THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 174/2024

In the matter between:

THE ROAD ACCIDENT FUND	**APPELLANT**
and	
L[...] M[...]	**FIRST RESPONDENT**
L[...] M[...]	
obo C[...] M[...]	**SECOND RESPONDENT**
L[...] M[...]	
obo J[...] M[...]	**THIRD RESPONDENT**

Neutral citation: *Road Accident Fund v L[...] M[...] and Others* (Case no 174/2024) [2026] ZASCA 73 (21 May 2026)

Coram: MATOJANE, GOOSEN, KEIGHTLEY JJA, STEYN and MODIBA AJJA

Heard: 21 August 2025

Delivered: 21 May 2026

Summary: claim for loss of support by dependants against the Road Accident Fund - arising from the death of the breadwinner following a motor vehicle collision - deceased took his own life – deceased did not suffer any cognizable psychological lesion or mental illness as a consequence of the injuries sustained in the collision – degree of mental distress arising from the consequences of physical injuries and sequelae established – whether death by suicide was a *novus actus interveniens* – whether a new intervening cause of harm was sufficiently closely related to the wrongful conduct or reasonably foreseeable as a consequence.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Lekhuleni, Erasmus and Samela JJ, sitting as court of appeal):

1 The appeal is upheld with costs.

2 The order of the full court is set aside and replaced with the following:

'The appeal is dismissed with costs.'

JUDGMENT

Goosen JA (Matojane and Keightley JJA and Steyn and Modiba AJJA concurring)

[1] This case concerns the attribution of legal liability for the consequences of a death by suicide. The issue arises in the context of a dependant's claim for loss of support. Suicide, by its nature, evokes deep emotions and, usually, considerable trauma and distress for the family, friends, and associates of the deceased. Its emotional impact extends even into the courts of law, which are called upon to address its meaning and effect. As Lord Bingham of Cornhill remarked in his speech in *Corr v IBC Vehicles Limited, (Corr)* a leading English law authority on the treatment of suicide for liability in tort:[1]

'I have some sympathy with the feeling, expressed by Ward LJ in paragraph 61 of his judgment, that "suicide does make a difference". [2] It is a feeling which perhaps derives

[1] *Corr v IBC Vehicles Limited* [2008] 1 AC 884; [2008] UKHL 13; [2008] ICR 372; [2008] 2 WLR 499' [2008] 2 All ER 943 (HL) para 13.

[2] The reference is to the judgment of the Court of Appeal, which was the subject of the appeal to the Appellate Committee of the House of Lords. The judgment is reported as *Corr v IBC Vehicles Limited* [2006] EWCA Civ 331, [2006] 2 All ER 929, [2007] QB 46, [2006] ICR 1138, [2006] 3 WLR 395.

from recognition of the finality and irrevocability of suicide, possibly fortified by religious prohibition of self-slaughter and recognition that suicide was, until relatively recently, a crime. But a feeling of this kind cannot absolve the court from the duty of applying established principles to the facts of the case before it.'

[2] Those established principles have undergone, and continue to undergo, adaptation as our understanding of suicide has changed. Suicide is no longer regarded as criminal or even wrongful conduct. Nevertheless, perspectives on suicide are contingent on culture and other forms of normative ordering of society. Psychiatric views of suicide tend to equate it with forms of mental illness. There are, however, forms of suicide that occur independently of mental illness and within a framework of cultural sanctioning. One such example is Seppuku ('cutting the belly'), the ancient samurai ritual of suicide by self-stabbing, which was long considered an honorable act of self-determination. More recent debates within both common law and civil law jurisdictions have arisen in support of the legal recognition of euthanasia and physician-assisted suicide in the context of terminal illness. Despite these developments, taboos and moral opprobrium continue to sway thinking about suicide.

The facts

[3] On 21 June 2014, the deceased was involved in a motorcycle collision with another motor vehicle. He suffered serious injuries. These included a comminute fracture of his right tibia, a fracture of the ramus of his pelvis, and soft tissue injuries to his right thumb. He also suffered a mild concussive injury. He was transported from the scene of the collision and was admitted to the hospital. He underwent surgical reduction of the fracture to his tibia. A steel plate and screws were inserted to stabilise the fracture. Upon his discharge from the hospital, he was mobilised in a

wheelchair. Following further recovery at home, he was able to mobilize with crutches. His recovery lasted approximately eight to nine months. The injuries suffered by the deceased resulted in significant impairment of physical function and some disfigurement.

[4] In 2016, the deceased instituted a claim for patrimonial and other damages against the Road Accident Fund (RAF) in the Gauteng Division of the High Court, Pretoria (the Pretoria High Court). On 6 December 2016, the deceased took his own life. The executor of his deceased estate was substituted in the claim against the RAF. On 16 November 2018, the Pretoria High Court issued an order, by agreement between the parties, that the RAF must pay R1,020,857.30 to the deceased's estate as compensation. Liability was apportioned at 80% in favour of the deceased estate.

[5] On 17 January 2018, the first respondent, Ms L[...] M[...] (Mrs LM), the widow of the deceased, instituted a claim arising from the deceased's death against the RAF in the Western Cape Division of the High Court, Cape Town (the trial court). She claimed for loss of support in her personal capacity and in her representative capacity as natural guardian and mother on behalf of her minor daughters, the second and third respondents.

[6] On 14 April 2022, the trial court dismissed the claim. It found that the respondents had failed to establish that there was a factual causal link between the wrongful conduct giving rise to injury and the death of the deceased. The court found that the deceased had not been diagnosed as suffering from a major depressive disorder. It took the view that, in the absence of an established mental disorder or illness, it could not be said that the death by suicide was factually caused by the injuries sustained in

the collision. The respondents were granted leave to appeal to the full court of the Division (the full court).

