stage, in the left front wheel suddenly “biting” and rising/driving on to the tarred road surface due to the irregular nature of the edge of the tarred road or the left front tyre may have in any event have suddenly “bit” into an irregular feature of the edge drop, causing the vehicle to suddenly drive onto the tarred road surface. During this sudden driving and the rising of the wheel onto the tarred road surface, the front of the vehicle would probably have steered suddenly to the right due to the regained traction of the left front wheel.

- Such a sudden steering of the vehicle to the right would probably have initiated the clockwise yaw of the vehicle (with the rear of the vehicle stepping out to the left), with loss of control resulting.
- The experts relied on photographs taken of the collision at the time and at various stages thereafter as well as visits to the scene indicating tyre skid and yaw marks. They produced complicated calculations in respect of estimated speeds and weights of the respective vehicles and thereafter concluded and agreed that, had the insured driver been travelling at the speed limit of 60km/h or slower, he would have had almost twice as long to have avoided the collision then what he had available at the speed at which he was travelling. He would also probably have been able to bring his vehicle to a stop at almost $\frac{1}{4}$ of the distance at 60km/h than that which would have been required at approximately double this speed.
- It is therefore probable that the collision could have been avoided had the Toyota driver been travelling at the speed limit of 60km/h instead of in excess of 112km/h on approach to the accident scene, which was the agreed estimated speed deduced from the distance of travel post-collision to where the Toyota eventually ended up.

[15] I shall deal with the points of disagreement between the experts when evaluating the evidence later.

[16] The plaintiff also relied on another expert, Mr Willie du Preez (Du Preez). Du Preez is a registered civil road construction engineer. His evidence was, broadly speaking, the following: The shoulder of a road is supposed to be a safe recovery area for errant vehicles. Although Du Preez did not know when the edge drop had developed prior to the accident, he opined that due to furrows in the shoulder, which were probably caused by rain, he did not regard the shoulder as a safe recovery area, and it appeared not to have been maintained for weeks prior to the accident.

[17] Du Preez could not fault SANRAL for having appointed a supervising engineer and a maintenance contractor to perform the maintenance work because it is standard practice worldwide in the industry. He contended, however, that the size of the maintenance contract was such that it should have been split into separate contracts or tenders. This was only his opinion, and he had no evidence to back up or confirm whether this had been feasible or not.

[18] In cross-examination Du Preez conceded that he could not say how long before December 2014 the last road repair had been done. He conceded that depending on the material used for the shoulder, it can indeed erode within a few weeks. He also conceded that the prioritisation prescribed by the engineer was not necessarily incorrectly done. He also could not dispute that there was a previous contractor involved, or that the shoulders were done by a previous contractor. Du Preez conceded that the roads in South Africa are generally in a

dire state. He conceded that the engineer can decide where to work first, and if it was considered that the R81 for example was more serious, or being exposed to higher rainfall, then that would be a reasonable exercise of the engineer's discretion if maintenance efforts were directed thereto.

[19] Du Preez conceded that had the Plaintiff not gone off the road, there would have been no loss of control but contended that the route patrol should have picked up the difference between the shoulders, and it should have been repaired. The engineer should have requested funds and SANRAL should have authorised a temporary repair. Gravel should have been dumped, graded with a grader and then compacted with a roller. Despite this contention, Du Preez conceded that according to industry standard recommendations, the edge drop should be repaired within 6 months.

SANRAL's case

[20] SANRAL relied on two witnesses. The first was Lötter, who was the co-author of the joint expert report together with the plaintiff's expert, Grobbelaar.

[21] The only aspects upon which Lötter disagreed with Grobbelaar were noted in paragraph 3 of their joint minute. These were the following:

- Lötter was of the opinion that a height differential (edge drop) between the shoulder of the road and the tarred surface of 160mm would have a reduced effect compared to a step height of 170mm to 230mm and the lesser edge drop could be countered with relative ease by steering slightly more to the left, away from the step which is formed by the edge drop.

