



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: 2965/2018

In the matter between:

**TRACEY LEIGH DU PLOOY**

**CHANE-LEIGH DU PLOOY**

**MONIQUE DU PLOOY**

and

**THE MEMBER OF THE EXECUTIVE COUNCIL**

**FOR DEPARTMENT OF POLICE,**

**ROADS & TRANSPORT: FREE STATE PROVINCE**

**FIRST PLAINTIFF**

**SECOND PLAINTIFF**

**THIRD PLAINTIFF**

**DEFENDANT**

**AND**

Case no: 31/2019

In the matter between:

**DAVID GREEN**

and

**THE MEMBER OF THE EXECUTIVE COUNCIL**

**FOR THE DEPARTMENT OF POLICE,**

**ROADS & TRANSPORT: FREE STATE PROVINCE**

**PLAINTIFF**

**DEFENDANT**

**Neutral citation:** *Du Plooy and Others v Member of the Executive Council for Police, Roads & Transport: Free State Province* (2965/2018; 31/2019)  
[2025] ZAFSHC 363 (20 November 2025)

**Coram:** NTANGA AJ

**Heard:** 18 August 2025

**Delivered:** 20 November 2025

**Summary:** Delict – motorcycle accident – negligence – contributory negligence – inadequate or absence of road signage.

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## ORDER

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- 1.1 It is declared that the defendant is liable for 80% of the plaintiffs' proven damages as a result of the two motorcycles' accident which occurred on 14 May 2018.
- 1.2 The defendant is ordered to pay the plaintiffs' costs on a party-to-party scale, including costs of counsel on scale B.

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## JUDGMENT

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**Ntanga AJ**

### **Introduction**

[1] The first plaintiff, together with the second and third plaintiffs, instituted action against the defendant under case number 2965/18 for damages arising from duty of care in respect of the maintenance and upkeep of public roads within the defendant's jurisdiction.

[2] Mr Green also instituted action against the defendant under case number 31/2019 for damages arising from duty of care in respect of the maintenance and upkeep of public roads within the defendant's jurisdiction.

[3] As the three actions share the same factual background and the same issues of law and facts, it was agreed that it would be convenient for all the two actions to be heard together. An order was granted on May 5, 2022, for consolidation of the two separate actions.

[4] The plaintiffs' claim arises from an accident of two motorcyclists which occurred on April 13, 2018, at or near the T-junction of Minaar Street and Wonderfontein road within the jurisdiction of the defendant.

### **Issues for determination**

[5] This Court is enjoined to determine the merits of the damages to be awarded to the plaintiffs. The Court must determine whether: (a) the defendant wrongfully failed to provide adequate signage on the road; (b) whether such wrongful failure was negligent;

(c) whether such wrongful and negligent conduct causally contributed to the accident; and (d) whether the motorcyclists were contributory negligent.

## **Background**

[6] In their particulars of claim, the plaintiffs averred that, on or about May 14, 2018 and at or near the T-junction of Minaar and Wonderfontein Road, a public road within the jurisdictional area of the defendant, at approximately 23h00 a motor vehicle accident occurred when a red and black Kawasaki motorcycle bearing registration number: C[...], driven at the time by Mr Adriaan Marthinus Du Plooy and a black Suzuki Motor Cycle with registration number: C[...]<sup>2</sup>, driven at the time by Mr David Green.

[7] The plaintiffs aver that the accident was caused by the defendant's wrongful and negligent breach of its duty to maintain the public road, specifically the T-junction of Minaar and Minaar Street, a public road within the jurisdictional area of the defendant, and to take all reasonable steps to prevent damage and or harm to road users. The defendant's failure or breach was wrongful and negligent in one or more of the following respects:

- '8.1 failed to have in place any warnings signs at or near the intersection of Minaar and Minaar Streets, Sasolburg District;
- 8.2 failed to have in place at the said place any advance warning signs;
- 8.3 failed to have in place at the said place any warning signs;
- 8.4 failed to have in place at the said place any road markings;
- 8.5 failed to have in place at the said place in advance of the said place any clear, unambiguous appropriately positioned warning signs or road markings;
- 8.6 failed to have in place the following signs and or road markings:
  - 8.6.1 warning of T-junction ahead;
  - 8.6.2 warning to reduce speed;
  - 8.6.3 stop sign at T-junction;
  - 8.6.4 chevron at T-junction;
  - 8.6.5 warning sign at island;
  - 8.6.6 stop street road markings; and
  - 8.6.7 road markings on kerb of island.'

[8] The plaintiffs averred that, as a direct consequence of the breach, the accident caused the death of Mr Adriaan Martinus Du Plooy as a result of injuries sustained in the accident.

[9] The plaintiffs further averred that, as a result of the breach of duty of care, Mr David Green sustained the following bodily injuries:

- (a) fracture of the left lower leg (tibia/fibula);
- (b) head injury;
- (c) laceration of left leg; and
- (d) bruises and abrasions.

### **The plaintiffs' case**

[10] The plaintiffs called Mr David Green as their first witness who testified that the accident occurred on or about April 13, 2018. He testified that, on the day of the accident, he was riding a Suzuki Motorbike called Boulevard 1800 from a function from Jackies' place on the Vaal River. He was travelling on his own motorbike, and Mr Du Plooy was riding his own motorbike. Mr Green was on the left-hand side, and they were staggered in the manner on which they travelled. Mr Du Plooy was on the right-hand side in front in the left-hand lane. Mr Du Plooy was travelling in front, and Mr Green was at the back, and they were four to five meters apart. Mr Du Plooy was leading the way because Mr Green was not familiar with the place. Regarding visibility, he testified that it was very dark, and he could not see anything, except the lights. The only lights were from their motorcycles, and they were travelling at 60 kilometres (km's) per hour. They were travelling to the northern direction of the road, from the bottom to the top of the road. After the accident, they landed more to the top of the road. At the end of the crossing, there is a ditch, Mr Du Plooy was lying in the ditch, and he was lying further to Mr Du Plooy.

[11] He testified that they did not know where a T-junction was because it was dark. It was too dark, there were lights on the right-hand side, he thought there was a motor vehicle coming on. The lights were on the right-hand side, on the side of the oncoming traffic, and that looked like it was a vehicle that took a curve away from them, on the right lane. He was not sure whether the lights were moving or stationery. He thought the lights were from a motor vehicle, but it turned out that it was a flashlight. He testified that he could not see the curve where the vehicle with a flashlight had parked, he only saw it

two days later. After he saw the lights, it was few seconds and he heard a sound, it was Mr Du Plooy falling, then it was him. After the lights, he travelled for about 30 meters before the accident. He heard gravel under his tyres, then it was chaos, the accident happened.

[12] On the way before the accident scene, he did not notice anything on the road, he did not see any road signs. At the intersection, there was nothing, he also did not see any indication of the speed limit. The only reason they drove at 60 km's per hour was because it was scary and dark. He testified that there were no road markings. On page 130 of the plaintiffs' trial bundle, which was submitted as Exhibit B, he marked the area where the lights were located.

[13] He testified that he did not identify any rumble strips towards the accident scene. Still referring to Exhibit B, Mr Green pointed out the gravel that appears on the photograph. He testified that the gravel appeared two to three seconds before the accident and that it is the sand he felt before the accident. The gravel is where the stop sign should have been. On page 11 of the trial bundle, he identified the document as a picture of the chevron board. He testified that he did not see the chevron board before the accident. Mr Green identified an island on page 16 of the trial bundle and testified that the island is located 10 meters before the accident scene. He also identified rumble strips on page 19 of the trial bundle and testified that he could not hear or feel the rumble strips from the motorbike because these were almost equal to the surface of the tar road. He did not feel that he was driving over rumble strips. Minaar street was 4.5 meters wide and, if he was able to see, he would bring his motorbike to a standstill within 10 meters.

