



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

Not Reportable

Case no: 4413/2020

In the matter between:

JOHANNA MARIA KATRINA ROUX

FIRST APPLICANT

KARA ROUX

SECOND APPLICANT

and

**MEC FOR POLICE: THE DEPARTMENT OF POLICE
ROADS AND TRANSPORT, FREE STATE PROVINCE**

FIRST RESPONDENT

Neutral citation: *Roux and Another v MEC for Police: The Department of Police, Roads and Transport, Free State Province* (4413/2020) [2026] ZAFSHC 288 (14 May 2026)

Coram: MHLAMBI J

Heard: 13 February 2024, 14 February 2024, 28 May 2024, 31 May 2024, 03 September 2024, 11 November 2024, 10 September 2025 and 05 December 2025.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 14 May 2026.

Summary: Delict – negligence – loss of support – failure to maintain road surface – potholes – causation – contributory negligence – expert evidence – actuarial calculations – accelerated inheritance – proceeds from life insurance – *res inter alios acta* – Assessment of Damages Act 9 of 1969.

ORDER

- 1 The applicant succeeds in her claim.
 - 2 Damages are awarded to the plaintiffs as follows:
 - 2.1 Past and future loss of support for the first plaintiff in the amount of R1 769 466.00.
 - 2.2 Past and future loss of support for the second plaintiff in the amount of R555 738.00.
- (The total loss of support due and payable by the defendant to the plaintiffs is R2 325 204.00.)
- 3 Interest to be calculated on the amount of R2 325 204 at the monetary interest rate calculated from the date of this order until the date of final payment.
 - 4 The defendant is to pay the plaintiff's and counsel's costs on scale B.

JUDGMENT

Mhlambi J

[1] The plaintiffs, who are mother and daughter, sued the defendant for past and future loss of support in the amount of R3 507 824.00 after the first plaintiff's late husband and father of the second plaintiff, Pieter Eduard Roux (the deceased), died on 27 October 2018, when the Toyota Land Cruiser he was driving hit a tree on the Kroonstad-Koppies Road.

[2] The plaintiffs pleaded that the deceased drove over a series of potholes, which caused him to lose control of the vehicle and hit a tree beside the road, resulting in his death. This was due to the defendant or the defendant's employees' sole negligence or omission in the following respects:

- (a) They breached their duty of care by failing to maintain the road properly;
- (b) They did not take reasonable steps to prevent harm to the deceased;
- (c) They failed to regularly inspect the road and notice the potholes and overall condition;
- (d) They failed to properly inspect and repair the road and potholes; and

(e) They did not take reasonable measures to prevent the accident and the deceased's death.

[3] In its plea, the defendant denied the negligence allegations and admitted that, through the Department of Police, Roads, and Transport for the Kroonstad District, it was responsible for maintaining the road between Koppies and Kroonstad. It pleaded that the road was properly maintained and regularly inspected. Reported or discovered potholes and areas of deterioration were promptly repaired. Alternatively, routine maintenance of such areas depends on the availability of personnel and financial resources. If these areas were not promptly and adequately repaired and maintained, road users were adequately warned of potholes and unsafe road surface conditions through warning signs and were advised to reduce speed. It pleaded in the alternative that the deceased was contributorily negligent.

[4] On the merits, the plaintiff led the evidence of six factual witnesses and an expert, while the defendant led only an expert witness. Johannes Tsunke was a sergeant in the South African Police Service (SAPS) stationed at Heuningspruit. He testified that on the morning of 27 October 2018, he and a colleague were driving on the R-82 road, between Kroonstad and Koppies, on their way to work, when he saw a vehicle on the side of the road that had collided against a tree, which was on the road reserve, 1.5 meters from the tarmac. On inspection, he saw a person sitting behind the driver's wheel. The motor vehicle was damaged on the front side, and the driver, who was still alive, was trapped inside the vehicle. He was extricated by the fire brigade personnel and whisked to the hospital by ambulance.

