

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

6 November 2025

Case No: 73413/2013

In the matter between:

ADV AC GOBETZ NO

OBO JUAN-MARIE LEWIS

First Plaintiff

and

MEC : ROADS AND TRANSPORT

(LIMPOPO PROVINCE)

Defendant

JUDGMENT

SK HASSIM J

SETTING

1. On 17 September 2012, the first plaintiff, Ms Lewis, was injured in a single motor vehicle accident when she lost control of a Discovery Land Rover (**“the Land Rover”** or **“vehicle”**) belonging to her father, the second plaintiff. The plaintiffs attribute the loss of control to the Land Rover striking an irregularity or a pothole

on the road surface. They turn to the defendant for compensation; Ms Lewis for bodily injuries sustained by her in the accident, and Mr Lewis for the loss of his motor vehicle, medical expenses incurred for his daughter's medical treatment and care, as well as for adaptations made to her living quarters.

2. It is common cause that the accident occurred on the R555 road between Roossenekal and Stofberg. This road falls within the jurisdictional boundaries of the Limpopo province and the defendant is responsible for maintaining the road.
3. The defendant initially disputed that an accident occurred. It also disputed that the first plaintiff suffered injuries. The disputes however narrowed as the trial progressed. Before the end of the trial the defendant accepted that the accident occurred and that the plaintiff was injured but disputed the mechanics of the accident and the liability to compensate the plaintiffs.
4. The first plaintiff was alone in the vehicle. She has no recollection of the accident. And there were no eyewitnesses. The plaintiffs' claims for compensation rest on photographs taken by the second plaintiff, and his wife, a day after the accident. These photographs are the basis for the conclusion by Mr Barry Grobbelaar, a mechanical engineer and accident reconstruction expert, that the accident was probably caused by irregularities on, or the failure of, the road surface.

THE CENTRAL ISSUE

5. The plaintiffs' case is that the Land Rover struck a pothole or other irregularity in the road surface. This caused the first plaintiff to lose control of the Land Rover which left its path of travel and ended up off the road on a gravel verge. The central issue is whether road surface irregularities on the area of the R555 road on which the first plaintiff was driving caused her to lose control of the Land Rover resulting in an accident.

THE EVIDENCE

6. Four factual witnesses and one expert witness testified for the plaintiffs.

- (a) Ms Juan-Marie Lewis, the first plaintiff on her recollection of events prior to the accident.
 - (b) Mr Anthony Lewis, the second plaintiff, testified on his personal claims and arriving at the scene of the accident after the first plaintiff had been taken by ambulance to hospital. He confirmed that he took photographs the day after the accident.
 - (c) Mrs Lewis, the second plaintiff's wife and the first plaintiff's stepmother confirmed she took photographs the day after the accident.
 - (d) Ms Trudi Verster, who went to the accident scene after the accident occurred, and before the first plaintiff was taken to hospital by ambulance; and
 - (e) Mr Barry Grobbelaar, an accident reconstruction expert who visited the scene of the accident for the first time on 2 July 2015, two years and ten months after the accident occurred
7. The plaintiffs and defendant each delivered a report from a civil engineer dealing with the condition of the R555 road, the warning signs on the road, and their state and visibility. Mr du Preez filed a report on behalf of the plaintiff and Mr Raath on behalf of the defendant. The experts produced a joint minute which obviated Mr Du Preez's testimony. The views of these experts on the state of the road do not contribute to deciding the central issue in this case.
8. The defendant called two witnesses:
- (a) Mr Tshabala, an employee in the Department of Public Works to testify on repairs to, and maintenance of, the R555, and the road signs erected thereon.
 - (b) Mr Raath, a civil and structural engineer.
9. The evidence for the defendant was aimed at demonstrating that the road in question was being repaired and maintained and that warning signs had been

erected to warn drivers of the existence of potholes on the road surface. Their evidence did not contribute in any way to resolving the central issue in the matter.

