



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: 17 September 2009

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

On 17 September 2009 the Supreme Court of Appeal handed down judgment in *The Minister of Safety and Security and others v Loraine Craig*, upholding an appeal against a decision of the Pietermaritzburg High Court. The SCA held that the police were not liable to pay damages to the widow of a person who had died whilst in police custody.

At approximately 21h00 on Saturday 19 July 2003 Mr Andre Craig was involved in a head-on collision which caused the death of two children. At that time he was heavily under the influence of alcohol — more than five times over the legal limit. He was arrested and taken to the rooms of the district surgeon to have blood drawn for the purposes of a blood-alcohol test. The district surgeon conducted an examination and blood was drawn. According to the district surgeon he had issued instructions that Mr Craig be taken to hospital to be monitored. According to the police such an instruction was not issued.

After the visit to the district surgeon Mr Craig was transported to the Hammarsdale police station where members of his family awaited. They sought to obtain bail but this was refused. According to members of his family Mr Craig was in obvious and

excruciating pain. According to the police Mr Craig had shown no signs of discomfort and had not complained. It was common cause that paramedics were summoned in response to the family's request that they be allowed to transport Mr Craig to hospital. According to a paramedic and the police Mr Craig was obstructive and refused to be examined. According to Mr Craig's wife the paramedic conducted a cursory examination and then pronounced that there was nothing wrong with him.

During the early hours of Sunday morning, because the Hammarsdale police station did not have holding facilities, Mr Craig was transported to the Mpumalanga police station. At 10h35 he complained that he was feeling unwell. He was transported to Grey's hospital, where, shortly after his arrival he died despite the hospital staff's best efforts to resuscitate him.

The cause of Mr Craig's death was diagnosed as a delayed rupture of the descending aorta. Although not a frequent occurrence, it is a well-known result of high-impact collisions. Most of these ruptures are lethal at the scene of the collision because the rupture is usually such that the injured person bleeds to death almost instantly. In rare cases where this does not occur, victims experience what is referred to as a contained rupture, which consists of a blood clot within the outer lining of the aorta. This has a fair amount of resistance, but with the passage of time and without surgical intervention, it ultimately gives way and death ensues. Where there is a contained rupture there are pointers and tell-tale signs to assist in a clinical diagnosis.

As a result of Mr Craig's death the respondent, Mrs Loraine Craig, instituted an action for damages in her personal capacity and in her representative capacity as the legal guardian of her three minor daughters, against the Minister of Safety and Security, the Charge Office Commander of the Hammarsdale police station and Detective Inspector Musawakhe Mwandla, the policeman who had transported Mr Craig to the district surgeon and to Grey's hospital.

The Pietermaritzburg High Court accepted the district surgeon's version, namely, that he had issued the instruction to Inspector Mwandla to transport Mr Craig to Grey's Hospital and that it had been ignored. Consequently the high court held the

three appellants liable, jointly and severally for such damages as Mrs Craig and her children may prove to have suffered.

The SCA held that on the record of evidence it was apparent that the district surgeon had conducted a cursory examination. The SCA had regard to the official form completed by the district surgeon which noted that although Mr Craig complained of shoulder pain he was well. The SCA held that the high court had erred in accepting the district surgeon's evidence that he had issued the instruction to Inspector Mwandla. The record of evidence revealed several unsatisfactory aspects of his testimony and the SCA found that Inspector Mwandla was a much more satisfactory witness.

The SCA held that the record provided no basis on which to reject the police version of events, from which the following picture emerged: The deceased had been seen by the district surgeon who had identified no medical problem that required further medical attention. The deceased walked unaided and had no ostensible signs of significant injury. At the Hammarsdale police station the deceased did not complain that he was unwell and did not show any obvious signs of distress. The deceased's family members requested that they be allowed to take him to hospital only after bail had been refused. When a second request was made Sergeant Mthembu issued an instruction that paramedics be summoned. Mr Craig refused to be examined. When the deceased himself complained at the Mpumalanga police station that he was unwell, that fact was noted and Inspector Mwandla summoned. There is no indication that the latter delayed unduly and that he did not transport Mr Craig to Grey's hospital expeditiously.

This court reiterated that police have a duty to ensure the well-being of arrested persons. However, in the light of the foregoing, it could not be said that the police were negligent. The court appreciated the plight of the deceased's widow and children. If the police had acted negligently and wrongfully they should be held to account. On the other hand, good policemen who behave properly and execute their duties conscientiously and often under trying circumstances, are entitled to have their reputations kept intact and should not be saddled with liability unjustifiably.

The appeal was upheld with costs.