[5] He did not know what caused this accident. On inspecting the scene and before completing the accident report, he observed that the road was tarred, dry, with no obstacles except potholes, which varied in size and depth. He observed a large one on the lane travelled by the deceased, measuring 15-20 cm, and his foot could be immersed to the ankle in it. It extended for two meters across the middle line to the oncoming lane and one meter down the road. He observed light tyre marks before the big pothole, up to where the vehicle stopped. He completed the accident report and his sworn statement. He pointed out that the point of impact on the hand-drawn sketch in the accident report was on the incorrect side. He communicated his observations to Warrant Officer Ntsepe

of the Kroonstad LCRC, who took photographs of the scene and drafted a sketch.

[6] Warrant Officer Ntsepe testified that she was a forensic analyst in the SAPS. She attended the accident scene and spoke with Sergeant Tsunke, who explained what might have happened there. She made her own observations and took photographs of the scene, but the memory card became corrupted, and she could not present the photographs to the court. She observed that the road was tarred with many potholes. It was dry, and the road signs were clearly visible. According to her, the driver might have lost control and collided with the tree because there was a 'disturbance on the road on the swaai...something like a skid on the swaai, and then the tyre marks'. The tyre marks were on the soil, not on the tar road.

[7] Mr Jonas Frederik Klopper testified that he found the deceased in the Land Cruiser, which had crashed into a tree. The middle of the bakkie had hit the tree. The police arrived and took photos of the scene. He was the deceased's employer and the owner of the Land Cruiser driven by the deceased that day. It was in good condition. According to him, the vehicle went through the potholes directly into the trees on the shoulder of the road. That part of the road had between 20 and 30 potholes; some of them were very big, half a meter and 20 centimeters deep. The rains washed out the potholes. He testified that the road was neither maintained nor regularly inspected, and that the farmers' union spread soil on it once a year to facilitate the passage of farmers' bakkies. Trees were overgrowing the road reserve on the gravel side. At the time of the accident, no repairs were effected on that road. He used the road daily in 2018, and there was no signage warning of the potholes or a deteriorated road surface. He observed tyre marks from the pothole to the tree where the vehicle came to a standstill, but did not see any long braking marks before the pothole.

[8] Mr Pieter Eduard Roux, the deceased's father, visited the accident scene three days later and noticed the poor condition of the road, which was full of potholes. He returned to the scene a year later and took two photos, showing that the road had been repaired and the potholes sealed.

[9] Mr Wessel Nicolaas Vorster testified that he was employed by Prinsloo Recovery Towing Services, which removed the vehicle from the accident scene. The road was poor,

with large, deep potholes. The damage to the Land Cruiser was on the front, towards the right, as the vehicle's nose bent around the tree.

[10] Mrs Roux, the plaintiff, testified that the deceased was her husband. She arrived at the scene before the SAPS and ambulance and spoke to the unresponsive deceased. She traveled daily on the R82 secondary road to take the second plaintiff to school. The road had many potholes.

[11] Ms Wilna Badenhorst considers herself an expert in accident investigation and reconstruction, and her qualifications are not in question. In her initial report, she opined that, after reviewing the sketch plan included in the accident report form, the Toyota Land Cruiser left the road surface on the opposite side and collided with a tree. This indicated that the driver lost control, causing the vehicle to leave the road to the right. The two photographs showing the scene were poor black-and-white copies. No meaningful discussion could be held about what was visible in the photographs. To conclude, reliable physical evidence was needed.

[12] Her second report was a joint submission with Mr Grobbelaar, the defendant's expert witness. The experts agreed that the accident happened at 05h30, after sunrise. The road was tarred, straight, and flat. They couldn't comment on potholes because there were no photographs showing the road and surface at the time of the accident. They agreed that the sketch in the accident report showed the Land Cruiser losing control and hitting a tree on the right side of the road, while the police sketch plan showed it hitting a tree on the left side. Both sketches indicated that the Land Cruiser was travelling from Kroonstad to Koppies/Heuningspruit. Mr Grobbelaar mentioned that Sergeant Tsunke stated the Land Cruiser was travelling from Kroonstad and collided with a tree on the left side, as shown in the police sketch.

