

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 23 September 2008

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

MUTUTAL CONSTRUCTION COMPANY (PTY) LTD

v

KOMATI DAM JOINT VENTURE

The Supreme Court of Appeal today reversed a decision of the Johannesburg High Court which had dismissed the appellant's claim for damages against the respondent.

The appellant had let a dump-truck to the respondent for use on a construction site. The truck had been let together with the services of an operator employed by the appellant. While working on site and under the respondent's control, the operator negligently fell asleep, allowing the truck to leave the road and collide with an embankment. The appellant sued the respondent for the cost of repairing the truck as well as for loss of income derived from the truck until it was repaired. The claim failed in the high court which found that policy and fairness dictated that the respondent not be held liable for the negligence of the appellant's operator.

On appeal, the Supreme Court of Appeal held that on a proper construction of the parties' written agreement the operator's negligence on site was to be construed as negligence on the part of the respondent for which the respondent had bound itself to be liable under the contract. The respondent

should therefore have been held liable to the appellant for its damages. The appeal succeeded and the order of the trial court altered to hold the respondent liable for whatever loss the appellant may have suffered.