THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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SN obo ON v MEC for Health: Eastern Cape (Case no 277/2023) [2025] ZASCA 36 (2 April 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appellant's appeal with costs.

The appeal concerned a medical negligence claim in terms of which the appellant (SN), acting on behalf of her minor child (ON), claimed damages in the Eastern Cape Division of the High Court, Mthatha (the high court) arising from the brain injury which ON suffered during the birth process at Madzikane KaZulu Memorial Hospital (the hospital) in the Eastern Cape Province. The claim was lodged against the Member of the Executive Council for Health, Eastern Cape Province (the MEC), who would be vicariously liable for damages caused by the negligent conduct of the hospital staff.

During 2013, SN was pregnant with her first child. She was 34 years old. She experienced labour pains in the morning of 14 February 2013 and was taken to the hospital where she was admitted at around 07h30. The partogram began at 10h00 and the examination revealed that labour was progressing well and the maternal condition was good. The Maternity Case Record (MCR) did not show any further assessment after 10h00. However, the partogram form showed that SN was again assessed at 12h00. ON was eventually born at 12h00. As regards complications, the summary of labour form revealed that there was a cord which was wrapped thrice around the baby's neck. It was not recorded whether the cord was tight or loose. ON was diagnosed with a hypoxic-ischaemic encephalopathy (HIE). Ischaemia is defined as a deficiency of blood in a body part due to functional construction or actual obstruction of a blood vessel. Hypoxia results from a sustained reduction in the supply of oxygen to the brain.

The evidence adduced before the high court was that of the appellant, the nursing sister who attended to her (Sister Bonga) and two experts, namely Dr Ebrahim, an obstetrician and gynaecologist, and Dr Kara, a paediatrician. The high court concluded that 'the loose nuchal cord did not cause acute profound hypoxic ischaemic brain injury in this case'. Consequently, the appellant's claims were dismissed with costs. This appeal is with the leave of the high court.

The SCA, per Mokgohloa ADP, stated that it was common cause that ON suffered damage and that he was a cerebral palsy (CP) baby. The question is what caused ON to be a CP baby. The SCA found that there is uncontested evidence that there was a cord around ON's neck. This cord was wrapped thrice around his neck. Dr Ebrahim opined that 'in the absence of an observable sentinel event, the cord was clearly tightly around the neonate's neck giving signs of near strangulation and WAS the sentinel event.' He concluded that the cord that was wrapped around ON's neck was the more probable cause of the injury as opposed to the cord compression. The SCA held that it was a hypoxic ischaemic event (a reduction or blockage of blood flow to a specific area of the body, leading to a shortage of oxygen and nutrients) that caused ON's injury.

The SCA then considered the issue of negligence: whether the cord occlusion could have been detected and steps taken to avoid an ischaemic hypoxic injury timeously. The SCA held that it was clear on the probabilities that the injury was caused by the cord around the neck of ON. Such injury, according to Dr Ebrahim, could have been prevented by proper monitoring by the nursing staff to determine whether there were foetal heart rate (FHR) decelerations. There was however no monitoring at 10h30 up to 11h00. There was also no monitoring at 11h15 when SN was fully dilated, and none at 11h30 when SN started bearing down and the cord probably tightened. The SCA found that it was clear from Sister Bonga's evidence that the nursing staff did not take reasonable and necessary steps to monitor the FHR of ON.

The SCA held that nuchal cords wrapped around the neck of foetuses occur frequently but they do not all result in CP births. This is because they are generally, on probabilities, identified early enough by proper or standard monitoring, picking up the foetal distress shown by decelerations or otherwise, and are then dealt with by timeous interventions. That was what a reasonable member of the nursing staff would have done. The SCA found that the MEC's employees failed to do so and upheld the appellant's appeal with costs.

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