[14] Mr Green testified that it was his first time that he was driving on that road as he was from Springs in Gauteng. At the time of the accident, he was staying in Sasolburg for three months and 13 days. He did not travel on that road when going to work as this was not the road to his workplace. He confirmed that he resides on the same street where the accident occurred and his house is about six kilometres from the accident scene. He had no need to travel on that road prior to the date of accident, when he goes to work, he travels by R55 road.

[15] Mr Green testified that they travelled to Jackies' place at around 19h00 to 20h00. Before travelling to Jackies' place, they had a burger and cool drink in Vanderbijlpark. At Jackies' place, there was music band playing. He is not familiar with the place, and it was the first time that he was at the place. He testified that they did not drink alcohol at Jackies' place, they only drank sprite zero cool drink. He bought two for himself and Mr Du Plooy. On whether Mr Du Plooy drank alcohol, he testified that he usually drank sprite zero and he did not see him drinking anything else at Jackies' place. He testified that he did not drink alcohol before travelling to Jackies' place as he does not drink alcohol when riding a motorbike.

[16] Regarding how he landed after the accident, Mr Green testified that he flew over the hip of soil or sand that was beyond the T-junction. He could not recall how he ended up flying over the hip of the soil after driving over the gravel. He testified that Mr Du Plooy fell into the ditch and passed on. After the accident, he passed out five times and experienced pain in his shoulder, left knee and right shoulder. There was water in his knee, he was on crutches and, at some point, on a wheelchair. He was taken to Emfuleni Medi Clinic by an ambulance. Prior to the accident, he had no injuries on his right shoulder and right knee. He now has screws on his leg, which were put 10 days after the accident. He suffered no other injuries between the accident and the operation.

[17] Under cross-examination, Mr Green testified that there are times that he would not be with Mr Du Plooy, particularly when he was with his customers. He confirmed that he would not know what Mr Du Plooy would be drinking when he was not with him. He testified that the distance between Jackies' place and the accident scene is 6 km's and it would take 25 minutes to drive. He took measurements after the accident; he decided to go to the accident scene after he was discharged from hospital to check what exactly happened. He was referred to a road sign indicating the speed limit as km's per hour. He confirmed that he was under the impression that Mr Du Plooy knew the route as they talked about it. He testified that, before the accident, other than the vehicle that had oncoming lights, there were no other vehicles and there were no visible animals on the road. He testified that, whilst he is wearing glasses, he can see from far and he confirmed that he was wearing glasses in 2018. Regarding his experience of riding a motorbike, he testified that he had been riding a motorbike from when he was 4 years

old. He was wearing a full helmet at the time of the accident. He testified that, if he had seen the T-junction, he would have stopped 20 meters before the T-junction and he would have stopped before the line.

[18] When dealing with the question of whether they were looking for a stop sign, he responded by stating that, when you know that a T-junction is coming, you would know that the road is coming to an end, that is why they drove at 60 km's per hour. He testified that he was not paying attention to the distance, he was just following Mr Du Plooy and could not see anything. Once his motorbike hit the gravel, he closed his eyes, he knew that an accident was coming. He confirmed that his motorbike was road worthy, and he bought it a year before the accident, the head lights were in good condition. Regarding the rumble strips, he confirmed that a motorbike would make noise and vibrate from the engine. However, he reiterated his version that they could not hear any rumble strips or see them. He disputed Sergeant Modise's version that there was a stop sign.

[19] After cross-examination, an application was made to re-open Mr Green's evidence, and the application was granted. Mr Green testified about the photos he took of the accident scene after he was discharged from hospital. He testified about the location of the motorcycles after the accident and where the stop sign should have been. He testified that the stop sign does not appear in the photograph. He testified that there was no stop sign lying on the ground. Under cross-examination, he testified that he took the measurements of the accident scene two months after the accident. He took the photographs on April 14, 2018, the day he was discharged from hospital. He confirmed in the photograph the absence of a stop sign. He testified that he did not walk to where the stop sign should have been, he just took a picture.

[20] The next witness was Mr Steward Truscott who testified that he is aware of the accident, in that evening he was assisting a friend who had an accident where the plaintiffs' accident occurred. He received a call from his friend after 23h00, he arrived on the scene at 23h30. He travelled with his father in a bakkie to tow the friend's motor vehicle. Upon arrival, the friend's motor vehicle was in the angle towards the ditch. He pointed out where the accident happened. On the way towards the accident scene, it



was extremely dark and there were no lights. They pulled the vehicle towards the bottom of the road. His friend advised him that she was driving from the bottom towards the intersection and did not notice that the road was ending. There was no board indicating that the road was coming to an end. He observed that there was no chevron board indicating that the road was coming to an end. He testified that there were no road signs.

[21] Ms Van der Gryp advised him that when coming from Wonderfontein Road, she saw the road ending, swerved and lost control. Whilst standing, they noticed two lights coming down from Wonderfontein Road, from bottom to the top. He could not indicate how far the lights were because it was dark. Mr Truscott testified that he told his father to warn the oncoming drivers with the two lights with a flashlight to indicate that there was something there. He was still seated at the time on the driver side. His father took the flashlight, showed it to the sky and tar road. His father was standing next to his bakkie on the driver side, about a meter and a half. They wanted to caution the oncoming drivers to be cautious because there was already an accident, so that they are not also involved in an accident. He confirmed that the lights coming towards their direction were dim. The motorcycles took five to six seconds before reaching where they were standing. After the motorcycles passed them, they heard a sound which was loud but not too loud. He turned around and saw them going across the street and thought that the two motorcyclists might have been involved in an accident. He testified that the motorcyclists fell into the ditch, he went to check the motorcyclists and found one biker still breathing and the other one was not responding and later on he stopped breathing after almost two hours. He decided to call an ambulance for assistance.

[22] Mr Truscott confirmed that there was gravel lying on the tar road, there was no paint marking the stop line and there were no speed bumps. He walked on the left-hand shoulder of the road to see if there was an indication of a stop sign and he did not see any stop sign. He testified that during the proceedings, his father was in a lot of pain, recovering from a back surgery. He cannot sit up for more than 30 minutes, and he cannot bend or drive a long distance as he stays in Vanderbijlpark. After the accident of the motorcycles, other motor vehicles arrived. This included friends and family members of the motorcyclists.

[23] The next witness to testify is Mr Willie Du Preez, who testified via video link that he holds a B. Engineering from University of Pretoria. He is registered as a professional construction manager in the civil engineering field. He obtained his degree in 1982 and he has knowledge in roads, road signs and road markings. He referred to his expert opinion the summary of which is as follows:

(a) He was instructed by Leon JJ van Rensburg Attorneys to issue an opinion where two motorcyclists drove through an intersection at a T-junction where there were no warning signs or road markings in place. The scene of the accident was identified to him by Mr Anton Myburgh from Leon JJ van Rensburg Attorneys on 18 May 2018. He based his opinion on the facts gathered on the scene as well from the affidavits from Emmanuel Modise from the South African Police Service (SAPS), Stuart Scott and Jenifer van der Gryp, all attached under Annexure "A".

(b) He took the photographs of the scene on 18 May 2018 at approximately 08h00. Warning signs are used to alert drivers to hazardous or potentially hazardous conditions, on or adjacent to the roadway. Warning signs indicate a need for extra caution by road users and may require a reduction in speed or other manoeuvres, in the interest of their safety and that of other drivers. It is imperative for warning signs, to be clear, unambiguous and appropriately positioned.

