IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, JOHANNESBURG

Case No: 80976/2018
(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES
SIGNATURE:
DATE: 16/3/2023

In the matter between:

T[...], T[...] N[...] (Nee M[...]) PLAINTIFF

And

MEMBER OF EXECUTIVE COUNCIL FOR HEALTH, GAUTENG PROVINCIAL GOVERNMENT DEFENDANT

Coram: Sardiwalla J

JUDGMENT

SARDIWALLA J:

[1] The plaintiff instituted a claim for damages against the defendant arising from an incident of medical negligence which occurred on 16 November 2015 at the Pretoria West Hospital, Gauteng.

[2] The issue of both liability and quantum are in dispute. At pre-trial it was

decided that the issue of quantum would be postponed *sine die* and therefore this Court is tasked with only determining the liability of the defendant.

COMMON CAUSE FACTS

[3] The parties have agreed to the following common cause facts and circumstances between them:

3.1 On 16 November 2015 the plaintiff was admitted to the Pretoria West Hospital. She was admitted by General Practitioner Sibiya and Dr Mojapelo at the Pretoria West Hospital (the "hospital") into the care of the medical professionals, personnel and other staff under the employ of the hospital.[1]The plaintiff was in labour pains as it was her 42nd week of gestation.[2]

3.2 On 17 November 2015, at the Pretoria West Hospital, the plaintiff gave normal birth through vaginal delivery with an episiotomy. Whilst still in labour, the Defendant's medical personnel performed an episiotomy procedure.[3]

3.3 Following the episiotomy procedure, the plaintiff sustained a 4th degree perineal tearing and bladder injury.[4]

3.4 Though the ANC card was faint and faded due to photocopying, she attended at least 5 ANC sessions in 2015 and there was no evidence of any substandard care in the ANC ward.

3.5 The plaintiff delivered a healthy baby at 01h05 on 17 November 2015.[5]

3.6 The clinical notes indicate that the plaintiff's placenta was delivered and was apparently however, the placental membranes were rugged.[6]

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[1] *Particulars of claim ("POC") par 7 at 3, CL 051-11.*
[2] *POC par 7 at 3, CL 051-11.*
[3] *POC par 9 at 5, CL 051-13.*
[4] *POC par 9 at 5, CL 051-13.*
[5] *Obstetrician & Gynecological Joint Minute, par 4 at 1, CL043-3.*
[6] *Obstetrician & Gynecological Joint Minute, par 5 at 1, CL043-3.*

3.7 The episiotomy was sutured by the midwife under local anaesthetic; however, the plaintiff says she could still feel the pain while being sutured.[7] The plaintiff further informed the midwife that she could feel something moving in the womb and the nurse informed her that it was normal after giving birth, the plaintiff was assessed by nursing staff at 02h20, 05h00 and 07h30 on 17 November 2015.[8]

3.8 The plaintiff was discharged on 17 November 2015 at approximately 11h20.[9]

3.9 The plaintiff was discharged without being first assessed by a medical doctor or midwife for the rugged placental membranes present after delivery.[10]

3.10 After the discharge, the plaintiff experienced severe pains as a result of a 4th degree perineal tear and bladder injury.[11]

3.11 On 21 November 2015, the plaintiff noticed heavy bleeding, a foul-smelling discharge and excretion of pus on the perineal tearing wound. Her husband whilst bathing her felt something hanging inside the vagina and he removed it and after removing it, a terrible offensive smell emanated from the plaintiff's vaginal area.[12]

3.12 The plaintiff was taken to and readmitted to the hospital for further assessment, management and treatment. The plaintiff was later transferred to Kalafong Hospital.[13]

3.13 The experts agree that the clinical notes at 19:30 on 21st November shows that the plaintiff was assessed at a health care facility (possibly a clinic) and the diagnosis was retained placenta and septic wound[14].

