

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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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

MEC FOR PUBLIC WORKS, ROADS AND TRANSPORT, FREE STATE

v

T ESTERHUIZEN & OTHERS

[1] The Supreme Court of Appeal (SCA) today dismissed an appeal by the MEC for Public Works, Roads and Transport, Free State against a finding by the High Court (Free State Provincial Division) that the failure by the Provincial authority to properly maintain the R64 road between Dealesville and Bloemfontein caused a motor vehicle accident on 22 June 2001.

[2] The SCA confirmed the finding by the High Court that the accident occurred in the following circumstances:

Driving from west to east the driver had, after observing a small buck in front of him, taken evasive action by veering to the left thereby bringing the two wheels on the left side of the vehicle off the tar onto the gravel verge on the northern side of the road while the two wheels on the vehicle's right side, i.e., the southern side remained on the tar. As the driver attempted to regain the tar he felt a jerking action on his steering wheel and then lost control of the vehicle. The vehicle swerved to the right across the road, struck an embankment on the southern side of the road, rolled over and came to rest on its wheels in a field. The court found as a fact that the point at which the driver had attempted to bring the two left wheels back on to the tar had a dangerous difference in height between the gravel and the tar. This, it concluded, was the cause of the jerking

action of the steering wheel which resulted in the driver's loss of control of the vehicle. The appellant was held liable because it had failed properly to maintain the road.

It thus rejected the submission by counsel for the MEC that the driver's loss of control was unrelated to the difference in height between the gravel and the tar.

[3] In dismissing the appeal the SCA ordered the MEC to pay the costs of the respondents on the punitive scale as between attorney and client because, so it found, the MEC's legal representatives had made unwarranted allegations of impropriety against the trial judge when applying for leave to appeal, and then retracted them without a proper explanation.

The effect of this, said the SCA was that the respondents had been put through considerable and unnecessary expense, inconvenience and delay and the SCA has had to expand scarce judicial resources on an appeal utterly devoid of any merit.