(c) A driver of a motor vehicle is obliged to maintain a proper lookout; they must pay attention to what is happening around them. But, most important of all, they must, as far as possible, keep their eyes on the road, particularly at night when the vision is limited. Depending on the state of the traffic, the nature of the road and the speed at which he is travelling, the opportunity which a motorist must read and comprehend the importance of each sign may be extremely limited. Indeed, it is not uncommon for even the most competent and cautious drivers to misread or fail to react to a road sign. For this reason, it is imperative, particularly in unlit areas, for warning signs and other signs and road markings to be in place, to be clear, unambiguous and appropriately positioned, so, if necessary, they may be read and comprehend at a glance. This is more so where there is a potentially dangerous situation ahead, such as an unusual, shaped bend or, for that matter, an unlit T-junction which would otherwise not be anticipated by a driver who is unfamiliar with the road.

(d) Authorities responsible for road signs are not entitled to assume that drivers will read and react to every sign regardless of nature, size and positioning. Road markings

perform a very necessary function by conveying requirements and information to drivers which might not be possible by means of road signs. They may often be visible when signs are obscured and are able to provide message continuity to drivers of moving vehicles, which may be difficult to achieve by using road signs. The effectiveness of road markings will deteriorate rapidly if their application is not adequately specified and controlled. When road markings have poor durability, the road authority is forced to re-mark more frequently, which was not the case in this incident. The road authority failed to maintain the road markings. If road markings are not durable or well maintained, the accident potential for sections of roadways may be significantly increased, with adverse economic effects, which is the case at the specific alleged scene of the accident.

(e) There are absolutely no warning signs of any nature from any direction approaching the intersection, nor are there any form of road markings visible from a direction towards the intersection, which is an unacceptable situation created by the relevant road authority, placing the road user in a very dangerous and risky situation. The road user receives no warning of any nature, which might enable the road user to reduce speed or to take the required action to avoid the risk/danger.

(f) Photographs 1 and 2 of the photo album indicates the absence of the required 'STOP' sign. Photographs 3 and 6 indicate no road markings that indicate the requirement to 'STOP'. Photographs 5 indicates that there were no signs of any nature in place to warn the drivers of motor vehicles of a dangerous situation coming up soon. Photograph 7 indicates the skid marks on the road surface of a motor vehicle that overshot the intersection as a result of no warning signs or road markings. Photograph 8 indicates the required warning sign in a position in the grass, scratch marks on the warning sign indicates that numerous objects went across the sign while being in this position in the grass, instead of where the sign was supposed to be. Photograph 9-12 indicate spares from various vehicles that have overshot the intersection as a result of the absence of the required warning signs and road markings. Photograph 13 indicates that the raised island is not marked with a hazard marker to indicate the hazard and the curb stones are also not painted white and black to make the raised island more visible.

[24] Mr Willie Du Preez' opinion concludes that:

(a) The applicable road authority is not conducting their duty with diligence and in the best interests of the general road user. The road user expects the correct and applicable warning signs and road markings to be in place at all times, to inform the road user of any dangerous situation that will enable the road user to take the required preventative actions as per the information issued by the warning signs. The consistency of providing the correct and required warning signs next to roads is very important, inconsistency leads to confusion by road users which is a risk to the road user.

(b) These accidents and all previous incidents at this specific location might have been avoided if the required road signs road markings were in place. It is therefore also clear that road safety audits are not done regularly in an effort to identify the risk areas and to mitigate the risk for the relevant road authority as well as for the road user.

(c) In a case such as this where the relevant road authority does not have the financial means to erect road signs and to apply road markings, or where the relevant road authority does not have the experienced and skilled technical people who can take the required decisions, the stage has been reached where the road should have been closed, in an effort to protect the road users against these dangerous conditions.

[25] Mr Du Preez testified that he was taken by Mr Anthony Muyburgh to the accident scene on May 18, 2018. In his evidence, he restated his opinion regarding the road signs and road markings as well as the importance of their visibility. He testified that road markings and road signs go hand-in-hand. If there is a marking, there should also be a solid wide line to indicate that the road user is not allowed to overtake in that area. Road markings complement the road signs. Road markings indicate where you should not overtake and where you should stop. Road signs indicate that you should reduce speed. From time to time, where there are no road signs, road markings can complement and vice versa.

[26] Regarding the picture on page 18 of his report, Mr Du Preez testified that the picture is a steel pole where the stop sign used to be. He testified that one can see that the stop sign has been removed for quite some time. When making reference to page 20 of the expert notice bundle, he testified that, as appears from the photograph, there are no road signs or solid line in the area. He pointed out to the potholes and indicated

that the road edge is breaking. He referred to page 22 of the expert notice and testified that there is no warning sign, no road marking sign or stop sign at the T-junction. He confirmed that the photographs in the expert notice bundle were taken a month and four days after the accident. Regarding the photograph on page 24 of the expert notice, he testified that the picture shows skid marks as a result of absence of warning signs. He also testified that there is a lot of debris and the portion of the road surface that is not in place. There is a little bit of gravel lying there. There is also muddy area. Photograph 21 of the expert notice indicates rumble strips which has minimum effect. They are relatively flat and have no impact to the road users.

[27] Mr Du Preez testified that in his opinion, the rumble strips were in similar condition, very flat and not able to warn the road users of the danger coming up. On how the rumble strips are created, he testified that effort is created with asphalt (tar) on a half-circle profile. Rumble strips can be created within one day. The road markings should have been re-done a while ago as there are no road markings visible anymore. He testified that there was a patch here and there on the right, at the T-junction, there was no full road marking. Depending on the planning of the project, at least three days' time period will be sufficient. He testified that, in his opinion, maintenance on the road surface and markings was not done very diligently. Road inspections should be done frequently to see the conditions of road signs and road markings. He testified that road markings, if properly done, can last three to four years with minimum traffic on the road. Rumble strips can last quite a long time with minimum traffic, depending on the bitumen content of the asphalt as the bitumen binds the asphalt. If it is too weak, the mixture will weaken with temperature and traffic.

[28] He referred to the photograph on page 25 of the expert notice bundle and testified that it is a portion of road sign that was not in place before the accident. When he arrived, it was lying beyond the T-junction in the field. Beyond the T-junction, there were numerous spares of numerous vehicles lying there. He testified that motor vehicles went through the T-junction from the direction of left to right. If the road authority would have conducted regular inspections, they would have recognised that there are no road markings and no road signs. If they had went to the ditch, they would have seen motor spares and seen that this is a dangerous area. The road authority would have put temporary road signs to warn motorists that a T-junction is coming up. This should have

been 100 meters before you get to the T-junction. He testified that on the rear side before you get into the storm water channel, there should be a temporary barrier, yellow plastic barrier with reflective tape to indicate that there is a danger coming up. Regarding the photograph on page 30 of the expert notice bundle, he testified that this was taken from the direction of the motorcyclists' travel, and the photo indicates that there are no road markings, there are no hazard markers to warn the road users.

[29] Regarding the appropriateness of permanent signs, Mr Du Preez testified that one must dig a hole and fill it with concrete which takes up to three days, whilst temporary signs are done immediately. He testified that there could be a combination of a sign with an exclamation mark and a supplementary board written T-junction, warning that there is a T-junction coming. The stop sign should be there. There should be a chevron beyond the T-junction indicating that the road is not continuing and you should enter, turn left or right. Road marking is complementary to the road sign, as well as barrier line preventing overtaking as you approach stop sign as well as stop line and T-junction written to the road surface.