- Lötter was of the opinion that, even in the absence of edge drop, it remains possible that the Suzuki driver would in any event have lost control after her vehicle's left wheels had left the paved road surface on to the gravel shoulder due to the different traction of the left and right wheels, and her steering input which could have initiated a clockwise yaw when she re-entered the road.
- Lötter was of the opinion that the instrument cluster may give an indication of the wheel speed of the vehicle, but this does not necessarily translate to the actual road speed of the vehicle at the time of the impact. If the court however accepts this higher value for the speed of the Suzuki to be applicable, then the speed of the Toyota would also have been higher.
- Lötter was of the opinion that it was evident from the accident scene, that when a driver in the position of the plaintiff was travelling at 60km/h, while keeping a proper lookout and being aware of one's surroundings, this speed was of such a nature that it would have been relatively easy to maintain control over a vehicle, even if it went off the tarred surface to its left. In such a case, a driver could merely slow down and travel slightly more to the left, which would further prevent contact with the underside of the vehicle. The driver can then move back on to the road at a lower speed a short distance further where the edge-drop would not have been as much.
- Lötter was of the opinion that the plaintiff probably over-reacted and immediately attempted to "swerve" back on to the road when encountering the uneven surface.

[22] Mr Van Eyk (Van Eyk) was SANRAL's second witness. He is a qualified engineer and was the project manager on the specific project,

representing SANRAL at all material times. He explained that, after a procurement process, Worley Parsons was appointed as a supervising engineer in terms of a standard SANRAL contract. The procurement process included a survey having been done by the engineer regarding the work to be done and a bill of quantities.

[23] The contract was not a construction contract, but a maintenance contract. It included various sections of road and was for an initial period of 36 months in an amount of R92 million. It was later extended in time and for another R62 million.

[24] Having regard to the tender documents, Van Eyk referenced the fact that, of the various sections of road, the one between Modjadji's Kloof and Mooketsi displayed road shoulders in "a very bad condition", while the relevant portion between Mooketsi and Morebeng was indicated as being in a "fair condition" and only in need of "isolated shoulder repairs".

[25] The relevant portion of the road where the accident had occurred, namely the R36 - 8, had previously been rebuilt and resurfaced. This included the rebuilding of the shoulders. This was completed in December 2012 with a retention period ending in December 2013. The contractors were Vela KE and the supervising engineer was KPPM.

[26] After the appointment of Worley Parsons, as supervising engineer to see to post-construction maintenance, SANRAL retained an oversight role. This would in practice be done by Van Eyk by way of the regular and monthly site meetings and by actually driving sections of the road. The site meetings were

held at different sections of the road, which were then also visited and inspected. Van Eyk, who is based in Pretoria, would often sleep over when attending these site meetings and take different routes to ensure that various portion of the road were inspected and assessed.

[27] The maintenance contract spanned over and included the R36, R40, R71, R81 and R528 roads with the total distance being 465 km.

[28] Van Eyk was tediously taken through numerous contractual clauses which dealt with the scope of work, the standards to be adhered to and the duties of the supervising engineer. Last-mentioned included the nomination of a contractor, the appointment of “site staff”, the conducting of monthly site meetings, the issuing of instructions to ensure compliance with the maintenance contract and the identification and scheduling of work to be performed, including the determination of the priorities of work to be done.

[29] Regarding the work to be done, the engineer had to assess, after inspection, which section of the various roads had to undergo maintenance or repair work in a particular month. This included various aspects relating to the road itself, such as culvert clearing and repair, maintenance of drainage systems, grass cutting, signage and the like.

[30] Van Eyk testified that the contractor nominated by Worley Parsons, being Penny Farthing, was one of the “top three” maintenance contractors in the country, who had always rendered excellent work and employed competent personnel.

[31] According to Van Eyk, SANRAL had complied with its statutory obligations by having appointed a duly qualified international engineering firm to supervise the maintenance of the roads in question.

Worley Parson's case

[32] Worley Parsons called a person who had been directly involved in the road maintenance contract in question, being another engineer, Mr Marius Nel (Nel). He was the route manager on the project.

[33] Nel was familiar with the roads and the state thereof as he was the assistant of the previous route manager, Mr Grundlingh.

[34] As to the nature of the work, Nel explained that as opposed to a construction contract, a maintenance contract is never-ending or continuous process.

[35] Regarding the issue of prioritizing maintenance work on various parts of the road, Nel explained that, working around a budget, prioritizing of work in a particular month, is based on issues of severity and road safety. So, for example, if there is damage to the actual surface of a road, it will receive priority over aspects outside the actual surface. Working from the center line of a road, which enjoys the highest priority, the urgency of the work to be done decreases as one moves to the "fence line".