[7] On 11 October 2023, the full court upheld the appeal with costs. It set aside the trial court's order and substituted it with an order that the RAF pay the respondents such damages as they may prove in due course. The full court accepted the opinion evidence that the trial court found unreliable. It found that the death of the deceased was caused by the wrongful conduct giving rise to injury. The full court reasoned that it was not a requirement that the deceased must have been diagnosed as suffering from a mental illness in order to establish factual causation. This, according to the full court, was sufficient. It did not proceed to examine the question of legal causation. This Court granted the RAF special leave to appeal against the order of the full court.

The issues

[8] Before this Court, the central question concerns the causal nexus between the admitted wrongful and negligent conduct which caused injury to the deceased, and the deceased's subsequent conduct causing his own death. In this case, it is important to appreciate the nature of the claim as pleaded and the evidence upon which the causal nexus was said to be established in order to address the central question.

The claim

[9] A dependant's claim is a *sui generis* delictual claim. It arises upon the death of a person who is under a legal duty to provide support to a dependant (a breadwinner) and who was, at the time of death, in fact providing such support. It lies against the person(s) who wrongfully and negligently caused the death of the breadwinner. The loss consists of the

support that the breadwinner can no longer provide. Wrongful causation of the death is an essential element to establish liability.

[10] This aspect of the claim was pleaded in perfunctory terms. It was merely alleged that 'as a result of the … collision [which occurred on 21 June 2014] the deceased sustained serious injuries and passed away on 6 December 2016.' The particulars of claim contain no description of the injuries suffered by the deceased. Nor are any facts pleaded which reference the deceased's death by suicide, notwithstanding the obvious relevance of this fact to the causal nexus which was sought to be established.

[11] The RAF did not file an exception to the particulars. It was content to deal with the matter as it was pleaded. As will be seen from the discussion of the evidence, it was not clear what 'causal nexus' the respondents sought to advance as a basis for liability for the loss they suffered. In this case, where the immediate and direct cause of the death of the deceased was known to be a deliberately inflicted gunshot wound, the respondents might have been expected to set out the basis upon which the intentional act of the deceased should be causally attributed to the prior wrongful conduct of the insured driver. A precise pleading of the case would have guided the presentation of relevant evidence.

The evidence

[12] Several witnesses testified on behalf of the respondents. These included Mrs LM and the deceased's mother, Mrs S[...] B[...] (Mrs SB). They presented evidence about the impact of the injuries upon the deceased, his work and family circumstances and events immediately prior to his death by suicide. Expert evidence was presented by Dr F J D Steyn

(Dr Steyn), regarding the nature and extent of the deceased's orthopaedic injuries, and by Mrs B Crouse (Mrs Crouse), an occupational therapist who testified to the consequences of the physical injuries and their impact upon the deceased's capacity to work.

[13] The evidence relating to the causal nexus between the wrongful conduct giving rise to injury and the subsequent suicide of the deceased was that of Mrs E Auret-Besselaar (Ms E Auret-Besselaar), an industrial psychologist, and Mrs M Coetzee (Mrs M Coetzee), a clinical psychologist. The RAF presented the evidence of Dr L Loebenstein (Dr Loebenstein) a clinical psychologist.

[14] At the time of the collision, the deceased was self-employed as an artisan. He had qualified as a plumber and, for some years before the collision, had run a successful plumbing business. Approximately two years prior to the collision, his plumbing business had declined significantly following the loss of a major service contract. The deceased, however, had commenced another business venture involving the refitting and refurbishing of caravans. This was his principal source of income at the time of the collision. After the collision and following his recovery from his physical injuries, the deceased had continued to pursue the caravan refurbishing business. His physical disabilities served to constrain his ability to do so. The deceased accordingly undertook the installation of well-points, which property owners required to overcome the water shortage during the prolonged drought that then afflicted the Western Cape. He had secured a substantial contract to install well-points in a housing estate development. He was engaged in this project when, on 6 December 2016, he took his own life. He died as a result of a self-inflicted gunshot wound.

[15] Mrs LM described the deceased as a determined and resilient man who would not let adversity or hardship get the better of him. He was the sort of person who would always find a way to care for and support his family. It was this trait that drove him to find new ways to earn a living when his plumbing business suffered a setback, and his physical injuries hampered his ability to undertake the work required to refurbish caravans. She also described him as a person who did not acknowledge the existence of any form of mental distress. She explained that she had suffered from post-partum depression after the birth of their first daughter. She had been diagnosed with a major depressive disorder and underwent pharmacological treatment and therapy. The deceased did not believe in depression and took the view that she would be fine and should not see herself as depressed.

[16] She explained that the deceased's physical injuries had brought about changes to the deceased. He was less inclined to socialise and no longer enjoyed activities that he had previously relished. Physical activity would cause him pain. He would take over-the-counter medication for pain when he returned from work.

[17] The deceased's mother, Mrs SB, confirmed this description of the deceased's character. She explained that he often expressed frustration and anger about his physical limitations and that he had, not long before his suicide, said that he had had enough. She was concerned about him. The deceased, however, would not admit that he needed assistance. He would simply 'get on with coping' with his circumstances.

[18] Dr Steyn, an orthopaedic surgeon who consulted the deceased, described the deceased's injuries to his leg as serious. At the time that he

consulted the deceased, a radiologist's report indicated early arthritic changes consistent with the injuries. Dr Steyn suggested that the prognosis was poor. He considered that the physical disabilities reported to him, namely that the deceased was unable to bend or crouch without experiencing pain; that he was unable to stand for lengthy periods; or lift heavy objects and that he experienced pain following physical activity, were all consistent with the injuries he had sustained in the collision.