[30] Mr Du Preez referred to the defendant's trial bundle at page 1 and testified that, the photograph depicts a worksheet of activities, this shows that there was a permanent road sign installed, however, there are no coordinates to indicate where was this installed. There is no description of the road signs, and he did not know where and what type of road signs. The Worksheet is indicated FS 203 Heilbron and on page 7 page 10, the date is indicated as May 7, 2018. He testified that the consistency of road signs is very important as road users depend on the road signs as they travel on the road. They rely on consistent message as they travel on the road.

[31] Under cross-examination, Mr Du Preez confirmed that a driver needs to make a proper decision on speed, speed limit and adjust speed according to the conditions experienced. If he experiences the road to be dark, he needs to adjust. Responding to Mr Grobbelaar's version that if the stop sign was there, corrosion could have occurred on the galvanised portion, he testified that the stop sign would have been lying there. You can see from the scratch that it was knocked off quite some time, and he could not give indication of how long the stop sign was not there. On whether he would know if

the skid marks were caused by the vehicles, he confirmed that he would not, but the skid marks went through the intersection. He confirmed that he would not know whether the vehicles were speeding and whether the drivers were paying attention. Regarding the rumble strips, he testified that it was flat and not up and down. Regarding the photo depicting the island, he testified that the reason he took it is because there is no sign on the island.

[32] Mrs Du Plooy testified as the wife of the deceased. There is not much she could offer about the incident as she was not there when the accident occurred. She arrived on the scene after the accident.

[33] The fourth witness was Ms Van der Gryp who testified that on the day of the accident she went to Jackie's Pub & Grill and there was a show that evening. She was driving her motor vehicle, a Ford Fiesta. She had been to Jackies once and she was driving alone that evening. She drank cool drink and water and did not eat. She remained until the end of the show and she left going home. She travelled along Wonderfontein Road, the headlights of her motor vehicle were on, however, she could not remember if the lights were dim or bright. The road was dark and there were no streetlights. There were no road signs or road markings on the road surface. She did not feel or hear the rumble strips. She travelled at 60 km's per hour. She pulled off the road to alert her mother that she was driving back home and continued driving after the telephone call. After a short distance, she was involved in an accident. She noticed that the road was nearing a cul-de-sac. It was too late, she turned right, and her car landed on a ditch. She testified that there was no indication that the road was coming to an end and there was no stop sign or stop line. There was also no chevron board on the side of the T-junction. After the accident, she called her friend, Mr Steward Truscott to come and assist her. After Mr Truscott arrived, they towed her motor vehicle until the end of the road.

[34] After her motor vehicle was towed, they saw two motorcyclists coming up the road in the direction where she came from. They also went over the T-junction, and she could not accurately judge the speed of the motorcyclists. She testified that it was at night, and she could not make an accurate estimation of the speed. She confirmed that she made a statement to the police after the accident. In the statement, she had stated that

the motorcyclists were travelling at high speed. She testified that she would see that they would not be able to stop and she was terrified that they will experience the same thing she experienced. They would not be able to stop because there was no chevron board. She could not dispute Mr Green's version that they were travelling at 60 km's per hour. She did not know if they missed the turn or stopped on time.

[35] Under cross-examination she confirmed that she made a statement at police station on April 16, 2018, just over two days after the accident occurred. She went to make a statement about her involvement in the accident not the motorcyclists. She thought it was the right thing to include the accident of the motorcyclists in her statement to the police. In her understanding, when you make a statement, you mention everything you experienced. She disputed Sergeant Modise's version that there was a stop sign. She confirmed that she did not see the 60 km speed sign picked up by Mr Grobbelaar, 350 meters from the T-junction. She further testified that she did not see the rumble strips. Regarding Mr Grobbelaar's version that there are various rumble strips on Wonderfontein Road, she reiterated her version that she did not hear or feel nothing. Regarding the speed at which she was driving, she testified that it could be less than 60 km's per hour as she does not like driving at night.

### **The defendant's case**

[36] The defendant called Seargent Modise as a first witness, who testified that he is employed in the South African Police Service ("SAPS") as a member of Sectional Technical Response Team in Sasolburg. At the time of the accident, he was working at crime prevention as a constable. They work in the streets and do stop and search as well as highway patrols. He confirmed that the accident report appearing in the trial bundle was completed by him. The time he wrote in the accident report is the time that he arrived in the accident scene. On the day of the accident, he was doing his daily duties of patrolling. He travelled along Minaar Street from right to the left and stopped at the accident scene. There were vehicles and people around the area and there were also motorcycles. This was unusual because that is a quite road. He stopped to investigate what was happening and whether there were people who needed assistance. After making enquiries he established what had happened. He confirmed that he found the two motorcycles on the scene of the accident, they were off the road in the veld.



[37] He drew a sketch plan to indicate the circumstances he found on the accident scene. He confirmed that the sketch plan was his observation. In the sketch plan there is an indication of the T-junction, the island, the broken line which indicates where the road allows the motorists to proceed straight as well as the solid line which indicates the end of the road or the shoulder of the road. There is also an indication of the area where the motorists are supposed to stop, because the vehicle travelling along Minaar Street has a right of way. He pointed out an indication of a stop sign in the sketch plan and testified that the block is an indication that there was a stop sign and that there is a stop line at the left corner. He confirmed that the two motorcyclists were lying next to the hip of sand in the ditch. As there was a deceased person, they summoned different sections of the SAPS. They summoned Local Criminal Record Centre ("LCRC") as they are the specialists in collection of crime scene evidence and forensic.

[38] Seargent Modise testified that he indicated a speed limit of 100 km's per hour because there is a sign on the road indicating that motorists must reduce speed and it is followed by others indicating that motorists must reduce speed. You needed to go back in Wonderfontein Road to see the speed limit sign, the closest speed limit sign is 40 km's per hour. He confirmed that he is familiar with the road and the last time he travelled there was the Wednesday before the accident. He confirmed that there was a speed limit sign and stop sign on that road. Regarding the road markings, he testified that they were there but not visible and he marked not applicable in the road accident report.

[39] Under cross-examination, he was unable to provide the number of accidents that he attended in his working career; he testified that he attended to a few. He confirmed that it was not the first time that he worked on the accident report form. He testified that the road condition was good, the road surface was dry and there were no potholes. He confirmed that the road was unlit. His response on why he indicated the road markings as not applicable was that this is how the form is like, this was his understanding and the language used is not his. He testified that his understanding was that the road markings were not visible and the block does not allow him space to indicate not visible. Later on, he conceded that the indication of not applicable means that the road markings are not there.

[40] He confirmed that, on overtaking control he indicated 'none' and, on road signs, he indicated 'not applicable'. He confirmed that, on the block relating to road signs clearly visible, he marked not applicable. On condition of road signs, he indicated damaged or missing. He disputed the plaintiffs' version that there was no stop sign. He testified that he noticed that the sign showing 'dead end' of the road was there or it fell on the ground. He was unsure whether it fell during the accident or what caused it to fall. Regarding the lines he drew in relation to paintings, he testified that he was explaining how the road was divided, he confirmed that it was not the actual paintings on the road. He testified that he did not deem it necessary to show a stop sign in the sketch plan because accident did not occur inside the road, it happened outside the road. He could not explain why Mr Mangena, a member of the LCRC did not draw a stop sign in his sketch plan. Seargent Modise confirmed that a lot of accidents occur in the area where Mr Du Plooy and Mr Green were involved in an accident.

[41] The defendant called Mr Grobbelaar as an expert witness who testified that he holds a master's degree in chemical engineering from the University of Pretoria. He does forensic work in relation to motor vehicle accidents. He estimated his experience of testifying as a witness in relation to accident matters to between 300 and 400 cases. He testified that the difference between his opinion and that of Mr Du Preez is that Mr Du Preez is a civil engineer who focusses on roads, construction and maintenance whilst his opinion relates to mechanical aspects relating to speed and others.