[36] Determination of urgency and prioritization is dependent on visual inspections, which are in turn carried out by route patrols. Route patrols are

performed three times a week on all routes. In addition, the site agent also patrols the route once a week. If one has to stop at all the “hot spots” identified during such an inspection, it could take up to two weeks to do a proper inspection.

[37] It appears that a different road to the one where the accident happened was in need of maintenance at the time. That road was the R81. Nel was asked about his impression of that road and its topography. He described that the R81 starts in Polokwane at the taxi rank. Then it proceeds through several villages, where there is constant “pressure” on the road shoulder. At kilometre 62 the road traverses a mountain pass, which is very steep. There the shoulder slopes and edge-drops of up to a metre occurred. In addition, there were potholes and edge breaks. Edge breaks denote instances where the actual road surface is damaged and has broken up to where the edge of the tar should have been. An edge-break is far more serious than an edge-drop as it encroaches onto the surface where vehicles are supposed to travel.

[38] In comparing the R36-8 (where the accident had occurred and which surface had fairly recently been reconstructed, including the reinstatement of the road shoulders) with the R81, the last mentioned was in a much worse condition. Second to this was the R71, where there were also serious edge-drops.

[39] Weather also plays a role in maintaining a road. During a large rainstorm in that area, such as when 33mm rain can fall in an hour, corrugation and damage to a road shoulder can occur. After rains have fallen, one cannot work

on the shoulder for a while and that is why routine shoulder repairs are more often done during the dry winter months.

[40] In order to do effective shoulder maintenance, the necessary equipment has to be brought to site by a contractor. This typically would involve a grader, a water truck, a roller and the importation of material if there is insufficient material on site. Repair or reinstatement of a shoulder requires the building up of a shoulder by material and the compacting thereof by a roller to create a 3% angle. If all the equipment is available and nearby, the process can start within two days but otherwise it could take up to a week to bring all the equipment and material on site.

[41] There were two capable sub-contractors on the route. Customarily the engineer (Worley Parsons) would give instructions to the contractor (Penny Farthing) who would then give instructions to the sub-contractor, in this case BRDF Construction. During the December building holidays, there would be an emergency team of at least 6 people on duty.

Penny Farthing's case

[42] Penny Farthing closed its case without calling a witness and relied on legal argument and on the evidence produced by the other parties. I shall deal with this during the evaluation of the evidence and the respective claims later.

The RAF

[43] Although the RAF was the second defendant, the calling of witnesses by it was held over during the course of the trial, due to the unavailability of the

insured driver, who was overseas. This did not prejudice the hearing of the trial or the other parties as it was in any event convenient to deal with all engineering and maintenance aspects together.

[44] In the end, the RAF did not call the insured driver and applied to have his evidence accepted by way of a prior affidavit in terms of Rule 38(2). There was no objection hereto by any of the other parties and the Rule 38(2) application was granted.

[45] The affidavit of the insured driver, introduced into evidence in this fashion, read as follows:

“Statement by Zainul Patel

1. *I the undersigned, Zainul Patel, with Identity number 8[...] residing at no [...] A[...], T[...], do hereby state under oath as follows:*
2. *The contents contained herein fall within my personal knowledge and are both true and correct.*
3. *I confirm that on the 20th of December 2014 in the afternoon, I was involved in a motor vehicle collision. At the time I was driving Toyota Prado with registration number C[...], which collided with a Suzuki with registration B[...], which at the time was driven by Marcelle Van Vuuren.*
4. *I confirm that I gave a warning statement to Sonti Patrick Mahlatji where I indicated as follows:*
 - 4.1 *On Saturday 2014.12.20 I was from Tzaneen to Louis Trichardt (Makhado). On the very same day while I*

was approaching Morebeng (Soekmekaar), I saw the opposite vehicle losing control. Then the driver of the opposite vehicle tried to control motor vehicle then it came into my lane and collided head on. I was then transported to Makhado Hospital with private car for further treatment. I sustained a fracture on my right leg, small bruises on the face and the body.

Zainul Patel (Deponent) ”.

[46] That concluded the evidence of the parties.

The law

[47] The plaintiff seeks to hold SANRAL and its engineers and contractors liable in delict. The elements of such a claim are (1) actual conduct or omission¹; (2) wrongfulness; (3) fault; (4) causation and (5) that a harm was suffered². I shall refer to these elements more fully hereunder.

[48] Should the plaintiff fail to establish any one of these elements, her claim against those defendants mentioned above, cannot succeed³.