[19] Mrs Crouse, an occupational therapist who had consulted the deceased for purposes of his personal injury claim against the RAF, testified that the deceased was significantly compromised in his ability to undertake work he had done prior to the collision; that his physical disabilities curtailed his leisure activities and that he was, generally, only capable of performing light work in his post-morbid physical condition.

[20] Although Mrs Crouse's report contained inaccurate information regarding the nature of the work that the deceased was performing at the time of the collision, the evidence of these experts established that the injuries that the deceased sustained in the collision resulted in significant physical impairments to his capacity to work and enjoyment of the amenities of life he had enjoyed pre-morbidly.

[21] Mrs Auret-Besselaar, is an industrial psychologist who consulted the deceased in relation to his personal injury claim against the RAF. Her brief was to assess the deceased and to report upon his earning capacity in a post-morbid state. She consulted the deceased approximately five months prior to his suicide. As a result of her consultation, she advised the deceased's then attorneys that he ought to undergo an assessment by a clinical

psychologist. It was this aspect of her consultation with the deceased that formed the basis of her testimony before the trial court. Her evidence was factual rather than expert. She was able to observe the deceased. Her notes of the consultation recorded these observations and what the deceased had reported to her.

[22] Mrs M Coetzee, a clinical psychologist, consulted the deceased approximately two weeks prior to his death on 6 December 2016. She was asked to prepare a report, following the deceased's suicide, for the purposes of the dependants' claim. She expressed the opinion that the deceased had taken his life because of the injuries he had sustained in the collision. I shall return to an assessment of this opinion, hereunder.

[23] Dr L Loebenstein did not meet the deceased during his lifetime. His evidence was presented on the basis of an *ex-post facto* appraisal of the deceased's mental state at the time of his suicide. He based his evidence upon the factual evidence available from the accounts of Mrs LM and Mrs SB as well as that which was reported by Mrs Auret-Besselaar and Mrs Coetzee's psychological assessment. He explained that he did not purport to offer any diagnosis of the deceased. He stated that the available evidence did not indicate that the deceased suffered from a diagnosable mental illness. He cautioned that determining a person's mental state as it might have been at some prior time is extremely difficult. He stated that the conclusion which had been drawn by Mrs Coetzee regarding the causal nexus between the injuries suffered and his suicide was not supported by the available evidence. He further stated that it was not possible, upon the available evidence, to draw any conclusion as to the cause of the suicide. Suicide may occur for a multitude of reasons, which might interact. In this

case, it was not possible to determine what the deceased's mental state was and the role it may have played in the suicide.

[24] Dr Loebenstein cautioned against inferring irrationality solely from the fact of the suicide, noting that the circumstances surrounding the deceased's death could equally support a contrary conclusion. He referred to the deceased's apparent planning, including choosing a time when his wife was not at home and using the shower to minimise the unpleasant consequences of his actions. It is important to note that Dr Loebenstein did not seek to draw conclusions from these facts. He merely pointed out that the totality of the facts might allow for different conclusions to be drawn about the deceased's state of mind. His opinion was that the available data and facts did not permit a conclusion that the deceased was suffering from a mental illness.

Causation

[25] Causation of harm involves two distinct enquiries. The first concerns *factual* causation. It requires a causal relationship between the initial wrongful conduct and the resulting harm. Where there is no causal relationship, liability for the resulting harm cannot be attributed to the wrongful conduct. Once it is established that the wrongful conduct is a factual cause of the resulting harm, the second enquiry ensues. This is described as 'legal causation'. Here, the enquiry is whether there is a sufficiently close relationship between the wrongful conduct and the resulting harm to attribute liability for the harm. Considerations of the foreseeability of the harm, its proximity to the wrongful conduct, and the existence or absence of intervening causes all play a role. The essence of the enquiry, however, involves a determination of legal policy in which it is asked whether the particular circumstances in which the harm eventuates

require that liability should be attributed to the wrongdoer. It involves a determination of fairness in the attribution of legal liability.

[26] This Court has explained the concept of legal causation and its role in determining the original wrongdoer's liability in several judgments. In *International Shipping v Bentley,* [3] Corbett CJ stated that:

'On the other hand, demonstration that the wrongful act was a *causa sine qua non* of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called 'legal causation'. (See generally *Minister of Police v Skosana* 1977 (1) SA 31 (A) at 34E - 35A, 43E - 44B; *Standard Bank of South Africa Ltd v Coetsee* 1981 (1) SA 1131 (A) at 1138H - 1139C; *S v Daniëls en 'n Ander* 1983 (3) SA 275 (A) at 331B - 332A; *Siman & Co (Pty) Ltd v Barclays National Bank Ltd* 1984 (2) SA 888 (A) at 914F - 915H; *S v Mokgethi en Andere* 1990 (1) SA 32 (A) a recent and hitherto unreported judgment of this Court, at pp 18 - 24.) Fleming *The Law of Torts* 7th ed at 173 sums up this second enquiry as follows:

"The second problem involves the question whether, or to what extent, the defendant should have to answer for the consequences which his conduct has actually helped to produce. As a matter of practical politics, some limitation must be placed upon legal responsibility, because the consequences of an act theoretically stretch into infinity. There must be a reasonable connection between the harm threatened and the harm done. This inquiry, unlike the first, presents a much larger area of choice in which legal policy and accepted value judgments must be the final arbiter of what balance to strike between the claim to full reparation for the loss suffered by an innocent victim of another's culpable conduct and the excessive burden that would be imposed on human activity if a wrongdoer were held to answer for all the consequences of his default."