[13] The experts agreed that loss of vehicle control could occur for various reasons, including driver fatigue, lack of concentration, swerving or steering in response to an animal or pedestrian, tyre failures, mechanical failures, or a pothole. The lack of photographs and physical evidence collected at the time makes it difficult to assess, from an expert perspective, the visibility of the potholes mentioned in the particulars of the claim and the founding affidavit of JMK Roux. The parties agreed that such an

assessment may be made if such photographs or evidence become available.

[14] During her oral testimony, Ms Badenhorst stated that her conclusions relied on Sergeant Tsunke's evidence about tyre marks leading from a specific pothole to the vehicle, on the assumption that the court accepted that evidence. First, the tyre marks connected the pothole where they started to the nearby tree and, consequently, to the incident. Second, the Toyota Land Cruiser most likely travelled through the pothole. Third, loss of control probably occurred very close to the pothole. Fourth, the loss of control was likely caused by the pothole.

[15] Mr Grobbelaar testified that during an inspection of the accident site, Sergeant Tsunke acknowledged making a mistake in the sketch on the accident report form. The Land Cruiser should have been shown on the left side of the sketch, not the right. In cross-examination, he acknowledged that the plaintiff's witnesses testified about potholes on that road. He admitted that the entire road surface had deteriorated to the point that the entire section needed to be replaced. A crocodile crack or a severely degraded road surface can cause a vehicle to veer off the road. Such a crack can lead to a pothole. He confirmed that the Land Cruiser veered left, not right, and that it collided. He acknowledged that the pothole described by Sergeant Tsunke was 20 to 30 centimeters deep, long, and wide enough to cause a vehicle to veer off the road and the driver to lose control. It was classified as an extreme-severe pothole.

[16] It was argued on behalf of the plaintiff that, as their claim was for loss of support, they had only to prove 1% negligence on the part of the defendant to succeed. The defendant, on the other hand, argued that contributory negligence had to be proven on the side of the deceased to determine his level of negligence.

[17] In *Union Government (Minister of Railways) v Lee*,¹ the right of action given to the dependants was stated to be dependent upon the wrongful and negligent killing of the deceased. If the deceased himself could not have recovered damages for the injury, had death *not* ensued, no action lies at the suit of those who have been deprived of his support. The dependants, however, cannot be in a more favourable position than the deceased himself would have been had he survived. Any contributory negligence on his

¹ *Union Government (Minister of Railways) v Lee* 1927 AD 202 at 205.

part must accordingly be considered in assessing the damages recoverable by them.²

[18] It follows that although the dependants' claim for loss of support is a separate and distinct cause of action, it nevertheless arises from the same wrongful act, and the negligence of the deceased, if any, must be considered in determining the degree of fault and the consequent apportionment.³

[19] Save for the expert witness, the defendant called no witnesses to neutralise the plaintiff's witnesses. Despite the criticism, Sergeant Tsunke's evidence is bolstered by the other witnesses' accounts of the road's condition, the nature of the potholes, etc. Despite its plea, the defendant failed to present evidence that it regularly inspected and promptly repaired, reported, or discovered potholes and areas of deterioration. No evidence was provided that road users were adequately warned of potholes and unsafe road surface conditions through warning signs, nor that they were advised to reduce speed.

[20] In *Roux v Hatting*,⁴ the court held that direct evidence of what happened in a collision must carry greater weight than the opinion of an expert, however experienced he may be. The following passage is apt:

'In *Motor Vehicle Assurance Fund v Kenny* - Eksteen J held, in the context of a motor collision, that "[d]irect or credible evidence of what happened in a collision, must, to my mind, generally carry greater weight than the opinion of an expert, however experienced he may be, seeking to reconstruct the events from his experience and scientific training"; that the view of an expert witness as to what might probably have occurred should generally "give way to the assertions of the direct and credible evidence of an eye witness"; and that it is "only where such direct evidence is so improbable that its very credibility is impugned that an expert's opinion as to what may or may not have occurred can persuade the court to his view".'