[49] Wrongfulness and the test for it has been described as being one based on an objective evaluation of the legal convictions of the community, duly informed by the values entrenched in the Constitution⁴.

¹ For the explanation of conduct, see *Steenberg v De Kaap Timber (Pty) Ltd* 1992 (1) SA 337 (A).

² *MTO Forestry (Pty) Ltd v Swart* NO 2017 (5) SA 75 (SCA).

³ *Minister of Safety and Securing v Van Duivenboden* 2002 (6) SA 431 (SCA) and *Greenfield Engineering Works (Pty) Ltd v NKR Construction (Pty) Ltd* 1978 (4) SA 901 (N).

⁴ *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC).

[50] In claims of this nature, the elements of fault relied on is often in the form of negligence. The interplay between the elements of fault and negligence must not be confused with each other or conflated.

[51] Negligence and the test for it, involves a threefold enquiry namely (1) whether the eventuated harm was reasonably foreseeable; (2) whether the *diligens paterfamilias* would have taken reasonable care to guard against such harm and (3) whether the defendant in question has failed to take the necessary care⁵.

[52] The inquiry in respect of causation, is a factual one, often employing the “but-for” test, meaning posing the question of what would have happened, “but-for” the wrongful conduct of the defendant⁶.

[53] To the above matrix must be added the general rule that a principal is not liable for the civil wrongs committed by an independent contractor⁷. This general rule is qualified by instances where the principal is independently personally liable or where the principal might have been negligent in its choice of contractor or interfered with the actions of the contractor⁸.

[54] Another principle which may find application in this matter is that a court would not lightly find a public authority to have failed to act reasonably because

⁵ *Butise v City of Johannesburg* 2011 (6) SA 196 (GSI).

⁶ *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A).

⁷ *Langley Fox Building Partnership (Pty) Ltd v Da Valence* 1991 (1) SA 1 (AD) and *Chartaprops 16 (Pty) Ltd v Silberman & Another* 2009 (1) SA 265 (SCA).

⁸ *Cenprop Real Estate (Pty) Ltd v Holtzhauzen* 2023 (3) SA 54 (SCA).

it elected to prioritise one demand on its possible limited resources above another⁹.

[55] The plaintiff's alternate and/or joint claim against the RAF, was based on the statutory provisions of the Road Accident Fund Act (the Act)¹⁰ namely that the plaintiff had suffered loss or damages as a result of the negligent driving of an insured driver who had caused a motor vehicle accident¹¹.

Evaluation of evidence and application of the law

The plaintiff

[56] The plaintiff bears the onus in respect of all the elements of her causes of action, as indicated above.

[57] The plaintiff could not, as already indicated, remember anything about the accident herself. She remembered that she had attended a family birthday on a farm outside Musina on the day in question. She was driving back to Tzaneen thereafter, with her sister's best friend as a passenger. She vaguely remembered leaving the farm, but nothing thereafter.

[58] All the documents completed after the accident, including accident reports and insurance claim forms were completed by someone else, probably her father, who had also passed away since, but not by herself. She cannot remember having spoken to a Warrant Officer Nkwinikwa at the accident scene.

⁹ *McIntosh v Premier, KwaZulu Natal* 2008 (6) SA 1 (SCA).

¹⁰ 56 of 1996.

¹¹ Section 17(1) of the RAF Act.

The inquest docket and a statement apparently taken from her in hospital, has also since gone missing.

[59] The plaintiff was also quizzed about a video on which she appeared sometime after the accident, apparently for promotional purposes of an insurance company, on which she would have blamed the cause of the accident on a motorcyclist who would have come from her left. This, she testified however, was a speculative version which someone told her long after the accident and not any true recollection. The experts have agreed that such a version could not reasonably have been possible.

[60] When one has regard to the above and the report of Grobbelaar and Lötter, it must be found that the plaintiff had left the tarred surface of the road on her left and partially have moved her vehicle on to the gravel shoulder. This must have happened shortly after she had negotiated the gentle left-hand curve after having left the town of Morebeng. There is no evidence of any justifiable reason why the plaintiff would have executed this manoeuvre. Had she maintained a proper look out and control of her vehicle, this would not have happened.

[61] What caused the plaintiff to thereafter move into the lane of oncoming traffic, was that the plaintiff had swerved to her right, back onto the tar after her vehicle had “bottomed out” on the edge of the tar. She had done so at a speed and in a manner that when the left front wheel of her vehicle “bit” onto the tar to negotiate the edge-drop, the vehicle spun or yawed to its right, into the lane of travel of an oncoming Toyota Prado, causing the two vehicles to collide.