In *Mokgethi's* case *supra*, Van Heerden JA referred to the various criteria stated in judicial decisions and legal literature for the determination of legal causation, such as

[3] *International Shipping Co Pty Ltd v Bentley* 1990 (1) SA 680 (A) at 700I-701F.

the absence of a *novus actus interveniens*, proximate cause, direct cause, foreseeability and sufficient causation ('adekwate veroorsaking'). He concluded, however, as follows:

"Regarding the different criteria, it would not appear to me that they are any more exact than a guideline (the flexible guideline) according to which it can be determined, with reliance on policy considerations, whether there is an adequately close relationship between the act and the result. Having said that, I am not suggesting that one or even more of the criteria be put to subsidiary use in the flexible guideline to a specific set of facts; but merely that none of the criteria can be used as a more concrete demarcation in all sets of facts and for the establishment of any form of legal liability."[4] (Own translation.)

[27] This was explained in *Standard Chartered Bank of Canada v Nedperm Bank (Ltd)*[5] in the following terms:

'It is still necessary to determine legal causation, ie whether the furnishing of the untrue report was linked sufficiently closely or directly to the loss for legal liability to ensue, or whether the loss is too remote. The principles applied in such an inquiry have recently been expounded by this Court in the cases of S v Mokgethi en Andere 1990 (1) SA 32 (A) at 39D-41B; *International Shipping Co (Pty) Ltd v Bentley (supra* at 700E-701G); and *Smit v Abrahams*,* as yet unreported, dated 16 May 1994, at pp 22-5, 32-3, 36-7, 39-40 of the typescript. As appears from these judgments, the test to be applied is a flexible one in which factors such as reasonable foreseeability, directness, the absence or presence of a *novus actus interveniens*, legal policy, reasonability, fairness and justice all play their part.'

(Italics in original).

[4] 'Wat die onderskeie kriteria betref, kom dit my ook nie voor dat hulle veel meer eksak is as 'n maatstaf (die soepele maatstaf) waarvolgens aan die hand van beleidsoorwegings beoordeel word of 'n genoegsame noue verband tussen handeling en gevolg bestaan nie. Daarmee gee ek nie te kenne nie dat een of selfs meer van die kriteria nie by die toepassing van die soepele maatstaf op 'n bepaalde soort feitekompleks subsidiêr nuttig aangewend kan word nie; maar slegs dat geen van die kriteria by alle soorte feitekomplekse, en vir die doeleindes van die koppeling van enige vorm van regsaanspreeklikheid, as 'n meer konkrete afgrensingsmaatstaf gebruik kan word nie.'

[5] *Standard Chartered Bank of Canada v Nedperm Bank (Ltd)* 1994 (4) SA 747 (A) at 764I – 765B.

[28] In *OK Bazaars (1929) Ltd v Standard Bank of South Africa Ltd* [6] the effect of a new or separate intervening causal element (*novus actus interveniens)* was explained as follows:

'Whether or not a new intervening cause relieves the original actor of liability for the consequence of his act is one aspect of the broader enquiry into legal causation (*Standard Chartered Bank of Canada (loc cit*)). It might, in some cases, have the effect of 'severing the legal *nexus* with the result that the consequence should not be imputed to the [original] actor' (Neethling, Potgieter and Visser *Law of Delict* 4th ed (2001) at 205) notwithstanding that the causative link remains factually intact.

I have already drawn attention to the fact that the test for legal causation is, in general, a flexible one. When directed specifically to whether a new intervening cause should be regarded as having interrupted the chain of causation (at least as a matter of law if not as a matter of fact) the foreseeability of the new act occurring will clearly play a prominent role (*Joffe & Co Ltd v Hoskins and Another* 1941 AD 431 at 455 - 6; *Fischbach v Pretoria City Council* 1969 (2) SA 693 (T); *Ebrahim v Minister of Law and Order and Others* 1993 (2) SA 559 (T) at 566B - C; *Neethling et al (supra* at 205); Boberg *The Law of Delict* at 441). If the new intervening cause is neither unusual nor unexpected, and it was reasonably foreseeable that it might occur, the original actor can have no reason to complain if it does not relieve him of liability.'

Factual causation

[29] Factual causation is determined by asking whether, but for the wrongful conduct, the harm (in this case, the deceased's death) would have eventuated. Applying the test requires a common-sense approach to the sequence of events, in which we mentally eliminate the wrongful conduct and replace it with a hypothetical course of conduct.[7]

[30] The deceased took his life by deliberately inflicting a gunshot wound upon himself. The gunshot wound self-evidently was the direct cause of

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[6] *OK Bazaars (1929) Ltd v Standard bank of South Africa Ltd* 2002 (3) SA 688 (SCA) paras 32 – 33.
[7] *Minister of Safety and Security v Van Duivenboden* 2002 (6) 431 (SCA); [2002] 3 ALL SA 741 para 25.

death. His decision to take his life was an expression of his own volition, and it necessarily involved deliberate conduct to bring about the intended result. Thus, in this instance, the proper inquiry is whether, 'but-for' the injuries sustained in the collision, the deceased would nevertheless have chosen to end his life?

[31] It is here that we encounter the obvious difficulties with the way in which the particulars of claim were formulated. On the pleaded case, the deceased's death was a direct consequence of the injuries he had suffered in the collision. No evidence to sustain that case was presented. The relevant evidence concerning the injuries suffered plainly does not support a conclusion that the deceased 'died as a result of his injuries'. Despite the ambit of the pleaded case, evidence was presented at the trial that sought to sustain a wholly different chain of factual (and legal) causation. Construed generously, the case at trial was that the deceased had suffered debilitating physical injuries which gave rise to the deceased experiencing emotional and mental distress. This mental distress caused him to take his life.