[42] He referred to his expert opinion the summary of which is as follows:

(a) The police photographs show the direction of travel (A) of the two motorcycles, their rest positions in the ditch (C) and (D), and the rest position of the one motorcycle rider (B) also in the ditch. There is no T-junction chevron sign visible in police photographs 1 or 2. The police sketch plan shows the T-junction with the direction of travel of the motorcycle (A), the rest positions of the two motorcycles (C) and (D), as well as the motorcycle rider (B). According to the AR form, the speed limit at the accident site was 100 km/h.

(b) When however, considering photographs 17 and 18 in appendix B, these show a 60 km/h speed limit sign found during the inspection, which sign was posted

approximately 3.8 km from the area of the accident site as the motorcycles would have travelled (see the aerial view of appendix A1 for the location of this sign). The rear of this sign indicates that it was manufactured in May of 2009 (photograph 18 in appendix B). This sign also appears to have been in position in July 2019, as can be seen in the Street View image contained as photograph 21 in appendix B, with the aerial view of appendix A4 showing that it was also in position on 30 June 2017. It is therefore probable that this 60 km/h speed limit sign was in position at the time of the accident.

(c) The inspection of the accident site and approach thereto also revealed a 60 km/h speed limit sign posted approximately 350 metres from the accident site, as the motorcycles were travelling, with this sign also visible in the street view image taken in July 2019 (photograph 20 in appendix B). The GPS used to locate the accident site also indicated a speed limit of 60 km/h on approach to the accident site, as can be seen in photograph 19 in appendix B. The presence of this speed limit sign could unfortunately not be confirmed in any of the Google Earth images taken before or after April 14, 2018, due to the clarity of the images. The presence of this 60 km/h speed limit sign at the time of the accident would therefore be a matter for evidence.

(d) It cannot be established, from an expert point of view, whether the stop sign or T-junction chevron warning sign were in position at the time of the accident in which the vehicle of Ms van der Vyfer was involved, and thereafter the motorcyclists. This would therefore be a matter for evidence.

(e) It can also not be established, from an expert point of view, in the event of the stop sign and the T-junction chevron warning sign not having been in position at the time of the accident in which the motorcycles were involved, at what stage these signs were removed/displaced from their positions. This would also be a matter for evidence. The Photo Report of Mr du Preez does however show the T-junction chevron to have been lying in the vicinity of the accident site.

(f) Inspection of the accident site on April 13, 2022, revealed that there was essentially unrestricted visibility of the roadway ahead of the motorcyclists on approach to the accident site, due to the road being straight and flat. This can be seen in photographs 1 to 13 in appendix B. During this inspection, numerous areas of rumble were found on the road surface as the motorcycles would have approached the accident site, with the first area of rumble strips found at approximately 730 metres from the accident site, a

further area found at approximately 370 metres from the accident site, and a further seven areas of rumble strips found from approximately 195 metres from the accident site to approximately 71 metres from the accident site. These rumble strips can be seen in photographs 1 to 3 and 5 to 11 in appendix B. These rumble strips were found to be functional during the inspection, with them providing the rumble effect to a driver whilst travelling over them to the accident site. These rumble strips were also visible in the aerial view of appendix A3 (taken 1 week after the accident), with the implication that they were probably also present at the time of the accident.

(g) There was a 60 km/h speed limit sign posted approximately 3.8 km's from the area of the accident site on the road that the motorcycles would have travelled to have reached the accident site, which 60km/h speed limit sign was also probably in position at the time of the accident. This has been concluded in paragraph 9.2. There was also a speed limit sign posted approximately 350 metres from the accident site, though it could not be confirmed whether or not this speed limit sign was in position at the time of the accident.

(h) Under the acceptance of there having been no road markings, no stop signs and no T-junction chevron warning sign in position at the time of the accident, the motorcyclists would have travelled over the first area of rumble strips approximately 370 metres from the accident site, the further area of rumble strips at approximately 370 metres from the accident site, and the further seven areas of rumble strips located between 195 metres to 71 metres from the accident site. These rumble strips should have provided prior warning to the motorcyclists to be aware of some or other situation or hazard ahead that warranted the placing of rumble strips on the road.

(i) Had the motorcyclists been travelling at the speed limit of 60 km/h as indicated by, at least the speed limit sign posted 3.8 km's from the accident site, they should have been able to have stopped their motorcycles in a distance probably shorter than 57 metres, which distance consists of a distance shorter than 33 metres travelled in the reaction time of the motorcyclists and a braking distance of approximately 24 metres. This is based on an average retardation factor of 0.6 for the motorcycle braking, a nighttime visualisation, perception and reaction time of two seconds. When considering that the motorcyclists would have had prior warning of some or other situation or hazard ahead by means of the rumble strips, and that this would already have occurred from approximately 730 metres prior to the accident site, this should have reduced their

visualisation, perception and reaction time due to them being more alert and on the lookout, had they heeded the rumble strips. In this regard if a visualisation, perception time of approximately one second is therefore used, this would reduce the stopping distance to 40 metres and for a time of 1.5 seconds, the stopping distance would reduce to approximately 49 metres.

(j) Had the motorcyclists therefore been travelling at or below the speed limit of 60km/h on approach to the accident site, and have been on the lookout for some or other situation ahead that warranted the placing of rumble strips on the road surface, they should have been able to have stopped their motorcycles prior to colliding with the northern bank of the ditch where the motorcycles ended up, for a reaction time of one second and 1.5 seconds.

(k) In this regard, it is probable that, in the absence of any road markings, the first visual alert that the motorcyclists would have had to the danger ahead would have been the northern edge of the road and the grass at this edge, with the added possible additional warning of the island to his right prior to reaching the T-junction. This northern edge of the road as well as the grass at this edge can be seen in police photographs 1 and 2.

(l) Had the headlights of the Kawasaki motorcycle, or the Suzuki motorcycle, or both, therefore have been set on bright on approach to the accident site, in the event of there having been no approaching traffic, and had the motorcyclists have been travelling at or below the speed limit of 60 km/h on their approach, they should have been able to have slowed down and to already have stopped their motorcycles a considerable distance prior to the area where the motorcycles collided with the northern bank of the ditch at the T-junction.

(m) It goes without saying that, in the event of there having been a stop sign in position, and/or a T-junction chevron sign, and/or a T-junction warning sign, and/or road markings on the road on approach to the accident site, this should have provided prior, visual warning to the motorcyclists specifically of the T-junction ahead (where the rumble strips should have provided prior warning to some or other situation ahead that warranted the placing of rumble strips), compared to a situation where none of these measures were in place. Under the circumstances, the accident would probably have been avoided had the motorcyclists been keeping a proper lookout and have heeded these measures on approach to the accident site.

(n) As was indicated previously, it is not possible to establish, from an expert point of view, which of these measures were in place at the time of the accident, and this would therefore be a matter of evidence. If it is found that none of the visual measures referred to above were in position at the time of the accident, it would be a matter for the Honourable Court to decide whether, in the event of some or all the visual measures indicated above having been in position, whether or not they would have prevented the accidents of both motorcycles from occurring under the circumstances of this accident.

(o) It is not possible to calculate the speed of the motorcycles on approach to the accident site, as there is insufficient information available with which to do so. In this regard, the statements of the eyewitnesses Ms van der Gryp as well as Mr Truscott, both indicate that they saw the two motorcycles approaching at high speed.