[62] I find, on a balance of probabilities, that the plaintiff had been negligent in having left the road and in the manner in which she had returned to it. She was negligent in having, as a result thereof, lost control over her vehicle.

SANRAL

[63] The plaintiff's claim against SANRAL is that SANRAL, as custodian of the road in question, had failed to comply with its statutory duties owed to road users such as the plaintiff, to provide a safe road shoulder for the recovery of her vehicle when she had inadvertently left the road in the fashion described above.

[64] SANRAL's defence is that it had neither acted wrongfully nor negligently. Although it must be found that there had been an edge-drop of about 140 mm between the tarred surface of the road and the left-hand shoulder for some metres before the scene of the accident, there is no direct evidence as to when the edge-drop of this height had occurred and for how long it had endured prior to the date of the accident. There was some evidence that Van Eyk and a Mr Römer of Worley Parsons may have identified an edge-drop near the accident scene of an undermined heights, somewhere in August 2014. The evidence in this regard was, however, too inconclusive to have any findings based on it.

[65] SANRAL contends that it, as road custodian, had taken reasonable and lawful steps to prevent such edge-drops, including the one in question, and to prevent such edge drops from remaining unattended, whenever they occurred, be it due to rain, road deterioration or otherwise. The steps taken were the

appointment of a competent supervising engineer to supervise the implementation of a maintenance contract. In addition, at the nomination of the engineer, a competent contractor had been appointed. The work of the engineer and the contractor (and sub-contractor) were overseen by a route manager, being a qualified engineer in the employ of SANRAL. This was all done in terms of section 26 of the SANRAL Act¹². I find that there was nothing unlawful on the part of SANRAL in having acted in this fashion.

[66] Was there any negligent conduct on the part of SANRAL which would or could otherwise make it liable?

[67] All the engineers who had testified, referred to publications produced by a Dr Roodt regarding road safety, maintenance of roads and the industry standards relating thereto.

[68] There is no evidence that the shoulder at this spot was identified specifically as hazardous or a “hotspot”, and the reasonable standard in the industry, according to Dr Roodt for the inspection frequency for an edge-drop, is twice a year, typically in the beginning and at the end of the wet season when erosion occurs. The action time proposed for repairs to edge-drops is six months, as edge-drop repairs are best repaired by a dedicated team with the necessary equipment for planning needs to be done on a network basis.

[69] Dr Roodt’s proposed reasonable standards in the industry were endorsed by the plaintiff’s own expert, Du Preez as being authoritative. It thus means

¹² 7 of 1998.

that SANRAL's prescriptions to its maintenance contractor and the engineer that route patrols must be conducted three times a week and a statutory inspection be done once a week, exceeded the reasonable norms in the industry by far.

[70] The case is therefore to be distinguished on the facts from those in *McIntosh v Premier Kwa-Zulu Natal* (supra) where the public authority responsible for the maintenance of provincial roads had been found to be at least 40% contributory negligent in respect of a resultant accident due to vast stretches of a road with a large number of dangerous potholes in the road surface, which had been left unattended for an extensive period of time.

[71] I therefore find that neither wrongful nor negligent conduct can be ascribed to SANRAL. In the premises it cannot be held liable in delict for having caused the accident.

Worley Parsons

[72] The plaintiff's claim against Worley Parsons as alleged joint wrongdoer was based on the assertion that it, as consulting and supervising engineer, was aware that the "*proper, timeous and professional execution of [its] contractual duties and obligations ... had a direct and indirect impact on the general safety of road users ...*"¹³ and that "*... its contractual obligations were intended to impose upon it the obligation to fulfil the statutory and public obligations of SANRAL ...*"¹⁴.

¹³ Par 6: 14.1 of the amended particulars of claim.

¹⁴ Par 8.21 of the amended particulars of claim.

[73] The plaintiff further pleaded that Worley Parsons had “*wilfully, alternatively negligently and wrongfully breached its contractual obligations*”¹⁵.

[74] The alleged instances of contractual breaches were pleaded in 22 different sub-paragraphs in the plaintiff’s amended particulars of claim, ranging from allegations of failing to appoint qualified staff to a failure to develop or implement a “... *supervision methodology to timeously identify problems such as the hazard on the road*” to an alleged failure to seek specialist assistance.