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[7] Obstetrician & Gynecological Joint Minute, par 5 at 1, CL043-3.
[8] Obstetrician & Gynecological Joint Minute, par 7 at 2, CL043-4.
[9] Obstetrician & Gynecological Joint Minute, par 8 at 2, CL043-4.
[10] Obstetrician & Gynecological Joint Minute, par 8 at 2, CL043-4.
[11] POC par 9-10 at 5, CL 051-13.
[12] POC par 11 at 5, CL 051-13 and Obstetrician & Gynecological Joint Minute, par 9 at 2, CL043-4.
[13] POC par 11 at 5, CL 051-13 and Obstetrician & Gynecological Joint Minute, par 9 at 2, CL043-4.
[14] Obstetrician & Gynecological Joint Minute, par 11 at 2, CL043-4.

3.14 The experts agree that clinical notes at 20:29 on 21 November 2015 shows that the plaintiff was seen and was admitted at Pretoria West hospital and the diagnosis was septic retained placenta and septic episiotomy wound.[15]

3.15 The experts agree that the retained products of conception were expelled a few days later (21 November 2022) and thus the plaintiff presented with a puerperal sepsis (*although Dr Manthatha mentioned that the puerperal sepsis was mild*).[16]

3.16 The experts agree that the clinical notes dated 22 November 2022 shows that the Plaintiff was assessed and the findings were:[17]

3.16.1 That the plaintiff was diagnosed as having a retained products of conception and no signs of sepsis.

3.16.2 Sonar examination and retained products of conception were inside the uterus.[18]

3.17 The hospital management acknowledged that the reported standard of care was not as expected from the midwife on the day.[19]

3.18 The midwife was supposed to have provided health education about the post-delivery management of the episiotomy wound.[20]

3.19 That the plaintiff was therefore offered a comprehensive consultation with independent gynaecologist to provide relief for the offensive smell and other gynaecological problems.[21]

[4] It is alleged that that as a result of the incident the plaintiff sustained the

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[15] *Obstetrician & Gynecological Joint Minute, par 13 at 3, CL043-5.*
[16] *Obstetrician & Gynecological Joint Minute, par 18 at 4, CL043-6.*
[17] *Obstetrician & Gynecological Joint Minute, par 14 at 3, CL043-5.*
[18] *Obstetrician & Gynecological Joint Minute, par 11 at 2, CL043-4 and par 13-14 at 3, CL 043-5.*
[19] *Minutes of redress meeting dated 10 February 2016, CL 051-80.*
[20] *Minutes of redress meeting dated 10 February 2016, CL 051-81.*
[21] *Minutes of redress meeting dated 10 February 2016, CL 051-81.*

following injuries:

4.1. Bladder Injury;

4.2. Degree perineal tearing wound;

4.3. Retained placenta;

4.4. Sepsis

4.5. Urinary incontinence

4.6. Loss of blood;

4.7. Foul-smelling discharge/excretion of pus; and

4.8. Enlargement and or gaping of her introitus.

[5] The plaintiff alleged the following *sequelae* resulting from the injuries:

5.1. That the Plaintiff's episiotomy was cut negligently causing the Plaintiff a 4th degree perineal tear and a bladder injury.[22]

5.2. That the Plaintiff was negligently discharged by the Pretoria West Hospital midwives with a retained placenta.[23]

5.3. That the alleged 4th degree perineal tear, bladder injury and the retained placenta caused the Plaintiff inability to pass urine, urinary incontinence, and possible inability to conceive again.[24]

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[22] *Para 9 of the particulars of claim at case lines page 044-76.*
[23] *Para 13 of the particulars of claim on case lines page 044-77.*
[24] *Para 13 of the particulars of claim on case lines page 044-77.*

5.4. That the alleged negligence of the Defendant's midwives resulted in a certain sequelae to the Plaintiff.[25]

[6] The Plaintiff admitted the reports of the following experts:

6.1. Dr M Mbokota, Specialist Obstetrician;

6.2. Dr C Candice, General Practioner;

6.3. Dr C Harris, General Practioner;

6.4. Dr Doran, Occupational Therapist;

[7] The defendant admitted the expert report of Dr Manthata- Cruywagen.

ISSUES IN DISPUTE

[8] The Court is required to determine the following issues for dispute:

8.1 Whether the Plaintiff suffered a 4th degree perineal tear and/or bladder injury.

8.2 Whether the Plaintiff suffered inability to pass urine, urinary incontinence, and possible inability to conceive again.

8.3 Whether the Defendant's employees negligently discharged the plaintiff with retained products of conception.

8.4 Whether there is any causal connection between the negligence, if proven, and the Plaintiff's alleged damages.

[9] Both parties led expert evidence.