[32] Mrs Auret-Besselaar's evidence was presented to explain the deceased's state of mind at the time she consulted with him, approximately five months prior to him taking his life. It was factual in nature, although she did venture an opinion regarding the cause of the suicide. In the opening paragraph of her report, she states that:

'Her husband committed suicide on 6 December 2016 as a result of his injuries sustained in the accident.'

[33] When she was asked who had informed her that he had taken his life *because of the injuries he had sustained*, she stated that Mrs LM had told her and that Mrs LM was convinced that the accident caused the suicide. She later explained that:

'. . .I was informed that he committed suicide. I do not recall any attorney telling me it was because of the accident per se. But after my .. in formulating this report, and in its development, its really two . . . trying to merge two reports into one: his loss of income and her need for support. It was convincing to me that she said it's the accident that caused serious injuries, incapacitated him to the extent that he couldn't operate as before. He could operate, but not as before. And due to his emotional distress and state he was in, he committed suicide.'

[34] This statement is, in my view, wholly destructive of the reliability of Ms Auret-Besselaar's evidence regarding the cause of the deceased's death. At the time of her consultation with the deceased, she claimed that he was angry and frustrated. Her notes record that he was 'moedeloos.' He complained of pain caused by the plate and screws, which had been inserted in his leg, and that he wanted to 'rip them out.' She reported these observations to the attorney and suggested that the deceased be assessed by a clinical psychologist to determine his mental state. She accepted that this was to obtain a clearer picture of the impact of the injuries and the effect this may have on his personal injury claim.

[35] She sought, however, to suggest that she was shocked by the deceased's level of anger and she considered that he may harm himself. This latter concern arose from his statement about 'ripping out' the plate and screws. Her consultation notes, however, do not support the statement that she was, in fact, concerned about the possibility of self-harm. Nor does the text of her correspondence with the attorney to advise that the deceased be seen by a clinical psychologist.

[36] It is difficult to discount Mrs Auret-Besselaar's assumption that the deceased's suicide must have been caused by the deceased's mental distress, and that her description of his mental state was coloured by this assumption. In my view, her evidence provides limited assistance in determining, as a matter of fact, what role the deceased's state of distress played in his decision to take his life. I shall accept that the deceased was frustrated and angered by his physical disabilities. I shall also accept that he was distressed about his financial circumstances. This accords with the evidence of Mrs LM and that of his mother, Mrs SB.

[37] Mrs Coetzee's assessment of the deceased occurred two weeks before he took his own life. The purpose of her assessment was to report upon the psychological impact, if any, of the collision and the injuries sustained by the deceased. Mrs Coetzee's report was formulated as a psychological assessment report for the purposes of a dependants' claim. She explained her brief as follows, in an opening paragraph of her report.

'The referring question relates to the nature, extent, and severity of any psychological sequelae arising from the relevant accident and the injuries sustained therein.'

[38] She concluded her report with the following assertion:

'The deceased's suicide is a direct result of the motor vehicle accident in which he was a victim.'

[39] Mrs. Coetzee stated that the deceased did not meet the diagnostic criteria to permit a clinical diagnosis of depression or a major depressive disorder. In her assessment, the deceased was, however, mentally distressed. The distress manifested itself as expressions of 'frustration, anger, aggression, reduced self-esteem, crisis of identity, feelings of

hopelessness and depression.' He had not used these terms to describe his feelings. He had stated that he felt 'moedeloos' and like a failure.

[40] She expressed the view that his mental distress stemmed from his physical injuries and that it extended into his personal life, relationships, and work life. When she was asked whether his psychological distress could be said to have impaired his judgment, she equivocated. She claimed not to appreciate what is meant by impaired judgment. She had found no suggestion of impairment in the sense that the deceased was incapable of exercising judgment in regard to his affairs, such as might arise in curatorship. She regarded the deceased as 'not mentally well.' She considered that 'there would have been a degree of impaired clarity of mind for him to have taken such a drastic action' when he took his life.

[41] In response to searching questions by the trial court as to why that was not recorded in her report, Mrs Coetzee stated that:

'There would have been a degree of impaired clarity of mind, and of course, in hindsight, it is clear to see that there was an impaired clarity of mind for him to have taken such a drastic action. For a man who – it was not in his make up to give up, to abandon his family, to devastate his children. That was not in his make up.

So in hindsight definitely his mind was impaired. But,ja I will in future – I have learnt something about what the legal issue is that would need to be answered.'

[42] Such deductive reasoning has long been considered impermissible in the assessment of causation. It proceeds from the effect, the deliberate self-infliction of injury causing death, to the cause, namely the existence of an impairment of the mind which negates the deceased's autonomous volition. It then serves to support the further conclusion, namely that the assumed impairment in the form of an absence of mental wellness is directly attributable to the injuries sustained in the collision. Reasoning of

this sort by an expert witness can provide no assistance in the determination of causation of harm.

[43] The purpose of the evidence regarding the deceased's mental state was to establish facts upon which a causal relationship might be established between the wrongful conduct and the eventuating harm. What then are we to make of the sum of the evidence presented about the deceased's state of mind? I accept that the deceased's physical injuries caused him significant impairment of function and that he experienced pain and discomfort as a result of the plates and screws that had been inserted to stabilise the fracture. I also accept that the deceased experienced anger, frustration and a degree of mental distress that would have impacted his family and work life.

[44] I accept, also, as a matter of common sense, that a person who suffers debilitating physical injuries may, in consequence of those injuries, develop psychological sequelae. Our courts have recognised such a causal relationship. I shall accept that the evidence points to the fact that the deceased manifested emotional responses which suggest mental or psychological distress, even if it was not such as would sustain a diagnosis of a mental illness or disorder.

