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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 24286/15

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE **25/2/2026**

SIGNATURE

In the matter between:

**M[...] M[...] M[...] OBO
obo T[...] D[...]**

Plaintiff

and

**THE MEMBER OF THE EXECUTIVE
FOR HEALTH OF THE LIMPOPO
PROVINCIAL GOVERNMENT**

Defendant

JUDGMENT

PIENAAR AJ

Introduction

1. This is an action for damages in delict on behalf of a minor child afflicted with a severe spastic quadriplegic type cerebral palsy. The core issue for determination is the liability of the defendant (“the MEC”) for the conduct of its staff at a public hospital during the birth of the child.

Parties

2. The plaintiff is M M M[...] “Ms” who acts in her representative capacity on behalf of the minor child, T [D..] who was born on 16 March 2004 at the Maphutha Malatji Hospital (“the hospital”).
3. The defendant is the MEC for Health, Limpopo Province.

Background

4. It is common cause that T [D...] suffers from cerebral palsy. What is in dispute is whether the nursing care provided during T [D..] birth at the hospital fell below the accepted medical standard, and if so, whether that substandard care caused T[D..] to suffer a brain injury resulting in cerebral palsy.
5. The parties agreed that it would be convenient to separate the issues of liability from that of the quantum of the plaintiff’s claim. An order to that effect was granted in terms of Uniform Rule of Court 33(4) and the matter proceeded to trial only on the issues of negligence and liability. The quantum of the plaintiff’s claim was *postponed sine die*.
6. The defendant’s counsel submitted that she does not have instructions regarding the issue of liability/merits. Both parties agreed to the joint minutes.

7. Both parties appointed experts, they form part of the evidence. The following three experts prepared the joint minutes:

7.1 Paediatrician - Prof Lewis for the Plaintiff and Prof Cooper for the Defendant.

7.2 Neurologist - Dr D Peace Pediatric Neurologist for the plaintiff and Prof Kakaza adult neurologist for the defendant.

7.3 Radiologist - Dr B Albeit for the plaintiff and Dr J Swartzberg for the defendant

8. All the expert witnesses had regard to the hospital records and the clinical notes upon which their opinions were based.

9. The *lis* between the parties is whether there was sub-standard care during the intrapartum period while the plaintiff was under the care of the hospital staff and further whether this resulted in the child suffering a hypoxic ischaemic brain injury which resulted in cerebral palsy.

Dr C Bowen - Gynaecologist

10. Dr Bowen is a Specialist Obstetrician and Gynecologist on behalf of the Defendant. Dr Bowen provides a review of available documents, literature and gave his conclusions and opinions.

11. The plaintiff was admitted on 15 March 2004 at 18h45. Fetal heart rate stated as normal. On 15 March 2004 at 22h00 the patient in labour complaint about labour pains. On 16 March 2004 at 04h00 a decision was made to augment labour with syntocinon, especially in view of grade 1 meconium stained liquor. This is correct management in a previously uncomplicated pregnancy, but a CTG machine should have been connected to ensure that fetal compromise was not being caused by the artificially strengthened

contractions. No mention was made of an attempt to get a CTG machine connected. By 15h50, the obstructed labour was finally diagnosed, and an emergency caesarean section ordered.

Plaintiff's expert witnesses

12. Dr Murray is a specialist obstetrician and gynaecologist, testified on behalf of the plaintiff.

13. Dr Murray testified that the plaintiff was actually in active labour and had been in labour for over 12 hours. Dr Murray testified that oxytocin should never be used in a woman in labour. Dr Murray further testified that in this case despite the fact that oxytocin should be monitored by way of CTG, no CTG was ever obviously performed which denotes substandard care. She reported that a caesarean section was the correct decision but it should have been taken several hours earlier.

14. Dr Murray further testified that the minor child T ..[D..] developed cerebral palsy as a result of an intrapartum hypoxic injury which occurred as a result of substandard care received at Mothupi Malatji hospital.

15. Dr Murray also commented that oxytocin is a high alert medication which should be used following strict protocols so as to avoid adverse outcome.

Joint minutes were prepared with Dr Lewis and Prof Cooper, who are paediatricians and neonatologists. Dr Lewis was appointed by the plaintiff, and Prof Cooper was appointed by the defendant.

16. 1 The baby required resuscitation as after the delivery he did not cry, had peripheral cyanosis with good [muscle] tone. Bag and mask ventilation was administered to assist breathing.

16.2 The most likely cause of the baby's poor condition is intrapartum hypoxic asphyxia, meaning that the baby did not receive enough oxygen during labour and delivery.

16.3 There are no neonatal notes available, save for a nurse comment that "baby's condition not yet well, nursed in an incubator for warmth, baby looks to be tired". They agreed that tiredness suggests that the level of consciousness was depressed and that there are no further notes to confirm that the baby developed moderate or severe neonatal encephalopathy"

Joint minutes were prepared with Dr Pearce and Prof Kakaza who are pediatric neurologist and adult neurologist. Dr Pearce was appointed by the plaintiff, and Prof Kakaza was appointed by the defendant.

17.1 Both experts agreed that T..[D..] suffers from a severe spastic quadriplegic type of cerebral palsy, that he is classified as GMFCS IV (Gross motor functional classification scale), MACS V (Manual ability classification scale) and CFCS V (Communication function classification scale).

17.2 They agreed, having considered ACOG's criteria, and based on the available records, that intra/postpartum hypoxia is the most probable cause of the neonatal encephalopathy hypoxia is the most probable cause of the neonatal encephalopathy in this child, T..[D..]