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[25] *Para 15.4 of the Particulars of Claim on case lines page 044-33. The Plaintiff alleges she encounters inter alia difficulty in concentrating, remembering and sound decision-making, uncontrollable emotions, fatigue, feelings of guilt, worthlessness, irritability, and less interest in sex.*

LEGAL POSITION ON NEGLIGENCE AND LIABILITY

[10] The general rule is that she who asserts must prove. Therefore the plaintiff must prove that the damage that she has sustained has been caused by the defendant's negligence. The failure of a professional person to adhere to the general level of skill and diligence possessed and exercised at the same time by the members of the branch of the profession to which he or she belongs would normally constitute negligence (*Van Wyk v Lewis* 1924 AD 438 at 444).

[11] "In order to be liable for the loss of someone else, the act or omission of the defendant must have been wrongful and negligent and have caused the loss."[26] Wrongfulness involves the breach of a legal duty. The test for establishing negligence is trite.[27] This test rests on two bases, namely, reasonable foreseeability and the reasonable preventability of damage.[28] What is or is not reasonably foreseeable in a particular case is a fact bound enquiry.[29] Of great significance is that negligence must be assessed in light of all the circumstances.[30]

[12] In *Sardi and Others v Standard and General Insurance Co Ltd*1977 (3) SA 776 (A) at 780C – H Holmes JA made plain that it is inappropriate to resort to piecemeal processes of reasoning and to split up the enquiry regarding proof of negligence into two stages. He emphasised that there is only one enquiry, namely whether the plaintiff, having regard to all of the evidence in the case, has discharged the onus of proving, on a balance of probabilities, the negligence averred against the defendant. In that regard the learned judge of appeal stated:

> *'As INNES, C.J. pertinently insisted in Van Wyk v Lewis, 1924 A.D. 438 at p. 445, lines 8 – 9, "It is really a question of inference. It is perhaps better to leave the question in the realm of inference than to become enmeshed in the evolved mystique of the maxim. The person, against whom the inference of*

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[26] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v ASASA* ***2006 (1) SA 461*** *(SCA);* ***[2006] 1 All SA 6****;* ***[2005] ZASCA 73*** *para 12.*
[27] *Kruger v Coetzee* ***1966 (2) SA 428*** *(A);* ***[1966] All SA 490*** *(A).*
[28] *Jacobs v Transnet Ltd t/a Metrorail* ***2015 (1) SA 139*** *(SCA);* ***[2014] ZASCA 113*** *para 6.*
[29] *Pitzer v Eskom* ***[2012] ZASCA 44*** *para 24.*
[30]

negligence is so sought to be drawn, may give or adduce evidence seeking to explain that the occurrence was unrelated E to any negligence on his part. The Court will test the explanation by considerations such as probability and credibility; see Rankisson & Son v Springfield Omnibus Services (Pty.) Ltd., 1964 (1) SA 609 (N) at p. 616D. At the end of the case, the Court has to decide whether, on all of the evidence and the probabilities and the inferences, the plaintiff has discharged the onus of proof on the pleadings on a preponderance of probability, just as the Court would do in any other case concerning negligence."

[13] The legal duty in the present matter arose when the mother was admitted to the hospital in labour. The midwives assumed a duty to care for plaintiff and her unborn baby during the birth process without negligence. Specifically, they had a legal duty to monitor the plaintiff and act appropriately on the results. The allegation is that they negligently failed to do so, in breach of that legal duty therefore their conduct was wrongful. However, to be liable for damages the wrongful conduct complained of must cause the wronged person to a suffer loss. The first step in proving this is to prove that the wrongful conduct (performing of an episiotomy procedure) by the midwives caused the plaintiff to sustain a fourth-degree perineal tearing and a bladder injury. The plaintiff bares an onus to prove this. Wrongfulness should not be confused with factual causation.

[14] The test for factual causation is whether the act or omission of the defendant has been proved to have caused or materially contributed to the harm suffered. Where the defendant has negligently breached a legal duty and the plaintiff has suffered harm, it must still be proved that the breach is what caused the harm suffered.