[45] When we engage in eliminating wrongful conduct, for purposes of determining factual causation, we do so in the context of the facts of the case. In this instance, we eliminate the occurrence of the physical injuries and their sequelae, as established by the evidence. Thus, we accept that the deceased would not have been burdened by physical incapacity and pain. He would have continued to enjoy his pre-morbid amenities and his family leisure pursuits. He would have been unconstrained in his physical ability

to undertake the refurbishment of caravans. And we must suppose that his economic circumstances would have been as it was at the time immediately prior to the collision.

[46] In this case, it involves accepting that he had already suffered a significant setback in his business. He had lost 60 % of his turnover in his plumbing business before the collision. As a consequence, the family's economic circumstances were severely constrained. He had sold his house and rented accommodation. His children were transferred from their previous school to a new one to reduce costs. The family had to forego luxury items and curtail their leisure activities. His caravan refurbishing business was progressing well, according to Mrs LM. However, it required capital to purchase caravan stock. The deceased's access to capital was limited, and there is evidence that the deceased had become heavily indebted.

[47] The purpose of the hypothetical exercise is to enable the court to assess whether there is the necessary causal relationship between the injuries sustained and the occurrence of the resulting harm. It need not be established that the injuries were the only causative element. It is sufficient if the probabilities suggest, upon a common-sense appreciation of the interplay between causes and effects, and considering the vagaries of human behaviour, that the wrongful conduct was a causative element.

[48] In my view, such a factual causal relationship is established. The evidence, particularly that regarding the deceased's resilience and his determination to provide for his family, suggests that it is improbable that, in the absence of the compounding effect of the deceased's injuries and his distress, the deceased would have taken his life.

[49] It follows from this conclusion that the requirements for factual causation are established. The trial court reached the opposite conclusion. In doing so, it erred. It premised its conclusion upon a misunderstanding of the nature of the test, and it considered the absence of a diagnosed impairment of mental capacity to be dispositive. The full court reached the correct conclusion that factual causation was established, albeit on an incorrect appraisal of the effect of the evidence. It also failed, in my view, to consider legal causation.

Legal causation

[50] This Court has dealt with the occurrence of suicide in relation to the elements of fault in delictual claims on a few occasions.[8] *Road Accident Fund v Russell*[9] concerned a case similar to the present matter. The deceased in that matter had suffered multiple injuries in a motor vehicle collision. Approximately six months after the collision, he had taken his own life. A dependant's claim for loss of support was instituted against the Road Accident Fund. On appeal to this Court, the central issue concerned the causation of the dependants' loss.

[51] This Court held that the act of taking his own life did not, in the circumstances of that case, constitute a *novus actus interveniens* (a new or separate event that caused the harm). The Court held that:

'The question raised by the present appeal has as yet not been considered by this Court. However, even though the deceased's act of suicide may be said to have been deliberate,

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[8] *Minister of Safety and Security v Madyibi [2009] ZASCA 95;*2010 (2) SA 256 (SCA); *Minister of Safety and Security v Hlomza [2014] ZASCA 5;* 2015 (1) SACR 1 (SCA). These involved claims for personal injury and loss of support arising from police officers using their service firearms to shoot their spouses and then take their lives. The claims were founded on a breach of a duty of care owed to the claimants, which occurred when the authorities failed to dispossess the police officers of their firearms. In both matters, the result turned upon the determination of the existence and ambit of the duty rather than the causation of harm.

[9] *Road Accident Fund v Russel* 2001 (2) SA 34 (SCA).

the weight of the evidence proves on the probabilities that the deceased's mind was impaired to a material degree by the brain injury and resultant depression. Consequently, his ability to make a balanced decision was deleteriously affected. Hence his act of suicide, though deliberate, did not amount to a *novus actus interveniens*. It is unnecessary for the purpose of this case to determine whether the question of *novus actus interveniens* is properly a consideration material to legal causation or, rather, factual causation and that question is accordingly left open.'[10]

[52] The court drew upon English law authorities in support of its approach to the operation of *novus actus interveniens* in the context of suicide.[11] The court expressed the view that these cases established the principle that a person who is not of sound mind cannot be said to have acted with unimpaired volition in forming the decision to commit suicide and that such suicide does not constitute a *novus actus interveniens*.[12] It is unnecessary for present purposes to consider these authorities. They are, in any event, distinguishable on the facts, and the decisions turn on different elements of English tort liability.[13] There can, in my view, be no quarrel with the general proposition accepted by this Court in *Russell.*

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[10] Ibid para 25.

[11] *Commissioners of Police for the Metropolis v Reeves (Joint Administratix of the Estate of Martin Lynch, Deceased) (Reeves)* [1999] 3 WLR 363 [2000] AC 360 [2000] 1 AC 360 [1999] 3 All ER 897 [1999] UKHL 35; and *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283 (CA) ([1990] 3 All ER 246) (*Kirkham)*.

[12] *Russell* para 24.