The first plaintiff's testimony

10. The first plaintiff worked as a waitress in Dullstroom. She had been living there for a year when the accident occurred. She was visiting her father and step mother at their farm in Modderspruit, Mpumalanga on the day of the accident. With her father's consent she drove the Land Rover from the farm to a shop in Roossenekal where she bought snacks. She left the shop and was driving on the R555 back to her parents' farm. She stopped on the side of the road to buy mielies from a vendor. She allowed a truck to pass before re-entering the road. The last thing she remembers was driving behind a truck on the R555 road. Her next memory was waking up in hospital. She testified that she had neither a driver's licence nor a learner drivers' licence. She could not remember the time she left the farm to go to the shop, nor the time of the accident. She could also not remember whether she was wearing a seatbelt. During cross examination she was taken to a statement in the trial bundle which was ostensibly signed on 26 January 2014. She does not recall making a statement. She did however identify the signature thereon as hers. She confirmed that portion of paragraph 3 which stated that she drove to Roossenekal to make purchases, stopped to buy mielies, drove out of Roossenekal and at a T-junction turned left onto the R555 traveling in the direction of Laersdrift. The statement was not handed in as an exhibit. The first plaintiff admitted that she was not able to testify to what occurred immediately before the vehicle left the road, nor what caused her to lose control of the Land Rover.
11. All the plaintiff's evidence established was that she was an unlicensed driver driving her father's Land Rover behind a truck on the R555 road on the day in question. She could not testify how the accident occurred nor why she lost control of the vehicle she was driving.

The second plaintiff's testimony

12. Mr Lewis, the second plaintiff, is the first plaintiff's father. He identified the road on which the accident occurred as the R555 road which is tarred. The road has two lanes; one lane carries traffic to Roossenekal and the other to Laersdrift. He described the road as full of potholes.
13. Mr Lewis was the owner of the Land Rover. He did not witness the accident. He received a phone call at around 17h30 that his wife had been involved in an accident. It turned out that it was his daughter. He was driven to the accident scene by a friend. By the time he arrived at the scene the first plaintiff had been transported to hospital by ambulance. Upon his arrival he saw that the Land Rover had been involved in an accident and whatever had been inside the vehicle was strewn over the road. Residents who lived near the accident scene were found in the vicinity of the accident scene. He removed what was on the scene, lifted debris and moved the vehicle from where it had come to rest after the accident to ensure that it did not pose a hazard on the road. The nearby residents agreed to look after the vehicle. Mr Lewis then left the scene of the accident and went to the hospital to which his daughter had been admitted.
14. Mr Lewis returned to the scene of the accident the following morning. He was accompanied by his wife and the friends who had taken him to the hospital the previous day. Mr Lewis and his wife took photographs of the Land Rover and of the area where the accident had occurred.
15. Mr Lewis confirmed that the photographs reflected what he saw on the day he took the photographs. He agreed that there were no photographs of the Land Rover standing at the place it had come to rest. The photographs of the Land Rover did not depict its resting place after the accident but depicted the place the Land Rover had been moved to from its resting place after the accident. He identified two tracks on the image on Exhibit "B8". These were the tracks of the Land Rover. The Land Rover had come to rest after the accident at the point where the tracks ended.

16. During cross-examination Mr Lewis was taken to some paragraphs in an affidavit he made on 26 January 2013.¹
17. Mr Lewis testified that he met Mr Grobbelaar, the motor vehicle reconstruction expert at the scene of the accident on the day of Mr Grobbelaar's first inspection of the accident scene. He did not make any "pointing outs" to Mr Grobbelaar. I understood the to mean he did not identify or point out anything to Mr Grobbelaar. As far as his claim for damage to the vehicle is concerned he testified that he did not repair the vehicle because the costs of repair would have exceeded its value. He later sold the vehicle as a scrap. He paid for the first plaintiff's medical treatment as well as the costs for adapting the house in which she lived to make it suitable for her needs.

Mrs Lewis's testimony

18. Mrs Lewis accompanied her husband to the scene the day after the accident. She saw marks on the road. She confirmed that the photographs she took depicted what she saw on the day they were taken. She confirmed that she took the photograph marked exhibit "B8".² According to her that photograph depicts where the motor vehicle went into the grass. She conceded that she had not seen the Land Rover entering that area or standing in that area after the accident. She could not identify the resting place of the Land Rover after the accident and did not dispute that the Land Rover had been moved from its resting place on the day of the accident.

Ms Verster's testimony

19. Ms Verster lived on a farm close to the scene of the accident. She estimated the distance from the farm to the scene of the accident to be 100m. Her house was located on the right side of the road while the accident occurred on the left side of the road. Ms Verster and her husband were about to sit down for the evening meal when she heard a loud sound outside. She and her husband went outside to

¹ The affidavit was not handed in as an exhibit.