[15] In *Lee v Minister for Correctional Services*[31]*Lee* concerned an inadequate system to monitor and isolate offenders who were in the infectious stage of tuberculosis in a correctional facility. It was accepted that the plaintiff probably became infected whilst incarcerated. The causation question was whether this

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[31] *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v ASASA* ***2006 (1) SA 461*** *(SCA);* ***[2006] 1 All SA 6****;* ***[2005] ZASCA 73*** *para 12.*

inadequate system could be said to have caused the tuberculosis. The court held that the case had not been made out. In the Constitutional Court, Nkabinde J, stated the following:

> *'The Supreme Court of Appeal judgment . . . non-suited Mr Lee on the basis that he failed to prove that reasonable systemic adequacy would have "altogether eliminated" the risk of contagion, that he does not know the source of his infection and that had he known the source it is possible that he might have been able to establish a causal link between his infection and the specific negligent conduct on the part of the responsible authorities.'*
>
> *She criticised this approach:*
>
> *'The implication of that kind of inexorable logic is that factual causation under our law can never be proved where the specific incident or source of infection cannot be identified. This means that even wrongful and negligent conduct of correctional facility authorities can by no means, in those instances, lead to delictual liability.'*

[16] The issue of causation recently received attention in the case of *Mashongwa v PRASA*.[32] In *Mashongwa,* the Constitutional Court pointed out that *Lee* never sought to replace the pre-existing approach to factual causation, rather, it adopted an approach to causation premised on the flexibility that has always been recognised in the traditional approach[33]. In re-stating the 'but-for' test in *Mashongwa,*[34] the Constitutional Court resolved the issue that the liability of the wrongdoer depends on whether the harmful conduct is sufficiently closely connected to the harm caused. If the traditional but-for test is adequate to establish a causal link, it may not be necessary to resort to the *Lee* test. The facts of each case will determine the test to be applied.

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[32] *Mashongwa v Passenger Rail Agency of South Africa* ***2016 (3) SA 528*** *(CC);* ***2016 (2) BCLR 204****;* ***[2015] ZACC 36*** *para 64.*
[33] *Ibid paragraph 65*
[34] *Ibid paragraph 68*

[17] Medical -negligence cases are complex and may require the evaluation of technical and conflicting expert evidence. I will therefore briefly discuss the principles applicable to the evaluation of expert evidence before dealing with the alleged negligence of the midwives.

[18] The correct approach to the evaluation of expert evidence was authoritatively laid down by this court in *Michael & another v Linksfield Park Clinic (Pty) Ltd & another*,[35] which endorsed the approach followed by the House of Lords in *Bolitho v City and Hackney Health Authority*.[36] This court pointed out that is required in the evaluation of expert evidence is to determine whether the opinions advanced by the experts are founded on logical reasoning and, if so, to what extent. If the court concludes that the opinion is one that can reasonably be held on the basis of the facts and the chain of reasoning of the expert, the threshold will be satisfied.[37] The court specifically stated-

> *"[36] . . . what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning. That is the thrust of the decision of the House of Lords in the medical negligence case of Bolitho v City and Hackney Health Authority* [1997] UKHL 46*;* [1998] AC 232 *(HL (E)). With the relevant dicta in the speech of Lord Browne-Wilkinson we respectfully agree. Summarised, they are to the following effect.*
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> *[37] The Court is not bound to absolve a defendant from liability for allegedly negligent medical treatment or diagnosis just because evidence of expert opinion, albeit genuinely held, is that the treatment or diagnosis in issue accorded with sound medical practice. The Court must be satisfied that such opinion has a logical basis, in other words, that the*

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[35] *Michael & another v Linksfield Park Clinic (Pty) Ltd & another* ***2001 (3) SA 1188*** *(SCA);* ***[2002] 1 All SA 384****;* ***[2001] ZASCA 12*** *para 36.*

[36] *Bolitho v City and Hackney Health Authority* ***[1998] AC 232****;* ***[1997] UKHL 46****;* ***[1997] 4 All ER 771****;* ***[1997] 3 WLR 1151*** *at 241-242. Also see Daubert v Merrell Dow Pharmaceuticals Inc* ***[1993] USSC 99****;* ***509 US 579*** *(1993).*

[37] *See Imperial Marine Company v Motor Vessel Pasquale della Gatta & another; Imperial Marine Company v Motor Vessel Filippo Lembo & another* ***2012 (1) SA 58*** *(SCA);* ***[2012] 1 All SA 491****;* ***[2011] ZASCA 131*** *para 26.*

expert has considered comparative risks and benefits and has reached 'a defensible conclusion' (at 241G-242B). . . .