[75] The plaintiff’s complaint is that the edge-drop in question should have been detected and repaired earlier, in any event, prior to the accident. While it is so that the edge-drop at the accident scene did not feature as an individually described item in the monthly site meetings, which in turn, were reliant on the route patrol observations, it was a known feature of the road.

[76] The plaintiff’s case is that, once the edge-drop had been or should have come to the knowledge of Worley Parsons, it should immediately have repaired it, is in conflict with the evidence.

[77] The evidence is that the maintenance contract spans across a period of time and includes maintenance work over 465 kilometres. The evidence is further that, over this distance there were various instances of far worse edge drops and many instances with a far higher risk and danger, requiring immediate or more urgent maintenance than the edge drop in question.

¹⁵ Par 11 of the amended particulars of claim.

[78] Both the evidence and the terms of SANRAL's contract with Worley Parsons, have established that the prioritization of which work to perform first or which aspect of any road has to be prioritised over any other, fall within the discretion of the supervising engineer.

[79] When one has regard to aspects such as timing, practicalities, resources on monthly budget amounts, there is no evidence that Worley Parsons had not exercised its discretion as professional engineer in any negligent or unlawful fashion, let alone in a fashion which amounted to a breach of its contractual obligations.

[80] Without entering into the debate about the elevation of contractual breaches to delictual liability, I find that Worley Parsons had not committed any such breaches. Its method of deploying engineers to monitor the road, to liaise with the appointed contractor and to monitor the state of the roads which it had to maintain on a regular basis, did not amount to any breaches of contract.

Penny Farthing

[81] As already indicated, Penny Farthing was joined as a party due to SANRAL having issued a third-party notice to Penny Farthing, claiming indemnification of or a contribution to any successful claim of the plaintiff against SANRAL.

[82] Subsequent to the plaintiff's withdrawal of her action against Penny Farthing on 23 April 2025, SANRAL sought to amend its third-party notice on

24 April 2025, pleading the incorporation of a tacit term into Penny Farthing's maintenance contract with SANRAL.

[83] In the third-party notice, SANRAL alleged that Penny Farthing, not only had the duty to inspect the road in question and to identify potential hazards, but had to report those hazards to Worley Parsons and then form part of the decision-making process to prioritise the repair of potentially hazardous spots which require immediate attention. (The underlined portion indicates the alleged tacit term to be incorporated). The amended third-party notice went further to suggest that Penny Farthing was required to advise Worley Parsons and SANRAL on the correct prioritisation of maintenance work and to request hoc instructions.

[84] Penny Farthing initially objected to this belated amendment but, in order to finalise the trial, withdrew its objection, subject to a reservation of rights.

[85] Penny Farthing's case, which was supported by the express terms of its written maintenance contract, was that it had been contracted to provide routine road maintenance services, which included routine petrol services, inspection of the road, edge build-up removals, repairs of potholes, edge-breaks and surface failures, shoulder repairs, road marking and repairing of damaged roads. However, the timing, frequency and sequence of the provision of any of these services were not determined by Penny Farthing, but by Worley Parsons, acting as SANRAL's duly authorized agent.

[86] In this regard, clause C3.1.9.3 of the Maintenance Contract Specifically provides as follows: "*Generally the maintenances activities covered by the*

Maintenance Contract will be on a continuous basis. However, certain specific activities are considered to be a priority or are critical and it is a condition of the contract that they shall be completed or responded to as specified, after receiving an instruction from the Engineer ...” (the reference to an engineer is of course, a reference to Worley Parsons).

[87] The instructions from Worley Parsons to Penny Farthing were issued in the form of job instructions, pursuant to which Penny Farthing became obliged to perform the work specified in the instructions. Penny Farthing had not received any job instruction in respect of the section of the road where the accident had occurred.

[88] Even though SANRAL’s engineer, Van Eyk has testified as to the good working relationship between the parties’ various employees, particularly on site, he conceded that it was not Penny Farthing’s obligation to make a determination of the works or the frequency or priority thereof. These were Worley Parsons’ obligations. Worley Parsons’ route manager, Nel, has confirmed this in his evidence.

[89] SANRAL’s third-party claim against Penny Farthing, both as originally pleaded and as later amended to include reliance on an alleged tacit term, was therefore at all times unsustainable.