[43] Mr Grobbelaar testified that he visited the accident scene on April 13, 2022, which is four years after the accident, he took photographs from different directions and where the motorcyclists were approaching and the area where they came to a rest. He took road measurements and went back a considerable distance as the motorcycles approached. He referred to a 730 meters distance from the T-junction on page 50 of the trial bundle. He also referred to the rumble strips appearing on the left-hand side. While driving over rumble strips it gave a rumbling sound and effect to the vehicle. He felt and experienced the rumble strips. He took a 50 meters drive from the accident scene and took a photo which shows a chevron sign, and it is in the vicinity where the motorcyclists came to a rest.

[44] He testified that in the photo that he took, there is a cross in the area where there is a ditch. He also took a photo of the speed limit sign and in the rear of the sign, it was manufactured in May 2009. That is the direction from where the motorcyclists came from. He also found a photo on google earth which was taken on April 21, 2018, a week later than the date of the accident. He testified about the arrows in the area where he found rumble strips, including the last one closer to the accident scene. Regarding page 59 of the trial bundle, he testified that the GPS shows the 60 km sign in the GPS and above the GPS there is a blurry sign. Photo 20 of the trial bundle is a street view image that shows the 60 km/h sign and there are rumble strips in photo 21, which was taken

from street view in google earth which 60 km/h sign taken 3.8 km's from the accident scene.

[45] He confirmed that in photos 1 and 2 attached to his opinion there is no visible sign of the chevron on the T-junction. He also confirmed what was stated by Mr Du Preez that on page 11 of the trial bundle, the chevron could be seen lying on the ground. He agreed with Mr Du Preez's conclusion regarding the presence of a pole but reiterated his position that when he visited the accident scene, there was effect of the rumble strips but agreed that they were of lesser effect than when they were new. He could not establish whether, at the time of the accident, the stop sign or the chevron was there or at what stage they had been displaced or removed.

[46] Regarding the speed at which the motorcyclists were travelling, Mr Grobbelaar testified that, if they were travelling at 60 km/h, they would have covered 37 meters, in the absence of warning signs, firstly, they would have seen the grass with a reaction time of two seconds. The rumble strips indicate that there is something coming up and they are placed as a warning. If they had heeded the rumble strips, there were nine sets of rumble strips. The reaction time could have been less, if the reaction time is one second, they could have stopped 40 meters. The headlights must be adjusted to illuminate an object at a distance of 45 meters. The headlights should have been able to illuminate the grass of the edge at least 45 meters if they were adjusted correctly. There was a flashlight which was a warning, the reaction time should have been lower.

[47] Under cross-examination, when dealing with the presence of rumble strips, Mr Grobbelaar testified that the rumble strips were in the same position that Mr Green found them four years before he went to the accident scene. He testified that the photos of the rumble strips taken by Mr Du Preez look similar to the photos he took and testified that the rumble strips would have minimum effect. The rumble strips were worn out; they did not have the effect of new rumble strips. They were audible and there were nine of those rumble strips. If you are an alert driver you should feel them. He agreed that it is possible that the rumble strips may have been resurfaced and ran out again in four years. As a motorcyclist himself, he is aware of the experience of riding over rumble

strips. If you are wearing a helmet, it may take away the sound effect, but the handles will give you the effect.

### **Legal framework and analysis**

[48] The Court must first determine whether the defendant's conduct is wrongful. It is not in dispute that the defendant has a duty to maintain the road and provide signage to alert the road users of potential hazards. This is to ensure the safety of the road users and limit the chances of being involved in accidents that will pose danger to them. The defendant is responsible for the road network within the Free State Province. As a responsible road authority, it must maintain the road networks and ensure that there are adequate road signs in the road networks.

[49] The Court must determine whether the defendant owed road users a duty to act without negligence in relation to erection of adequate road signs and maintenance thereof; and whether the defendant failed to fulfil its duty. Furthermore, the Court must determine whether such failure has contributed to the accident which resulted in damages suffered by the plaintiffs. Lastly, the Court must determine whether the defendant is liable to the plaintiffs for damages caused by the accident. In determining the liability of the road authority, it is necessary for wrongfulness to be established. In *Kruger v Coetzee*,<sup>1</sup> the Court stated that:

'For the purposes of liability *culpa* arises if-

- (a) A diligent 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.'

[50] The Court, in *Kruger v Coetzee*, further stated that:

'Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case. No hard and fast basis can be laid down. Hence the futility, in general of seeking guidance from the facts and results of other cases.'<sup>2</sup>

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<sup>1</sup> *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-F.

<sup>2</sup> *Ibid* at 340G.



[51] In *MEC for Department of Public Works, Roads and Transport v Botha*,<sup>3</sup> the Court followed the decision of *Minister of Safety and Security v Duivenboden*,<sup>4</sup> where it is stated that:

‘The classic test for negligence as set out in *Kruger v Coetzee* has since been quoted with approval in countless decisions of this Court: whether a person is required to act at all so as to avoid reasonably foreseeable harm and, if so, what that person is required to do, will depend upon what can reasonably be expected in the circumstances of the particular case. That enquiry offers considerable scope for ensuring that undue demands are not placed upon public authorities and functionaries for the extent of their resources and the manner in which they have ordered their priorities will necessarily be taken in determining whether they acted reasonably.’

[52] In *Trustees, Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd (Two Oceans Aquarium Trust)*,<sup>5</sup> the Court stated that:

‘Negligent conduct giving rise to damages is not, however, actionable *per se*. It is only actionable if the law recognises it as wrongful. Negligent conduct manifesting itself in the form of a positive act causing physical damage to the property or person of another is *prima facie* wrongful. In those cases, wrongfulness is therefore seldom contentious. Where the element of wrongfulness becomes less straightforward is with reference to liability for negligent omissions and for negligently caused pure economic loss . . . In these instances, it is said, wrongfulness depends on the existence of a legal duty not to act negligently. The imposition of such legal duty is a matter for judicial determination involving criteria of public or legal policy consistent with constitutional norms.’ (Footnotes omitted.)

[53] The Court further stated in *Two Oceans Aquarium Trust*,<sup>6</sup> that:

‘When we say that a particular omission or conduct causing pure economic loss is “wrongful”, we mean that public or legal policy considerations require that such conduct, if negligent, is actionable; that liability for the resulting damages should follow.’

[54] In *Minister of Transport NO and Another v Du Toit and Another (Du Toit)*,<sup>7</sup> the Court stated that:

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<sup>3</sup> *MEC for Department of Public Works, Roads and Transport v Botha* [2016] ZASCA 20 para 12.

<sup>4</sup> *Minister of Safety and Security v Duivenboden* [2002] ZASCA 79; [2002] 3 All SA 741 (SCA); 2002 (6) SA 431 (SCA) para 23.

<sup>5</sup> *Trustees, Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd* [2005] ZASCA 109; [2007] 1 All SA 240 (SCA); 2006 (3) SA 138 (SCA) para 10; see also *McIntosh v Premier, Kwazulu-Natal and Another* 2008 (6) SA 1 (SCA).

<sup>6</sup> *Ibid* para 12.

‘Indeed, it is not uncommon for even a competent and cautious driver to misread or fail to react to a road sign. For this reason, it is imperative, particularly in unlit areas, for warning and other signs to be clear, unambiguous and appropriately positioned, so that, if necessary, they may be read and comprehended at a glance. This is more so where there is a potentially dangerous situation ahead, such as an unusually sharp bend or, for that matter, an unlit T-junction which would otherwise not be anticipated by a driver who is unfamiliar with the road.’