[21] The evidence of the eyewitnesses, Sergeant Tsunke and Warrant Officer Ntsepe, cannot be overlooked and rejected, as it is supported by both experts. In my view, the defendant's conduct caused the road to deteriorate, creating crocodile cracks and potholes that led vehicles to veer off the road, resulting in the collision. It cannot, in the

² *South British Insurance Co Ltd v Smit* 1962 (3) SA 826 (A) at 836B-D.

³ *Botes v Legal Insurance Co Ltd* 1963 (1) PH J5 (AD) at 15.

⁴ *Roux v Hatting* [2012] ZASCA 132; 2012 (6) 428 (SCA) para 20.

given circumstances, be said that the deceased was contributorily negligent. I find that the defendant was the sole cause of the collision.

[22] The first plaintiff testified that she was married to the deceased and was 52 years old at the time of his death. The second plaintiff was their daughter, born on 7 March 2006, and in Grade 12. They had applied for her to attend the Potch Akademie, where she would study photography. She inherited everything they owned together, including a motor vehicle, furniture, and a policy she believed was a life insurance policy. She did not remember the policy's payout amount, but with the proceeds, she bought a vehicle and a house and invested about R1 500 000.00, which yielded a monthly interest of R7 000.00. She confirmed that before the deceased's death, she refurbished furniture and earned R3 000.00 per month. She accepted Mr Kloppe's evidence that the deceased had worked for him part-time since September 2018.

[23] Two actuaries' testimony was led to determine the amount of the loss of support. The plaintiff's actuary, Mr Mellet, provided various amounts that differed from the original amount claimed. Initially, the calculation did not provide for contingencies. Two scenarios were presented, and it was assumed that the child would be dependent on the deceased until she turned either 18 or 21 years old. The deceased's income at the time of his death was based on his earnings for the 20/17/2018 tax year, when he was employed as a farm manager. It was also based on a copy of the IRP5 document for the 2017/2018 tax year, which indicated his income as R 378 104.00 per annum. It was assumed that he would have received annual increases until his retirement at age 65. The first plaintiff began earning R 30 000.00 per month after the deceased's death, and her income was therefore not taken into account in calculating the loss of support. It was also assumed that the plaintiffs did not inherit any amounts following the deceased's death.

[24] In re-examination, the actuary's calculations included the first plaintiff's annual income of R36 000.00, the monthly investment income of R7 000.00, and a 15% future loss contingency for the claimant. After accounting for contingencies, the calculations for the child until age 21 were R2 245 521.00 for the first plaintiff and R702 378.00 for the second plaintiff. The total loss of support was R2 947 899.00.

[25] The defendant's calculations were presented by Mr Pretorius, an actuary, who

based them on the deceased's income of R15,000 per month from the family farm since March 2018, and on the assumption that, during the planting season when he worked for Mr Klopper, he earned R15,000 per month for three months. According to IRP 5 for the 2019 tax year, the deceased had a gross income of R163,750 for the period from 1 March 2018 to 26 October 2018, consisting of taxable income of R150,250 and a travel allowance of R13,500. The travel allowance, however, was ignored on the assumption that it was solely for work-related purposes. The first plaintiff's income from restoring furniture, R36 000.00 per annum, increasing with earnings inflation until retirement at age 65, was considered.

[26] He was informed that the deceased and the first plaintiff were married out of community of property; that the first plaintiff was the deceased's sole heir and beneficiary of his life insurance policy; and that the first plaintiff currently received R7 000.00 per month in interest from the inheritance, which she invested. He did not make a deduction for the accelerated inheritance because he was not provided with the Liquidation and Distribution Account or any further information relating to the deceased's estate. He stated that, under the Assessment of Damages Act 9 of 1969 (Assessment of Damages Act), life assurance may not be taken into account when calculating the accelerated inheritance deduction.

[27] He applied general contingency deductions of 5% for the past loss, 10% for the child's future loss, and 15% for the widow's future loss of support. The present value of the net total loss of support as of 10 September 2025, assuming the second plaintiff would have been financially dependent until age 21, would have been R2 325 204.00, calculated as R1 769 466.00 in respect of the first plaintiff, and R 555 738.00 in respect of the second plaintiff.