[40] Finally, it must be borne in mind that expert scientific witnesses do tend to assess likelihood in terms of scientific certainty. Some of the witnesses in this case had to be diverted from doing so and were invited to express prospects of an event's occurrence, as far as they possibly could, in terms of more practical assistance to the forensic assessment of probability, for example, as a greater or lesser than fifty per cent chance and so on. This essential difference between the scientific and the judicial measure of proof was aptly highlighted by the House of Lords in the Scottish case of Dingly v The Chief Constable, Strathclyde Police 200 SC (HL) 77 *and the warning given at 89D-E that*

'(o)ne cannot entirely discount the risk that by immersing himself in every detail and by looking deeply into the minds of the experts, a Judge may be seduced into a position where he applies to the expert evidence the standards which the expert himself will apply to the question whether a particular thesis has been proved or disproved – instead of assessing, as a Judge must do, where the balance of probabilities lies on a review of the whole of the evidence."[38]

[19] In this case the matter must be approached on the basis that at the conclusion of the episiotomy, the retained products of conception which allegedly included vaginal packs and or cotton swobs was overlooked and remained in plaintiff's uterus. For in no other way could it have found its way into her body. The compensation demanded is in respect of an injury alleged to have been sustained by reason of the negligence on the part of the attending medical staff in the employ of the defendant. The defendant's liability therefore depends on whether the injury sustained was due to negligence on the part of its employees in allowing the plaintiff to be discharged with retained products of conception left in the plaintiff's uterus.

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[38] *Michael & another v Linksfield Park Clinic (Pty) Ltd & another* ***2001 (3) SA 1188*** *(SCA);* ***[2002] 1 All SA 384****;* ***[2001] ZASCA 12*** *para 36 Supra*

WITNESS TESTIMONIES

[20] The plaintiff testified that the baby was delivered by the midwife and that post-delivery she was attended to by the midwife. She was not examined by any Doctor until she was discharged on 18th November 2015. She mentioned that she was examined by a nurse when she was in the normal ward and a vaginal examination was done. No ultra-sound was done by a doctor on the Plaintiff and no specula was passed to determine whether the Placenta was retained or not.

[21] Prior to her discharge she testified that she was informed to take the baby to the clinic for a check-up on 19 November 2015 and that she was never informed to come for a follow up appointment to examine the episiotomy wound.

[22] She testified that whilst she was at home post-delivery, she cleaned her the episiotomy as per the directions of the nursing staff. She did not make use of cotton wool to clean the episiotomy wound and that due to excessive bleeding, she made use of a towel which she wrapped around herself, this was used as a type of linen saver to avoid any excessive bleeding where the Plaintiff is sitting or sleeping.

[23] The plaintiff was questioned about the fact that she was informed to go to the hospital or clinic when she experiences pain, during her testimony she testified that she did not feel any excessive pain and that she only felt mild pain which didn't necessitate her to go back to the hospital as the pain was not unbearable. She further testified that the episiotomy took approximately four months to heal and her vagina feels larger when she is getting intimate with her husband and although the episiotomy has healed, there is a bump where the episiotomy was done which makes her feel uncomfortable when being intimate with her husband.

[24] Dr Mbokota testified he practised both in the private and the public sector and that he's been practising for a period of approximately 20 years. He testified that that the plaintiff developed sepsis due to the retained placenta as a result of the products of conception being retained in the placenta. He further testified that the infectious discharge draining from the uterus caused by the retained products caused the

episiotomy to be septic and delayed its healing and has healed with scarring of the vagina and introitus. He testified that it is grossly substandard for the hospital staff not to notice that the placental products were retained in the uterus post -delivery when the plaintiff was discharged. The poor healing of the episiotomy is possibly the result of her constant pain and dyspareunia including the feeling of an enlarged introitus and 'vagina'.