The RAF

[90] The plaintiff sued all the defendants as joint wrongdoers as envisaged in the Apportionment of Damages Act¹⁶.

[91] In respect of the RAF, in addition to the various alternative formulations upon which the plaintiff claimed liability on behalf of the other defendants, the plaintiff pleaded that the accident was caused “... *solely by the acts and/or omissions of the insured driver ...*”.

[92] The acts and/or omissions ascribed to the insured driver were that he had failed to keep a proper lookout, drove at an excessive speed in the prevailing circumstances, failed to apply his brakes timeously, sufficiently or at all and had failed to avoid the accident when, by the exercise of reasonable skill, care and diligence, he could and should have done so.

[93] Of these various alternatives, only the excessive speed and failure to apply brakes had been proven on a balance of probabilities. The application of brakes would however only have assisted in the avoidance of the accident if the insured driver had not been travelling in excess of the prescribed maximum speed.

[94] On a conspectus of the evidence, but in particular, the application of the findings of the experts contained in the joint minutes Grobbelaar and Lötter, read with the insured driver’s own statement, he had negligently contributed to the accident having taken place.

¹⁶ 34 of 1956.

Apportionment

[95] Having found that the only two parties who could be held liable for the causing of the accident, were the plaintiff and the insured driver, it is now necessary to consider the degree of apportionment between these two parties.

[96] The parties to this action have provided useful case law in this regard, and the facts and contentions in three of the cases display surprising similarity to that of the plaintiff's case. I shall briefly deal with the judgments which were of assistance.

[97] In *Botes v MEC Western Cape Department of Transport and Public Works*¹⁷, the plaintiff alleged that his vehicle had veered off the left-hand side of the road and that the edge-drop to the shoulder had caused him to swing across the road when he managed to regain the tarmac. Relying on evidence gleaned from the docket, it was found, however that the accident had occurred when the plaintiff had overshot an upcoming curve to his left. He then went onto the incorrect side of the road and when his right-hand wheels left the tarmac, the plaintiff lost control when he swerved back onto the road from the right-hand shoulder and that is when he left the road on his left-hand side, causing the vehicle to overturn and cartwheel.

[98] Rogers J (as he then was) dealt with the plaintiff's negligence as follows¹⁸: "*In my view, a reasonable driver, after realizing he had negligently strayed off the road onto the right shoulder, would have taken his foot off the accelerator and slowed down in order to gain complete control of his vehicle.*"

¹⁷ (21774/2014) [2020] ZAWCHC 147 (6 November 2020).

¹⁸ *Id* at para 33.

A gravel shoulder is not intended to be driven on at the same speed as the tarmac surface. The friction differential between the tarmac surface and the shoulder adds a further complication. While sharp braking would have been inadvisable with the right wheels on the gravel shoulder, gently braking to slow the vehicle down would have been prudent...". This finding ties in neatly with the opinion of Lötter as referred to earlier in the second-last bullet point in par [21] above.

[99] On the facts of that case, Rogers J found that the provincial authority had not been negligent in prioritising maintenance work on potholes and that a driver had to keep a proper lookout and take into account the different levels between the tarmac and the road shoulder. The plaintiff's claim was refused on the basis that he was solely to blame for the accident.

[100] In *Van der Merwe v MEC for Public Works, Road and Transport, Free State and another*¹⁹, the provincial authority was found to be negligent in concentrating almost exclusively on pothole-repair and neglecting a specific section of a road for more than four years. This caused edge-breaks to develop of between 150mm – 300mm. When the plaintiff was overtaken by another vehicle, she moved to her left and the edge-breaks caused her to leave the tarmac. A four-year old edge-drop then prevented her from returning to the road surface, causing an accident on the left-hand side of the road. The defendant was found to have been negligent and 100% liable for the plaintiff's damages.

¹⁹ (4617/2010) ZAFSHC 6 (28 February 2019). The same consequence followed a decade-long neglect by the same provincial authority in *MEC for Public Works, Roads and Transport, Free State v Esterhuizen* 2007 (1) 201 (SCA).

[101] In the circumstances of this case however, where it has been found that SANRAL, Worley Parsons and Penny Farthing are not liable, the cases ascribing liability to those who had the obligation to maintain roads, are distinguishable on the facts and not applicable.

[102] Section 1(1)(a) of the Apportionment of Damages Act enjoins a court to reduce damages suffered by a plaintiff “... *to such extent as the court may deem just and equitable*”, having regard to the degree to which the plaintiff is found to also having been at fault.