² The second photograph on CL 18-4

investigate. Albion, the gentleman who tended to their garden, told her that he saw a human body going through the air. She went to the scene of the accident where she found the first plaintiff lying on the ground behind a steel pole. She was at the scene when the first plaintiff was taken by the emergency services. Ms Verster testified that she did not know Albion's surname nor his whereabouts. Her last contact with him had been in 2013 when she moved from the farm.

Mr Barry Grobbelaar's testimony

20. Mr Grobbelaar is a motor vehicle reconstruction expert. He was given the photographs taken by Mr Lewis and Mrs Lewis on the day after the accident. According to him these photographs depicted road surface irregularities, potholes on the road, as well as indications of past repairs to potholes. He noted the existence of a step up at the end of a portion of the road that had been previously repaired. He also noted an irregularity as well as tyre marks in that repaired area.
21. Mr Grobbelaar conducted two inspections of the scene of the accident. The first was on 2 July 2015 at which he took photographs. The second inspection was on 24 February 2024.
22. Mr Grobbelaar testified that Mr Lewis was present at the first inspection, that he and Mr Lewis walked around the scene and behind the fence, and that Mr Lewis had pointed out to him where the vehicle had come to rest after the accident.
23. After the first inspection Mr Grobbelaar drew a sketch of the accident scene to scale based on the photographs taken by Mr Lewis and Mrs Lewis, and his own observations and measurements taken at this first inspection. The available information formed the basis of his opinion.
24. In his opinion the accident occurred on a section of the R555 that had previously undergone repairs due to damage such as potholes or surface failure. There was a depression or drop in the repair area and potholes had formed in the repaired area. A step up had formed at the end of the area where the patched surface met the road surface ("**the repair area**"). Mr Grobbelaar identified this step up on the

photograph labelled C14 on exhibit “I”. He circled the step-up during his evidence for identification purposes. (The photograph C14 is a an enlargement, to emphasise the road irregularities, appearing on the photograph labelled C4).

25. Mr Grobbelaar described the step-up to be of significant height. And described the pothole which appears on the photograph (C14) as being “relatively deep”. He explained that he used the word “relative” to convey that the depth of the pothole can have an effect on a sedan motor vehicle. He did not know how deep or wide the pothole was.
26. The rectangle shape drawn on the photograph C14 was placed by Mr Grobbelaar during his evidence. He described that part as a section of the road that had been completely distorted. He described the area inside the rectangle as an area of severe road failure or road trauma where the tar section of the road had been pushed upwards to create a mound on the left-hand side of the road.
27. On the photograph labelled “C5” on exhibit “I” Mr Grobbelaar pointed to two dark lines on the road surface which he circled during his evidence. He identified these as tyre marks.
28. In this regard he also referred to the photograph labelled “C3”. He indicated the tyre marks on C3 by arrow marks which he drew on the photograph during his evidence.
29. He testified that the tyre marks start in the vicinity of the road repair and continue from there. He identified the area where the tyre marks start as the vicinity where the loss of control of the Land Rover started continuing to where the vehicle came to rest after having rolled.
30. Mr Grobbelaar concluded that the first plaintiff probably lost control of the Land Rover as a result of features identified by him in the repaired road section. I have mentioned these features in paragraph 24 above.

ANALYSIS

31. Ms Verster arrived at the accident scene after the accident occurred. She saw Ms Lewis lying outside the car. Her evidence, like that of Mr Lewis and Mrs Lewis does not establish why the first plaintiff lost control of the Land Rover. In the absence of Ms Lewis recalling how the accident occurred and in the absence of eyewitnesses, the entire case rests on the photographs taken by Mr Lewis and Mrs Lewis on the day after the accident.
32. Mr and Mrs Lewis testified that the photographs depicted what they saw the day after the accident. The photographs which were taken from different directions are images of the road on which the accident occurred. Neither Mr Lewis nor Mrs Lewis testified what marks or markings were on the road and where they can be seen on the photographs, nor where the alleged offending pothole or irregularity on the road surface on which the plaintiffs' case hinges can be seen on the photographs. I do not know what object or feature the photographs purported to represent.
33. It was submitted by the plaintiffs' counsel that the photographs constituted real evidence, and therefore it was not necessary for a witness to identify or describe the images depicted on them. He argued that the photographs had been proven by the photographers, Mr and Mrs Lewis, who had confirmed that they took the photographs and that the photographs correctly represented what they saw on the road on that day. I do not agree with these submissions. Photographs and films are real evidence. However, there must be evidence to identify the photograph as a true likeness of the place, object, or person which it purports to represent.³ Milne JP in S v Ramgobin and Others⁴ dealt with the question whether photographs constitute real evidence and stated –