[55] There is no dispute on whether the defendant has a duty to maintain the roads and provide adequate signage, this Court must determine whether the defendant acted in a negligent and wrongful manner. Mr Green’s evidence is that, on the day of the accident, he did not see road signs because it was too dark. He testified that he travelled at 60 km/h and he was following Mr Du Plooy. He did not see a stop sign and stop line before the accident. He also did not see the chevron sign before the accident. Ms Van der Gryp, who was involved in an accident on the same scene immediately before Mr Green and Mr Du Plooy were involved in the accident, also testified that she did not see road signs before she was involved in the accident. Both Mr Green and Ms Van Der Gryp testified that they did not see a chevron sign warning motorists of a T-junction ahead. They both testified that they did not see or feel rumble strips before the accident. Mr Truscott testified that there was gravel lying on the tar road, there was no paint marking the stop line and there were no speed bumps. Mr Green went back to the accident scene after he was discharged from the hospital, he took photographs of the accident scene, the photographs he took indicate that there was no stop sign and the chevron sign was lying on the ground.

[56] The plaintiff’s expert witness Mr Du Preez testified that, from the photograph taken, there are no road signs or solid line in the area where the accident occurred. He testified that road markings should have been re-done a while ago as there were no road markings visible anymore. He testified that there was a patch here and there on the right, at the T-junction, there was no full road marking. He also testified that the rumble strips had minimal affect. Mr Du Preez’ evidence is in corroboration with Mr Green’s evidence regarding the absence of road signs and road markings. This is also

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<sup>7</sup> *Minister of Transport NO and Another v Du Toit and Another* [2006] ZASCA 41; 2007 (1) SA 322 (SCA) (*Du Toit*) para 17.

consistent with Mr Truscott and Ms Van der Gryp's evidence regarding the inadequacy of the road signage in the area of the accident scene.

[57] The Court was presented with two conflicting opinions regarding the adequacy of road signs, road markings and rumble strips in the accident scene. Regarding the evaluation of expert evidence, the defendant referred to the decision of *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd*,<sup>8</sup> where the Court stated that:

‘ . . . [W]hen dealing with the approach to an expert witness I have found helpful the following passage from the judgment of Justice Marie St-Pierre in *Widdrington*:

“Legal principles and tools to assess credibility and reliability

[326] “Before any weight can be given to an expert’s opinion, the facts upon which the opinion is based must be found to exist.”

[327] “As long as there is some admissible evidence on which the expert’s testimony is based it cannot be ignored; but it follows that the more an expert relies on facts not in evidence, the weight given to his opinion will diminish.”

An opinion based on facts not in evidence has no value for the Court.

[329] With respect to its probative value, the testimony of an expert is considered in the same manner as the testimony of an ordinary witness. The Court is not bound by the expert witness’s opinion.

[330] An expert witness’s objectivity and credibility of his opinions may be called into question, namely, where he or she:

accepts to perform his or her mandate in a restricted manner;

presents a product influenced as to form or content by the exigencies of litigation;

shows a lack of independence or a bias;

has an interest in the outcome of the litigation, either because of a relationship with the party that retained his or her services or otherwise;

advocates the position of the party that retained his or her services; or

selectively examines only the evidence that supports his or her conclusions or accepts to examine only the evidence provided by the party that retained his or her services.’

[58] The issue is whether the experts’ evidence adduced during the proceedings meets the standards as set out by the Supreme Court of Appeal. In my assessment of Mr Du

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<sup>8</sup> *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd* [2015] ZASCA 2; [2015] 2 All SA 403 (SCA).

Preez and Mr Grobbelaar, they both possess requisite qualifications and experience as experts in these proceedings. I did not find their evidence to be lacking professional expert testimony. They are both independent and were not biased in favour of the parties that retained their services. They both made concessions in areas where their opinion was challenged, and I have no reason to doubt the independence of their testimony.

[59] The difficulty with Mr Grobbelaar's evidence is that he was at the accident scene almost four years after the accident. His testimony is that he did not do a reconstruction of the accident scene and was therefore unable to dispute Mr Green's evidence that they were travelling at 60 km/h before the accident. He could not establish whether, at the time of the accident, the stop sign or the chevron was there or at what stage they had been displaced or removed. Whilst there are different versions regarding the status of the rumble strips, Mr Grobbelaar conceded under cross-examination that it is possible that the rumble strips may have been resurfaced and ran out again in four years. I therefore accept Mr Du Preez's evidence as probable and true. I am satisfied that his evidence can be relied upon. The test for dealing with two mutually destructive versions is enunciated in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA & Others*,<sup>9</sup> which set out the following principles:

'The technique generally employed by Courts in resolving factual disputes of this nature may conveniently be summarized as follows. To come to a conclusion on the disputed issues a Court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the Court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. . . the Court will then, as a final step, determine whether the party burdened with onus of proof has discharged it.'

[60] I find that the evidence of plaintiffs' witnesses was honest and credible, they did not fabricate their evidence to make up a case for the plaintiffs. Mr Green and Ms Van der Gryp's evidence is that it was too dark, and they did not see road signs or road markings prior to the evidence. Mr Green went to the accident scene after he was released from hospital to determine how the accident occurred. He took photographs which indicate inadequacy of road signs and road markings to warn the road users of a

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<sup>9</sup> *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA) para 5.

potential hazard, being the T-junction. Mr Green was not evasive in his testimony: his evidence is that it was too dark to see any road signs or road markings. Ms Van der Gryt and Mr Truscott also did not appear to be merely presenting their evidence to support the plaintiffs' case, they were clear and truthful in their testimony, hence this Court's finding that they were honest witnesses. Regarding Sergeant Modise, he is the only person that is adamant that there were road signs and road markings in the accident scene. He was not a convincing witness under cross-examination and there are inconsistencies with his evidence regarding the sketch plan and the accident report that he compiled. I therefore find his evidence unreliable and untruthful.

[61] The defendant raised the issue of causal connection between any proven breach of the defendant's duty of care and the accident. In *Frank v Road Accident Fund*,<sup>10</sup> the Court followed the decision of *Grove v Road Accident Fund*,<sup>11</sup> where the Supreme Court of Appeal stated that:

'There can be no question of liability if it is not proved that the wrongdoer caused the damage of the person suffering the harm. Whether an act can be identified as a cause, depends on a conclusion drawn from available facts and relevant probabilities. The important question is how one should determine a casual nexus, namely whether one fact follows from another.'

[62] The defendant argued that, even if it were to be accepted that there were no road signs or road markings to warn the road users of the upcoming intersection, the plaintiffs did not prove that the lack of such signs or markings were the (sole) cause of the accident. This argument was rejected in a case of similar facts in *Du Toit*,<sup>12</sup> there is clear evidence that there was inadequate signage on the road, the stop sign was not in place, there was no stop line, there were no road markings, and the chevron was not in place. As the Court pointed out in *Du Toit*, apart from any other deficiencies in the signage, the probabilities are overwhelming that had the T-junction been properly aligned with the intersection, Mr Du Plooy and Mr Green would have been alerted to the danger of the T-junction and reacted accordingly.<sup>13</sup>

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<sup>10</sup> *Frank v Road Accident Fund* [2023] ZAGPJHC 1183 (*Frank*) para 35.

<sup>11</sup> *Grove v The Road Accident Fund* [2011] ZASCA 55 para 7.

<sup>12</sup> *Du Toit* para 21.