18. Counsel for the plaintiff argued that the matter before the court is supported by uncontested evidence. The most likely cause of the poor condition of the baby is intrapartum hypoxia asphyxia. The medical care that the plaintiff and the minor child received was substandard and resulted in a failure to correctly and or timeously intervene to prevent the injury to the minor and therefore resulted in the eventual cerebral palsy of the minor.

19. Counsel for the defendant argued that the parties have agreed to and accepted the joint minutes filed. They are accordingly bound by those minutes, in line with the principle articulated by the Supreme Court of Appeal in ***Glenn Marc Bee v The Road Accident Fund (093/2017)[2018] ZASCA 52*** (29 March 2018). The court held that:

“In such a case, as I have said, a litigant cannot be expected to adduce evidence on the agreed matters. Unless the trial court itself were for any reason dissatisfied with the agreement and alerted the parties to the need to adduce evidence on the agreed material, the trial court would, I think, be bound, and certainly entitled, to accept the matters agreed by the experts”

Negligence

20. It is trite that the negligent conduct of a medical professional is to be assessed against the standards prevailing in the medical profession at a particular time period, in order to determine whether reasonable steps were taken or not. The oft quoted leading case on negligence is ***Kruger v Coetzee 1996 (2) SA 428 (A)*** at 430 E- where the court stated that what is required to be established is whether the reasonable person the shoes of the wrongdoer would, firstly have reasonably foreseen the possibility of harm, secondly would have taken reasonable steps to prevent the harm; and thirdly, did not take those preventative steps.

21. In the case of ***Oppelt v Head: Health, Department of Health Provincial Administration Western Cape*** [2015] ZACC 33; 2016 (1) SA 325 CC at para 71 of the court held that: “In simple terms, negligence refers to the blameworthy conduct of a person who has acted unlawfully. In respect of medical negligence, the question is how a reasonable medical practitioner in the position of the defendant would have acted in the particular circumstances”

Conclusion

22. There was agreement between the two radiologists that the dominant injury of the brain is exceeding likely to be peripartum Watershed (prolonged partial pattern) hypoxic ischemic in nature. Both radiologists agreed that the findings of the MRI study suggest that other genetic disorders as the sole cause of the child's brain damage are unlikely.

23. Further and in any event, the conspectus of the evidence has shown on a balance of probabilities that the harm suffered by the baby T..[D..] is closely connected to the omissions of the hospital staff in relation to their inadequate monitoring of the plaintiff's condition at critical stage of labour. Consequently, the casual link between the negligence and the harm that ensued is undeniable. As stated by the experts, the available information and evidence, neurological and radiological findings support that intra/postpartum hypoxia is the most probable cause off the cerebral palsy in this child.

24. For these reasons, the plaintiff's case must succeed on the merits.

Order

In the result, the following order is made:

1. The merits and quantum are hereby separated in terms of Rule 33(4)
2. The determination of quantum is *postponed sine die*
3. The defendant is 100% liable for the plaintiff's agreed or proven damages arising from the cerebral palsy suffered by the minor child T..[D..]
4. The Defendant shall pay the Plaintiff's taxed or agreed costs of suit on the High Court scale, which costs shall include:
 - 4.1 the Plaintiff's costs of obtaining the medico legal reports, including addendum hereto, off the Plaintiff's experts listed below relating to the issue of liability, as well as the said experts' costs of the preparation of joint minutes:

- 4.1.1 Dr Alheit
- 4.1.2 Dr Murray
- 4.1.3 Dr Lewis
- 4.1.4 Dr Peace

4.2 the costs of the MRI investigation of T..[D..] brain performed by Burger Radiologists on 21st of January 2015 for purposes of the report of Dr Alheit, expert radiologists;

4.3 the costs of the preparation of the Radiological Power point presentation prepared by Dr Alheit, expert radiologist;

4.4 The qualifying, reservation and preparation fees of Dr Alehit and Dr Murray

4.5 The reasonable expenses of the traveling costs by air from Cape Town to Johannesburg in result of Dr Alheit (if any, subject to the discretion of the taxation master)

4.6 The reasonable expenses of the traveling costs by air from Kwa-Zulu Natal to Johannesburg in respect of Dr Murray (if any, subject to the discretion of the taxation master)

4.7 the costs of Counsel - Scale B

4.8 the costs and expenses of accommodation and of transporting the plaintiff and the minor child in attending all medico legal examinations and consultations by the plaintiff's and defendant's experts (where applicable), for purposes of preparing their reports for the trial relating to the issue of liability, subject to the discretion of the Taxing Master.

5. The costs of the above mentioned shall be paid into the trust account of the Plaintiff's attorney, the details which are:

Wim Krynauw Attorneys

Bank: ABSA

Account number: 4[...]

Ref : O Moitsheki/MEC0520

6.1 The plaintiff's attorneys shall serve the notice of taxation on the Defendants attorneys of record;

6.2 The Plaintiff's attorney shall allow the Defendant 30 calendar days to make payment of the taxed costs from date of settlement or taxation thereof;

6.3 should payment not be made in accordance with paragraph 6.2 above, the plaintiff shall be entitled to recover interest at the applicable legal rate of interest on the taxed or agreed costs calculated as from 31 days from the date of affixing of the Taxing Master's allocated or date of settlement of the issue of costs, to date of final payment.

**PIENAAR M
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

The judgment is handed down electronically by uploading it to the electronically file of this matter on CaseLines.

Date of hearing : 25 November 2025

Date of judgment : 25 February 2026

Appearances:

Counsel for the plaintiff : Adv P Uys

Instructed by : Wim Krynauw Attorneys Inc

Counsel for the defendant : Adv P Binds

Instructed by : State Attorney (Pretoria) - Ms Mhlubula