³ *The South African Law of Evidence* DT Zeffertt and AP Paizes (3rd ed) at 968 para 22.2.

⁴ 1986(4) SA 117 (N) at 125G-I.

“The case of *R v W* establishes that photographs and films must be identified as true representations of the objects and persons which they purport to represent before they can be said to be real evidence. Objects do not prove themselves any more than documents do.”

34. I do not know what Mr and Mrs Lewis saw on the road on the day they took the photographs. In my view all that the plaintiffs have proven is that the photographs were taken by Mr Lewis and Mrs Lewis on the day after the accident, and that they are images of the R555 road on the day the photographs were taken. While the photographs are a reflection of a stretch of the R555 road on which the accident occurred, I do not know what particular features or characteristics of the road are depicted on the photographs. Neither Mr Lewis nor Mrs Lewis pointed to tyre marks, other marks or markings, pot holes or other defects or distinguishing features on the road or road surface. Mr Lewis identified the damaged Land Rover on the photographs and identified the tracks on exhibit B8 as those of the Land Rover. What has been proven is that the vehicle tracks depicted on exhibit B8 are those of the Land Rover and that is the area where Mr Lewis found the Land Rover when he arrived at the scene of the accident.
35. The location of the pothole or road irregularity which was alleged to have caused the first plaintiff to lose control of the Land Rover was not identified by any of the factual witnesses. Until Mr Grobbelaar gave evidence I did not know where the pothole or road defect that the Land Rover is alleged to have struck was to be found. I also do not know how far from the point the Land Rover had come to rest it was moved, and in relation to its resting place after the accident, where it had been moved to. All that I know is that the Land Rover was moved closer to a house near the accident scene and that the Land Rover was severely damaged.
36. Mr Grobbelaar’s conclusion that the accident was the result of the vehicle encountering an irregularity on the road surface causing the first plaintiff to lose control of the motor vehicle is based on his interpretation of the photographs taken by Mr Lewis and Mrs Lewis, the measurements he took at the scene of the accident, what he had observed at the scene and what he had been told on the day of his first inspection of the scene. According to Mr Grobbelaar he and Mr Lewis

walked around the scene behind the fence and the area where the vehicle came to rest was indicated to him. Mr Lewis testified that he met Mr Grobbelaar at the scene of the accident but denied making any pointing outs to him. I do not know what Mr Grobbelaar was told, who the source of the information was, and how he came to conclude that the two dark lines he referred to in his evidence, and which appear on photographs C3 and C5, are firstly tyre tracks, and secondly are those of the Land Rover. The tyre tracks as well as the resting position of the Land Rover are pivotal to a finding where control of the vehicle was lost. Mr Grobbelaar conceded under cross examination that he did not investigate whether the tyre marks reflected on the photographs were made by the Land Rover. He was asked whether he could say that the tyre marks belonged to a Land Rover or such type vehicle. He responded that he could not tell this from the photographs.

37. Mr Grobbelaar also conceded he could not point out on the photographs where the Land Rover had come to rest. When challenged by the defendant's counsel how he was able to take measurements considering that Mr Lewis did not point out to him where the Land Rover had come to rest, he answered:

“it was pointed out to me where the Land Rover came to rest, as I have said I am not sure who pointed it out, where it was pointed I measured that position relative to the road and relative to the starting point which was the area of the road repair. As I did all the other points that are on the scale plan and that is how that measurement occurred. And as one looks at the plan...on page 08-8 there one can see where I have indicated the approximate position [where] the Land Rover [came to rest], as indicated, it is approximate as pointed out, that is also on my plan. And it follows on the path of the tyre marks on and off the road. So if [you] will follow the dotted line indicated from the location of road repairs, [you] ... will see a dotted line indicating the path which those tyre marks that [you] ... saw on the photographs, that indicates the approximate path that they follow to where it goes through an area where this Land Rover slid across the gravel verge on the opposite side of the road and where it comes to rest.”