[13] Both *Reeves* and *Kirkham* involved statutory claims for loss of support arising from the death by suicide of a person detained in police custody. In *Reeves* the deceased was not suffering from any diagnosed mental illness, whereas in *Kirkham* the deceased was. The central question in both cases was whether the deceased's deliberate act of taking his own life might constitute a *novus actus intervieniens.* The majority in *Reeves* held that the ambit of the duty of care imposed upon the Crown authorities extended to the prevention of suicide by persons held in custody. As such, the very act which the Crown was under a duty to prevent could not be held to constitute an intervening cause which interrupted the causal consequences of the admitted breach of that duty of care. Lord Craig said the following:
'There is no doubt that the Commissioner was right to concede that he owed a duty of care to the deceased while he remained in police custody. The deceased had been identified as a suicide risk, having on two previous occasions attempted to strangle himself with a belt after being placed in a cell. It was the Commissioner's duty to take reasonable care not to provide him with the opportunity of committing suicide by making use of defects in his cell door. The risk was not that he would injure himself accidentally if given that opportunity, but that he would do so deliberately. That is the nature of an act of suicide by a person who is of sound mind. It is a deliberate act of self-destruction by a person who intends to end his own life. So I think that the Commissioner's duty can most accurately be described as a duty

[53] The more recent English case of *Corr v IBC Vehicles Limited*[14], provides some assistance in the present instance. The claim arose as a consequence of injuries sustained by an employee at his workplace and his subsequent death by suicide. The deceased had suffered both physical and psychological injuries. The latter developed over time into severe depression and anxiety. On the established evidence and accepted facts, this condition culminated in the deceased taking his life several years after the injuries were sustained. The question accordingly arose whether the deceased's death by suicide broke the chain of causation and whether it was a foreseeable consequence of the injuries sustained.

[54] The House of Lords decided the first question on the basis that the deceased's conduct fell within the scope of the duty which rests upon an employer to prevent harm, both physical and psychological, to an employee. Lord Bingham framed it as follows:

'The law does not generally treat us as our brother's keeper, responsible for what he may choose to do to his own disadvantage. It is his choice. But I do not think that the submission addresses the particular features of this case. The employer owed the deceased the duty already noted, embracing psychological as well as physical injury. Its breach caused him injury of both kinds. While he was not, at the time of his death, insane in *M'Naghten*'s terms, nor was he fully responsible. He acted in a way which he would not have done but for the injury from which the employer's breach caused him to suffer. This being so, I do not think his conduct in taking his own life can be said to fall outside the scope of the duty which his employer owed him.'[15]

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to take reasonable care to prevent the deceased, while in police custody, from taking his own life deliberately.'

[14] Fn 1 above.
[15] *Corr* para 10.

[55] Turning to the foreseeability question it held that:

'…the principle that a tortfeasor who reasonably foresees the occurrence of some damage need not foresee the precise form which the damage may take in my view applies. I can readily accept that some manifestations of severe depression could properly be held to be so unusual and unpredictable as to be outside the bounds of what is reasonably foreseeable, but suicide cannot be so regarded. While it is not, happily, a usual manifestation, it is one that, as Sedley LJ put it, is not uncommon. That is enough for the claimant to succeed. But if it were necessary for the claimant in this case to have established the reasonable foreseeability by the employer of suicide, I think the employer would have had difficulty escaping an adverse finding: considering the possible effect of this accident on a hypothetical employee, a reasonable employer would, I think, have recognised the possibility not only of acute depression but also of such depression culminating in a way in which, in a significant minority of cases, it unhappily does.'[16]

[56] Lord Bingham went on to state that:

'The rationale of the principle that a *novus actus interveniens* breaks the chain of causation is fairness. It is not fair to hold a tortfeasor liable, however gross his breach of duty may be, for damage caused to the claimant not by the tortfeasor's breach of duty but by some independent, supervening cause (which may or may not be tortious) for which the tortfeasor is not responsible. This is not the less so where the independent, supervening cause is a voluntary, informed decision taken by the victim as an adult of sound mind making and giving effect to a personal decision about his own future. Thus I respectfully think that the British Columbia Court of Appeal (McEachern CJBC, Legg and Hollinrake JJA) were right to hold that the suicide of a road accident victim was a *novus actus* in the light of its conclusion that when the victim took her life "she made a conscious decision, there being no evidence of disabling mental illness to lead to the conclusion that she had an incapacity in her faculty of volition": *Wright v Davidson* (1992) 88 DLR (4th) 698, 705, CanLII. In such circumstances it is usual to describe the chain of causation being broken but it is perhaps equally accurate to say

[16] *Corr* para 13.

that the victim's independent act forms no part of a chain of causation beginning with the tortfeasor's breach of duty.[17]

[57] In the argument before this Court, both parties placed reliance upon this Court's judgment in *Russell.* The respondents contended that a deliberate act of suicide brought about by impaired judgment or an unsound mind could not constitute a *novus actus interveniens.* They contended that it was not required that the person be diagnosed as suffering from a mental illness. They argued that the evidence, in this case, establishes that the deceased was of unsound mind when he took his life and that this was caused by the wrongful conduct of the insured driver.

[58] On the other hand, the RAF contended that the facts in *Russell* are distinguishable since there had been a diagnosis of mental illness arising from a brain injury suffered in the collision. The deceased was therefore of unsound mind. It was argued that, in the present matter, there was no diagnosis and the evidence does not establish that the deceased was of unsound mind in a manner that would negate his act of volition. For this reason, it was submitted that the deceased's act of suicide was a *novus actus interveniens* which served to break the chain of causation.

[59] The judgment in *Russell* is indeed distinguishable on the facts. In that case, the wrongful conduct had directly caused the injury giving rise to the impairment of the mind of the deceased. The deceased's deliberate act of suicide was therefore not one of unimpaired volition. The court found that the deliberate act of suicide was not too remote and was foreseeable as a consequence of the injuries actually suffered by the deceased.

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[17] *Corr* para *15.*

[60] Suicide is the deliberate act of ending one's own life. It involves exercising a choice, an act of volition, to bring about the result. Such a choice is a matter upon which the law has little scope for interference.[18] From a legal policy perspective, every natural legal subject enjoys full autonomy of will and self-determination. It is premised on the recognition and protection of the rights to dignity, equality, and freedom and security of the individual, as afforded by our Constitution.[19] A natural legal subject with full legal capacity is entitled to determine their own fate. This is the principle of self-determination.

