



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

17 September 2014

STATUS: Immediate

JACOBS v TRANSNET LTD t/a METRORAIL (803/13)

The Supreme Court of Appeal today upheld an appeal against a judgment of the Western Cape High Court, Cape Town, which had dismissed a claim for damages brought by the two appellants, Ms Primilda Jacobs and Ms Caroline Hendricks. Their claim arose out of a horrific collision in November 2006 between a rail commuter train and a small truck carrying seasonal farm labourers at the Croydon level crossing near Somerset West. Nineteen persons were killed and 12 others were injured – the worst incident of its kind in this country's history. The appellants brought their action for damages consequent upon injuries sustained in the collision against the respondents, two companies in the Transnet parastatal. The case was brought as a test case for all the other pending damages claims. The first respondent, Transnet Ltd t/a Metrorail, runs Transnet's railway line operations, while the second respondent, the South African Rail Commuter Corporation Ltd, runs its rail commuter operations. The SCA held the two respondents jointly and severally liable on the basis that the speed designated by Metrorail for that particular part of the railway line, namely 90 km/h, was excessive, given the low level of protection at that crossing and the significant pedestrian traffic from the nearby farm labourers' houses. In this regard the SCA accepted the evidence of the experts who testified on behalf of the appellants at the trial, including that of the Railway Safety Regulator's experts who had conducted an extensive investigation into the collision. These experts all opined that the speed limit of 90 km/h was excessive for that part of the railway line. The SCA rejected the evidence of the only expert who held a contrary view, Mr Roodt, who had testified for the respondents at the trial. The SCA criticized Mr Roodt's expert opinion evidence as being biased and lacking the requisite objectivity. It also reiterated the role and functions of expert witnesses and the need for such witnesses to remain impartial and objective in assisting a court to arrive at the truth. The SCA also emphasized that a court, faced with two conflicting opinions,

is required, where possible, to choose the one over the other based on the cogency of the underlying reasoning and a court must furnish reasons for doing so. The high court failed to undertake this exercise and failed to advance reasons for its implied rejection of the appellants' experts' opinion that the speed restriction was excessive.

For these reasons the SCA upheld the appeal and substituted the high court's order with one holding the respondents jointly and severally liable for such damages as the appellants were able to prove to have sustained in the collision and that the respondents should jointly and severally pay the appellants' costs in both the SCA and the high court.

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