38. Considering that Mr Lewis denied pointing out anything to Mr Grobbelaar on the day of the inspection I do not know who told Mr Grobbelaar where the vehicle had come to rest.

39. Against Mr Lewis's testimony that the Land Rover was moved from its resting position so that it was not a hazard, the following in Mr Grobbelaar's evidence affects the weight of his opinion –

MS BOTHMA: Now can you explain to the Court how that information of having to remove the Land Rover from the side of the road so that other vehicles do not drive into it, would accord with your evidence that the Land Rover according to you, would have ended up according to your sketch plan which is Annexure A1 to your report, your additional report, would have ended up approximately 22.3 metres into the veldt?

MR GROBBELAAR: Well, that is the area that was pointed out when I was at the accident scene.

MS BOTHMA: Do you agree that that does not accord with each other, those two versions?

MR GROBBELAAR: Well, the vehicle was not on the road, that we know.

MS BOTHMA: But my question to you is, is do you agree that that version by Mr Lewis, that the vehicle had to be towed away from the side of the road so that other vehicles do not drive into it. So it is not a danger to other vehicles on the road, does not accord to what you had testified to that the vehicle had ended up or what you had indicated on your sketch, as the vehicle was pointed out to you 22.3 metres into the veldt?

MR GROBBELAAR: Correct, yes. I mean that is the way into the veldt.

MS BOTHMA: So that does not accord?

MR GROBBELAAR: Well, it would not pose a danger to other vehicles when it is 22.3 metres into the veldt, correct.

MS BOTHMA: So that evidence does not accord with each other. Is that correct?

MR GROBBELAAR: Correct."

40. Based on the evidence before me I do not know what caused the first plaintiff to lose control of the Land Rover. While I am persuaded that there were potholes and road irregularities on the day I am not able to find that the Land Rover had struck a pothole or encountered an irregularity on the road which resulted in the first plaintiff losing control of it, and it leaving the road. In the result I come to the conclusion that the defendant is absolved from the instance.
41. Turning to the question of costs there are two aspects. The one relates to the curator ad litem costs and the other the costs of the action. The application for the appointment of a curator application was brought at the insistence of the defendant. During the trial it became evident that there was no need for a curator

ad litem. In my view the defendant's attitude that a curator *ad litem* was necessary for the first plaintiff was unreasonable. The defendant's attitude appeared to have been informed by the first plaintiff's inability to recall the accident. It is fair that the defendant should fully indemnify the plaintiffs for all the costs relating to the curator ad litem. As far as the costs of the action are concerned, the trial could not commence on the first day because the defendant's expert did not want to agree to a meeting with Mr du Preez, and to a joint minute. The defendant should bear those costs. There were days when the matter did not proceed at the defendant's request. The costs of those too should be borne by the defendant. As far as the remaining costs are concerned, I do not deem it just and equitable for the costs to follow the result. Having considered all the evidence before me and noting the delays caused by the defendant in bringing the action to trial I deem it just and equitable that each party should bear its own costs in that regard. Insofar as the liability for costs which may have been reserved are concerned the parties must prepare a joint note listing the dates of the postponement as well as the reason therefore in order for me to decide who should pay the reserved costs.

42. In the result I make the following order:

- a. The defendant is absolved from the instance.
- b. The defendant must pay the following costs:
 - (i) all costs relating to the curator *ad litem*, including the costs of the application for his appointment; and
 - (ii) the costs for the hearing on 15 April 2024 as well as the costs for the days when the trial did not continue at the defendant's request.
- c. The costs payable by the defendant are to include the costs of two counsel, junior counsel's costs are to be paid on Scale B.
- d. The issue of liability for any reserved costs is postponed *sine die*.

- e. Subject to paragraph 38(b)(i), 38(b)(ii) and 38(d) above, the parties shall pay their own costs.



S K HASSIM J
Judge of the High Court
Gauteng Division, Pretoria

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file on CaseLines. 6 November 2025 is deemed the date on which the judgment is handed down.

For the Plaintiffs:

Adv SJ Myburgh SC
Adv JC Van Eeden

For the Defendant:

Adv M Bothma