[61] When, therefore, we are confronted by a deliberate act of suicide, we do not presuppose that it was brought about by something other than a deliberate act of will or by some defect in the exercise of such will. We accept that a deliberate act of suicide may constitute an expression of self-determination by the person concerned.

[62] If, however, it is established upon reliable evidence that the person was not acting with full autonomy or capacity by reason of mental illness or impairment, and that the impairment was brought about by or caused by the wrongful conduct of another, then legal liability *may* be attributed to the person who caused the impairment. That is what occurred in *Russell.*

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[18] The law does not generally countenance intervention to protect a person from self-inflicted harm. Intervention is confined to instances where self-harm or the risk of self-harm arises in consequence of recognised impairments of volition, whether temporary or permanent. Thus, a detainee who deliberately refuses food as a form of protest against incarceration will not be subjected to involuntary feeding in order to prevent that detainee's demise. See *The World Medical Association's 1975 Tokyo Declaration and 1991 Malta Declaration*. A person who, by reason of mental illness, poses a risk to themselves (or others) may be subject to involuntary committal to a treatment facility. Intervention might also be required if there exists a legal duty to prevent self-harm, irrespective of the mental state or condition of the person concerned.

[19] Section 12(2) of the Constitution, which provides that everyone has the right to bodily and psychological integrity, which includes, *inter alia*, the right 'to security in and control over their own body'. These rights provide the foundation for the recovery of damages for wrongful physical and psychological harm and for asserting the right to autonomous self-determination.

[63] If, on the other hand, it is established that the decision to end life was not the result of a cognizable mental illness or impairment of judgment, legal liability *may* nevertheless be attributed to the wrongdoer if the suicide was reasonably foreseeable or sufficiently closely connected to the wrongful conduct. This is the clear import of the dictum in *OK Bazaars,* quoted above.[20] The existence of a new or separate intervening cause, will not serve to break the legal chain of causation if it was reasonably foreseeable.

[64] In this case, the deceased did not suffer from a cognizable psychological lesion or injury that can be said to have impaired his mental capacity or judgment. He was capable of exercising his free will, and there was no evidence that he did not or could not appreciate the consequences of his conduct. The deceased's mental distress, anger, frustration, and expressions of despair do not permit a finding that he was incapable of exercising his volition. In these circumstances, his decision to take his life was a new intervening cause of the eventuating harm.

[65] That is not the end of the inquiry. As pointed out by this Court in *OK Bazaars,* it must still be considered whether the deceased's deliberate act was foreseeable or sufficiently closely connected to the harm actually caused by the wrongful conduct. If so, then legal liability for the consequences of the eventuating harm can fairly be attributed to the wrongdoer. In this instance, I would answer this inquiry in the negative, for the reasons that follow.

[20] See para 28 above.

[66] Firstly, the resulting harm occurred approximately two and a half years after the initial wrongful conduct. In itself, the time period may not be decisive. The passage of time, however, reduces the sufficiency of the link between a cause and its effect. It also militates against the reasonable foreseeability of the harm that eventuated.

[67] Secondly, the harm that eventuated was not the sort of harm that might reasonably have been anticipated in the circumstances of this case. To establish whether it is the sort of harm that might reasonably be foreseen, we ask whether the wrongdoer, having caused the harm actually suffered by the deceased, would have foreseen that a person in the position of the injured deceased might take his life by suicide. It requires a measure of predictability regarding the harm that may ensue. In the language of *OK Bazaars,* the occurrence of the new intervening cause should not be unusual or unpredictable. Where a person suffers a psychological lesion which gives rise to a mental illness or incapacity, suicide as an eventuating harm is more readily predictable. It falls within the ambit of what we might consider not merely possible, but probable, given our appreciation of human behavioural responses. Where there is no such psychological lesion or subsequent mental illness or impairment, the probability of the occurrence of the eventuating suicide is necessarily much reduced. In this case, no evidence was adduced to address this circumstance.

[68] Thirdly, the evidence regarding the character of the deceased establishes that he was a determined and resilient individual who adapted to adversity while trying to fend for his family. He had no history of mental illness, which might have contributed to his conduct. While his family knew that he was in a state of mental distress, his conduct itself came as an unexpected shock. This evidence, I have already found, supports the

determination of factual causation when applying the but-for test to ascertain a causal nexus, but it does not support a conclusion that his conduct might reasonably have been foreseen as a likely or probable consequence of the wrongful conduct.

[69] In the circumstances of this case, the deceased's decision to commit suicide cannot be said to have been a reasonably foreseeable consequence of the wrongdoer's wrongful and negligent conduct, which caused harm to the deceased. Accordingly, I conclude that legal causation was not established.

[70] As much as legal principles must be brought to bear in a case such as this, the consequences of suicide are always tragic and distressing. However sympathetic we might be to the innocent survivors of the tragedy, the claim cannot be sustained. In the circumstances, the appeal must succeed.

[71] I make the following order:

1 The appeal is upheld, with costs.
2 The order of the full court is set aside and is replaced by the following order:

'The appeal is dismissed with costs.'

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G GOOSEN

JUDGE OF APPEAL

Appearances

For appellant:	G Naude SC with P Eia
Instructed by:	Malatji & Co attorneys, Sandton
	Honey & Partners Incorporated, Bloemfontein
For respondent:	J H Roux SC with A J Du Toit
Instructed by:	DSC Attorneys, Cape Town
	Rosendorf Reitz Barry, Bloemfontein.