[25] Dr Mbokota testified that a Doctor was supposed to have been called to examine the plaintiff if there was any doubt as to whether the Placenta is retained or not. He testified that treatment of retained products of placenta will be dependent on the clinical situation and that women may be given misoprostol, a synthetic hormone, which encourages the womb to expel the remaining tissue. However, where there is heavy bleeding, surgery may be required. The procedure, evacuation of retained products of conception (ERPC), is performed under a general anaesthetic. A speculum is inserted into the vagina and the cervix (neck of the womb) is stretched open in order to insert an instrument to remove the remaining tissue from the womb. Some women may be able to go home and return to hospital for the operation in a couple of days, but where the bleeding is particularly heavy, an emergency operation may be necessary.

[26] He further testified that the Placenta was supposed to have been examined through physical/manual examination by a Doctor prior to the plaintiff being discharged. That as a result of the episiotomy the plaintiff sustained a fourth degree tear which has healed with scarring and enlargement of the introitus.

[27] The next witness was Dr Harris testified that she was provided with the following documentation:

30.1. Summons and Particulars of Claim;

30.2. Letter of Demand;

30.3. Medical Records of Pretoria West Hospital; and

30.4. Medical Records from Kalafong Hospital.

[28] Dr Harris testified that she holds a Bachelor of Science (1995), Bachelor of Nursing (1999), Master of Science (Nursing)(2000), Doctor of Philosophy (Midwifery and HIV) (2004), and Bachelor of Medicine and Surgery (2008) all at the University of the Witwatersrand. She also has a Diploma in Advanced Midwifery and Neonatal Care at the University of Johannesburg (2004) and a Diploma in HIV Management (Colleges of Medicine, South Africa)(2001). Dr Harris practiced as a registered midwife at Charlotte Maxeke Academic Hospital between 2000 and 2004, then continued to practice and teach midwifery at CMJAH as an advanced midwife from 2004. In 2005, when she commenced studies in medicine, however she continued to teach midwifery and practice as a midwife at CMJAH and in the private sector at Carstenhof Hospital. From 2009, once qualifying as a medical doctor, Dr Harris continued to deliver babies at CMJAH and then at Mofolo Clinic, and at Hillbrow Clinic. As both Mofolo Clinic and Hillbrow Clinic were MOU's (midwifes obstetrical units), Dr Harris only called to assist with complications that occurred during labour and delivery.

[29] In relation to events leading to the plaintiff's condition, Dr Harris testified that the duration of the second stage of labour was a short five minutes and the birthweight of the baby was a normal 3300g and that it is unclear why an episiotomy was indicated. That given that the duration of the second stage of labour was only 5 minutes, it was unclear to her how it was possible for the midwife to prepare a lignocaine injection, infiltrate the perineum, cut an episiotomy and deliver the baby, all in 5 minutes.

[30] In respect of the third stage of labour (the period following the completed delivery of the baby until the completed delivery of the placenta she testified it is reasonable to expect the midwife to properly and correctly deliver the placenta and the amniotic membranes. It is reasonable to expect the midwife to properly and correctly check that the placenta is complete, and that no portion of the placenta is missing. The placenta is weighed. It is reasonable to expect the midwife to properly check the amniotic membranes and to check that both membranes are present and complete. It is reasonable to expect the midwife to properly document that the

placenta and membranes were checked and were found to be intact. It constitutes sub-standard midwifery care, not to properly deliver and then properly check that the placenta and membranes are complete following the delivery of a patient. Occasionally (rarely) a portion of the placenta or membranes are retained.

[31] With regard to retained placenta and/or membranes, Dr Harris remarked that it is reasonable to expect the midwife to:

31.1 Attempt to properly deliver the retained placenta and/or membranes.

31.2 Call for a doctor's assistance to properly deliver the retained placenta and/or membranes.

31.3 Occasionally the patient may be required to be taken to theatre immediately post-delivery for a proper and complete delivery of the placenta and membranes.

31.4 It constitutes sub-standard midwifery care for a midwife not to poorly and correctly:

31.5 Deliver the placenta and membranes.

31.6 Check that the delivered placenta and membranes are complete.

31.7 Call the doctor to assist with the delivery of the placenta of the membranes.

31.8 It constitutes sub-standard midwifery care to allow a patient with retrained products of conception to be discharged from Hospital.