[28] The present value of the interest the first plaintiff earned on the proceeds she received from the deceased's life insurance policy was calculated by discounting the interest payments of R7000.00 per month, taking into account the first plaintiff's probability of survival, and deducting the expected present value of receiving this benefit had the accident not occurred. The present value of the interest payments was calculated at R1 272 966.00. However, he deferred to legal opinion on whether this amount should be deducted from the loss of support.

[29] The defendant contended that there was no credible evidence before the court showing that the first plaintiff had received any proceeds from a life insurance policy. For the court to apply the provisions of s 1(1) of the Assessment of Damages Act, it should first determine whether it has been proven that the inheritance was, in fact, a life insurance policy. It was submitted that:

'Since the plaintiffs did not prove that the payout was from a life insurance policy and as the first plaintiff testified that she had inherited the money, the payout equates to an accelerated inheritance, which should be deducted from any award made against the defendant. The proverbial double recovery should be avoided.'

The monthly interest of R7 000.00 cannot be said to come from a life insurance policy.

[30] The defendant contended that the amounts calculated by her actuary should be accepted but reduced by R1 272 966.00. The plaintiff argued that the policy payout received by the first plaintiff should not be deducted from any damages awarded for loss of support, as it constituted a collateral benefit to be excluded as *res inter alios acta*. Counsel referred to *Zysset and Others v Santam Ltd*⁵ and *Smada Security Service (Pty) Ltd v Tshwane University of Technology*⁶ and submitted that benefits under indemnity and non-indemnity insurance should not be taken into account in reducing the plaintiff's damages.

[31] The contention that allowing the plaintiff to retain interest earned on invested policy proceeds amounts to impermissible double compensation cannot be sustained. The interest arises not from the deceased's death or the loss of support, but from the plaintiff's post-death investment of capital. As held in *Lambrakis v Santam Ltd*,⁷ interest generated by the investment of estate assets, payable only because of the deceased's death, constitutes an accelerated benefit that should not be treated as deductible, as doing so would conflate the source of the loss with the use of the capital. The contention that the interest income constitutes double compensation is incorrect and must be disregarded.

⁵ *Zysset and Others v Santam Ltd* 1996 (1) SA 273 (C).

⁶ *Smada Security Service (Pty) Ltd v Tshwane University of Technology* [2021] ZAGPPHC 301; 2021 JDR 1136 (GP).

⁷ *Lambrakis v Santam Ltd* 2002 (3) SA 710 (SCA) para 20.

[32] I agree with both counsel that the calculations in the defendant's actuarial report are reasonable. I am satisfied with the calculations on page 9 of the report, which reflect a net total loss of R 2 325 204.00. I am satisfied with the contingencies applied and that the relevant parts of the evidence and the law have been taken into account. All circumstances considered, the applicant should succeed in her claim, and the defendant is ordered to pay the costs.

[33] As a result, I make the following:

1 The applicant succeeds in her claim.

2 Damages are awarded to the plaintiffs as follows:

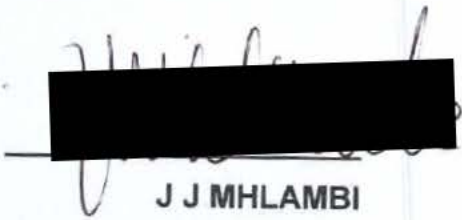
2.1 past and future loss of support for the first plaintiff in the amount of R1 769 466.00.

2.2 past and future loss of support for the second plaintiff in the amount of R 555 738.00.

(The total loss of support due and payable by the defendant to the plaintiffs is R2 325 204.00.)

3 Interest to be calculated on the amount of R2 235 204 at the monetary interest rate calculated from the date of this order until the date of final payment.

4 The defendant is to pay the plaintiff's and counsel's costs on scale B.


J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

Instructed by:

G S J Janse van Rensburg

Rosendoff Reitz Barry,

Bloemfontein

For the respondent:

Instructed by:

G Wright

Office of the State Attorney,

Bloemfontein.