



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 26 November 2005
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

RE:

FOURWAY HAULAGE SA (PTY) LTD	APPELLANT
and	
SA NATIONAL ROADS AGENCY LTD	RESPONDENT

On 26 November 2008 the Supreme Court of Appeal dismissed the appeal of Fourway Haulage SA (Pty) Ltd ('Fourway') against the judgment of the Pretoria High Court in favour of the SA National Road Agency Ltd ('the Agency'). Fourway is a long distance haulier. The Agency is the entity authorised by statute to levy and collect toll fees on toll roads.

The dispute between the parties which gave rise to the appeal originates from an accident which occurred on 26 September 2003 on the N1 between Polokwane and Mokopane in the Limpopo province. The two vehicles involved were an articulated truck and a light delivery van. The articulated truck was driven at the time by an employee of Fourway who was acting in the course and scope of his employment.

The articulated truck was on its way from an asbestos mine in Zimbabwe to the Durban harbour and carried about 34 tonnes of chrysolite asbestos, destined for export. As a result of the collision, the truck overturned and spilled its cargo onto a portion of the national road and its surroundings. Because of the hazardous nature of the asbestos powder, the spillage required an extensive cleaning-up operation of the polluted area. To facilitate the cleaning-up process, the traffic authorities closed the section of the national road involved and diverted the traffic in both directions onto an alternative road. This lasted for about 24 hours. The section of the national road which was closed forms part of a toll road. The alternative route was not subject to toll. As a result of the closure, two toll plazas could not collect toll fees. Based on these facts, the agency instituted an action against Fourway for the damages it allegedly suffered in the form of loss of toll revenue.

In the Pretoria High Court Fourway was held liable in principle for the damages.

On appeal it was not in dispute that the collision had been caused by the negligence of Fourway's driver or that it necessitated the closure of the toll road which in turn caused the Agency to suffer a loss in toll income. In consequence the dispute turned on the enquiry whether as a matter of legal policy, liability should be imposed on Fourway for the Agency's so-called pure economic loss, ie loss not resulting from physical damage to its property.

Underlying to the dispute was the principle of our law that, unlike damages arising from physical damage to the plaintiff's property or person, so-called pure economic loss does not normally attract liability. The reason for the reluctance to extend liability to the latter kind of loss is essentially to be found in the fear of indeterminate liability. What gives rise to this fear can, in the present context, be illustrated by the example of a businessman who wishes to claim damages suffered because he missed a flight to London with the resulting loss of a lucrative business opportunity, owing to the closure of the road.

In this case, however, so the Supreme Court of Appeal found, there was no prospect of indeterminate liability. The loss claimed was suffered by a single plaintiff and is finite in its extent.

Other policy considerations in favour of imposing liability on Fourway, so the SCA held, were that:

- a) The Agency could not readily protect itself against the risk of such loss by concluding a contract with every user of the toll road.
- b) The extension of liability for the Agency's loss would not impose an additional burden on the driver of Fourway – for whose negligence it was held responsible – in that the driver was already under an obligation towards other users of the road to drive with reasonable care.
- c) If toll fees were to be increased in order to accommodate losses of this kind, it would mean that innocent users of the toll road would effectively be held responsible for the negligent conduct of Fourway's employee.

That, in short, is why the SCA agreed with the High Court's decision to hold Fourway liable for the Agency's loss.