31.9 Retained production of conception (placenta and/or membranes) could potentially result in:

31.9.1 Post-partum haemorrhage and consequences thereof; and

31.9.2 Puerperal sepsis.

[32] In conclusion she testified that the plaintiff's third stage of labour:

32.1 The midwife delivered substandard midwifery care, in that the midwife:

32.2 Failed to properly and correctly deliver the placenta and membranes;

32.3 Failed to properly and correctly check that the placenta and membranes were completely delivered;

32.4 Failed to inform the doctor that the placenta and membranes were not properly delivered, so that the doctor could assist with delivery and/or take the patient to theatre for proper and complete delivery of the placenta and membranes;

32.5 Allowed the plaintiff to be discharged with retained products of conception, causing her to develop puerperal sepsis and requiring an evacuation of the uterus for proper removal of the retained productions of conception.

[33] Mr Loate the plaintiff's husband testified that he attended the two redress meetings and that on the meeting held on 10 February 2016, the hospital management reported that the standard if care was not that as expected from the midwife on the day. He also testified that the nurse who delivered the baby was not present at the said meeting. He further testified that he no longer enjoys being intimate with the plaintiff.

[34] Dr Manthata testified that she could not provide a detailed explanation of the documents at the time of consultation and stated that she is struggling to access caselines. She further testified that she never consulted with the midwife who assisted the plaintiff with her delivery, and she does not know her experience.

[35] Dr Manthatha was further questioned about the findings, or the diagnosis noted in the hospital record (retained Placenta and septic wound[39]) how a medical practitioner would interpret the findings upon receipt of the hospital record. She testified that the does not agree that the products were retained placenta and that it was membranes. However, she testified that could not remember which documents she was provided with for the purposes of consulting with the plaintiff. When questioned about the photographs of the retained products, she was not able to give a positive answer and relied on the excuse that she doesn't have access to Caselines.

[36] Dr Manthata testified that she did not know the experience of the midwife and whether she was capable of passing a specula and whether she was even competent to access whether the placenta was complete or not. She has never consulted with the midwife. She did not know how long the episiotomy took to heal and therefore failed in giving a comprehensive opinion as to whether the healing period must have attributed to the vagina being enlarged or any other secondary implications the healing period must have had on the plaintiff.

ANALYSIS

[37] The joint minutes are conclusive that the plaintiff retained products of conception and that the plaintiff suffered of puerperal sepsis caused by the delivery of her baby a few days earlier. It is clear on a consideration of all the evidence before Court that the plaintiff suffered pain and discomfort from the puerperal sepsis. Her recovery from the episiotomy took longer to heal due to the constant discharge from the sepsis she suffered. It is also understood that the lengthy period of the healing of the episiotomy may have resulted in an enlargement of the introitus. The

[39] Amended index to Plaintiff's general notices, Pg 69

failure of the midwives to inspect the retained products of conception and have the plaintiff assessed by a medical professional prior to her discharge was clearly negligent. Of significance is that the defendant did not call the midwives to testify in this matter and therefore the evidence of the plaintiff remained uncontested as well as the plaintiff's diagnosis on the hospital records. There is no doubt that the plaintiff retained products of conception. Her injuries require prolonged treatment. Multiple forms of future medical and surgical treatment regimens are likely foreseeable. Based on the above principles I have assessed what that the midwives in the employ of the defendant were negligent in the treatment of the plaintiff and failed to act with the reasonable care and skill required in the treatment of the plaintiff. I am therefore satisfied that the plaintiff has discharged that on a balance of probabilities the plaintiff has suffered a fourth degree perineal tear and bladder injury due to the negligent episiotomy performed by the midwives and the resultant retention of products of conception.

[38] In the result the following order is made:

38.1 The defendant is liable for the proven or agreed damages of the plaintiff.

38.2 **The Defendant is ordered to pay the plaintiff's costs on a party and party scale of the High Court**.

SARDIWALLA J
JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Adv.: K S MASHABA

Instructed by: MPHELA & ASSOCIATES ATTORNEYS

For the Defendants:	Adv.: M RAPHAHLELO
Instructed by:	STATE ATTORNEY