<sup>13</sup> *Ibid.*

[63] Having considered the totality of the evidence, I find that the defendant has failed in its duty to maintain the road and/or to provide adequate road signs and road markings to warn the road users of the potential hazard, particularly, the existence of a T-junction at Wonderfontein Road and Minnaar Streets, Sasolburg. A reasonable person in the position of the defendant would have foreseen that road users like Mr Du Plooy and Mr Green would suffer injury as a result of the defendant's failure to provide adequate road signs and marking signs to warn the road users of a potential T-junction hazard. The defendant has a duty not to act negligently and its failure to provide adequate road signs and road markings meets the test for negligent conduct. The next issue for determination is whether such negligent conduct is wrongful in order to give effect to an actionable conduct that gave rise to damages sustained by the plaintiffs. The defendant's negligent conduct has given rise to the physical damages sustained by Mr Du Plooy and Mr Green and is wrongful. It therefore follows that the defendant is liable for the damages suffered by the Plaintiffs as a result of the negligent and wrongful conduct of the defendant.<sup>14</sup>

### **Apportionment**

[64] The other issue to be considered is whether the Mr Du Plooy and Mr Green contributed to the accident by either failing to keep a proper look out and/or drove at a speed that might have been excessive and in so doing failed to avoid the accident, when they could have done so. Section 1(1)(a) of the Apportionment of Damages Act 34 of 1956 provides that:

'Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the Court to such extent as the Court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.'

[65] In *Du Toit*,<sup>15</sup> the Court stated that:

'A driver of a motor vehicle is obliged to maintain a proper look-out. He (or she) must pay attention to what is happening around him; but most important of all, he must as far as possible

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<sup>14</sup> Op cit fn 5.

<sup>15</sup> *Du Toit* para 17.

keep his eyes on the road, particularly at night when his vision is limited. Depending on the state of the traffic, the nature of the road and the speed at which he is travelling, the opportunity which a motorist has to read and comprehend the import of each sign may be extremely limited.'

[66] Mr Grobelaar's opinion is that, compared to a situation where none of the measures relating to road signs and road markings measures were in place; under the circumstances, the accident would probably have been avoided had the motorcyclists been keeping a proper lookout and have heeded these measures on approach to the accident site. Mr Du Plooy conceded under cross-examination that in the absence of appropriate road signs and markings, it is important for road users to (i) keep a proper look out; (ii) adjust their speed according to prevailing circumstances; and (iii) act according to visibility as experienced by the individual users themselves. Mr Green's evidence is that they were aware that they were driving towards a T-junction. Whilst there was a flashlight which was warning them of a potential hazard ahead, they did not reduce speed to heed the warning. Mr Green's evidence is that he was focussed on Mr Du Plooy, and he did not keep a proper look out on the road, as it was too dark to see. He did not apply breaks when his motorbike hit the gravel.

[67] In *Botes v MEC Western Cape Department of Transport and Public Works*,<sup>16</sup> the Court stated that:

'In my view, a reasonable driver, after realising that he had negligently strayed off the right shoulder, would have taken his foot off the accelerator and slowed down in order to gain complete control of his vehicle. A gravel shoulder is not intended to be driven upon 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, gentle breaking to slow down the vehicle would have been prudent.'

[68] In *Steyn v Road Accident Fund*<sup>17</sup> this Court stated that:

'The test for negligence as stated in *Kruger v Coetzee* has as a yard stick the conduct of the reasonable man (hereafter the reasonable "person"). It is trite the onus rests on the plaintiff to prove the defendant's negligence which caused the damages suffered, on a balance of probabilities. To avoid liability, the defendant must produce evidence to disprove the inference of negligence on his part, failing which the defendant risks the possibility of being found to be liable

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<sup>16</sup> *Botes v MEC Western Cape Department of Transport and Public Works* [2020] ZAWCHC 147 para 33.

<sup>17</sup> *Steyn v Road Accident Fund* [2024] ZAFSHC 241 para 8.

for damages suffered by the plaintiff. On the other hand, where the defendant had in the alternative pleaded contributory negligence and seeks a finding of an apportionment, the defendant would have to establish negligence on the part of the plaintiff on a balance probabilities.’

[69] In order to give effect to contributory negligence, there must be proof that there was a causal link between the accident and the plaintiff’s conduct. Section 1(1)(a) of the Apportionment of Damages Act gives authority to the Court to reduce damages suffered by the plaintiff and have regard to the degree to which the plaintiff is found to be at fault. In *Van Vuuren v South African National Roads Agency Ltd and Others*,<sup>18</sup> the Court stated that:

‘The locus classicus in this regard is *South British Insurance Co Ltd v Smit* 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 be difference of opinion by different minds.’ (Footnotes omitted.)

[70] Having considered the totality of evidence, I find that had the defendant provided adequate road signs and road markings to warn the road users of a potential hazard, particularly, the existence of a T-junction at the intersection of Wonderfontein and Minnaar Streets, the accident would not have happened. Similarly, had Mr Du Plooy and Mr Green, kept a proper look out and reduced speed as they were riding towards an intersection to which they anticipated to meet a T-junction, the accident could have been avoided. They should have reduced speed upon noticing a flashlight which was warning them of a potential hazard. They should have adjusted the headlights of their motorcycles to illuminate at a distance, as indicated by Mr Grobbelaar, to be able to see

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<sup>18</sup> *Van Vuuren v South African National Roads Agency Ltd and Others* [2025] ZAGPPHC 1147.



the grass of the edge at least 45 meters as they approached the T-junction. They made no attempt to apply breaks as their motorcycles hit the gravel immediately before they fell into a ditch beyond the T-junction. I find that both Mr Du Plooy and Mr Green's negligent conduct contributed to the accident on a 20 percent scale. The Defendant's negligent and wrongful conduct contributed to the accident on an 80 percent scale.

### **Onus**

[71] The plaintiffs bear the onus to prove on a balance of probabilities that the defendant's conduct is negligent and wrongful. I have made a finding that the defendant acted negligently and in a wrongful manner by failing to provide adequate road signs and road markings to warn the road users, particularly Mr Du Plooy and Mr Green of a potential hazard which may cause harm to them. The Court's duty is to determine the nexus between the negligent and wrongful conduct of the defendant and the accident before a decision is taken to award compensation for damages to the plaintiff. I am satisfied that the plaintiffs *in casu* have proven on a balance of probabilities the defendant's negligent and wrongful conduct. The defendant has failed to provide its duty of care towards the road users. In *South Cape Corp. v Engineering Management Services*,<sup>19</sup> the then Appellate Division stated that:

'As was pointed by Davis, A.J.A. in *Pillay v Krishna and Another*, 1946 at pp. 952-3, the word *onus* has often been used to denote, *inter alia*, two distinct concepts: (i) the duty which is cast on the particular litigant, in order to be successful, of finally satisfying the Court that he is entitled to succeed on his claim or defence, as the case may be, and (ii) the duty cast upon a litigant to adduce evidence in order to combat a *prima facie* case made by his opponent. Only the first of these concepts represents onus in its true and original sense.'

### **Costs**

[72] The general rule is that the successful party should be granted costs. This rule should not be departed from unless there are grounds for doing so. I see no reason to depart from this rule; the defendant should pay the plaintiffs' costs.

### **Order**

In the circumstances, I make the following order:

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<sup>19</sup> *South Cape Corp. v Engineering Management Services* 1977 (3) SA 534 (A) at 548A.

- 1.1 It is declared that the Defendant is liable for 80% of the plaintiffs' proven damages as a result of the two motorcycles' accident which occurred on May 14, 2018.
- 1.2 The defendant is ordered to pay the plaintiffs' costs on a party-to-party scale, including costs of counsel on scale B.

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**M. NTANGA AJ**

## **Appearances**

For the applicant: D J Smit

Instructed by: Rosendorff Reitz Barry Attorneys, Bloemfontein

For the respondent: G J M Wright

Instructed by: State Attorney, Bloemfontein.