[103] The locus classicus in this regard is *South British Insurance Co Ltd v Smit*²⁰ wherein the principle, which has often been confirmed since, has been formulated as follows: “*From the very nature of the enquiry, apportionment of damages imports a considerable measure of individual judgment: the assessment of ‘the degree in which the claimant was at fault in relation to the damage’ is necessarily a matter upon which opinions may vary. In the words of Lord Wright in British Fame (Owners) v MacGregor (Owners) [1943] (1) A.E.R. 33 at 35 (a maritime case; but the principle appears to be equally followed in England in relation to the Contributory Negligence Act): ‘It is a question of the degree of fault, depending on a trained and expert judgment considering all the circumstances, and it is different in essence from a mere finding of fact in the ordinary sense. It is a question, not of principle, but of proportion, of balance and relative emphasis, and of weighing different considerations. It involves an individual choice or discretion, as to which there may well be difference of opinion by different minds’*”.

²⁰ 1962 (3) SA 826 (A) at 837F - 837H.

[104] If one were to apply the “but for” test referred to in par [55] above, I find the position to be as follows: had the plaintiff not veered off the road to her left and had she not attempted to return thereto in the fashion that she did (as opposed to the fashion described by Rogers J as quoted in par [98] above) then the accident would not have happened. By the same token, had the insured driver not been driving at the speed the experts had determined, he could have applied the brakes in time and could have avoided the accident.

[105] I find that both drivers, through their respective negligent conduct had contributed to the accident, in equal measure.

Conclusion

[106] To sum up: I find that, on a balance of probabilities SANRAL not to be liable for the damages suffered by the plaintiff because, as a reasonable custodian of the road in question, it had appointed a competent engineer to supervise the maintenance of the road and has appointed an equally competent contractor to do the actual maintenance work. It had further not abdicated its responsibilities, but one of its own road engineers exercised a monitoring function. Neither the engineer, Worley Parsons nor the contractor, Penny Farthing had breached the terms of their respective contracts or the acceptable industry standards. None of these parties can be found to have acted negligently, that is in a fashion or manner other than one would have expected engineers and contractors to act in the circumstances. On the other hand, both the plaintiff and the insured driver had acted negligently and, in my view, equally so.

Costs

[107] I find that costs should follow the respective successes. The plaintiff is substantially successful in her claim against the RAF. SANRAL and Worley Parsons are successful in their defences. As for the costs of Penny Farthing, the plaintiff should be liable for the costs of her withdrawn claim up to the date of withdrawal. That is also the customary position. Thereafter, the party who caused Penny Farthing to remain bound to the matter, but having done so on an unsustainable basis, should be liable for Penny Farthing's further costs.

Order

[108] In the premises, the following order is made:

1. It is declared that the Road Accident Fund is liable for 50% of the plaintiff's agreed or proven damages suffered as a result of the motor vehicle collision which had occurred on 20 December 2014.
2. The Road Accident Fund is ordered to pay the plaintiff's costs of the trial to date thereof.
3. The plaintiff is ordered to pay the costs of the first and third defendants.
4. The plaintiff is ordered to pay the fourth defendant's costs up to and including 23 April 2025.
5. The first defendant is ordered to pay the fourth defendant's costs incurred from 24 April 2025.

6. All costs shall be inclusive of the costs of senior and junior counsel, where employed.

N DAVIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: 29 & 30 May, 3 and 5 June 2025

Judgment delivered: 15 October 2025

APPEARANCES:

For the Plaintiff:	Adv W P de Waal SC
Attorney for the Plaintiff:	Adams & Adams Attorneys, Pretoria
For the First Defendant:	Adv D Mills SC
Attorney for the First Defendant:	Prinsloos Attorney, Pretoria
For the Second Defendant:	Mr T Mukasi & Mr M Sekgotha
Attorney for the Second Defendant:	State Attorney, Pretoria
For the Third Defendant:	Adv C Eloff SC
Attorney for the Third Defendant:	Werksmans Attorney, Cape Town

c/o Tiaan Smuts Attorney, Pretoria

For the Fourth Defendant:

Adv J Babamia SC together with

Adv R Carvalheire

Attorney for the Fourth Defendant:

Norton Rose Fulbright South

Africa, Johannesburg

c/o Macintosh Cross &
Farquharson, Pretoria