

Liability for Damages Arising from Potholes

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Jacobs v MEC Public Works and Roads (2024) ZANWHC 73 (12 March 2024)

INTRODUCTION

The state of roads is an issue that plagues many South Africans who find themselves traveling along pothole riddled roads while incurring damages to their vehicles or sustaining injuries as a result of accidents. In a recent judgment by the Northwest Division, Mahikeng High Court, the issue of who bears liability for damages arising from potholes was raised and clarified.

BACKGROUND

In the matter of *Jacobs v MEC for Public Works and Roads (2024) ZA NWHC 73 (12 March 2024)*, Jacobs had been travelling along a gravel road when his motor vehicle hit a pothole causing him to lose control and collide into a tree that was situated next to the road. Jacobs sought to hold the MEC for Public Works and Roads (the “MEC”) liable based on his legal duty to ensure that the road is upkept and maintained for the safety of road users. The MEC, as the defendant in the matter, sought to deny any negligence or liability claims made regarding the accident. Alternatively, the MEC claimed that Jacobs was the sole cause of the accident. Further, alternatively, the MEC claimed that Jacobs contributed to the accident by acting negligently while driving, such as not keeping a proper lookout, driving at an excessive speed and failing to avoid the accident when he could have done so.

Jacobs himself did not have any recollection of the accident due to the serious injuries that he sustained. Expert evidence was relied upon to formulate the events of the accident. Through testimony provided, it was determined that the road had multiple potholes which were difficult to notice or avoid due to limited visibility caused by the shade that stretched over the road. It was further established that the road had not been adequately maintained as required, nor was there any signage to warn drivers of the potholes present ahead. This proved problematic since there had been complaints from the community, specifically pertaining to the dire state of this road.

JUDGEMENT

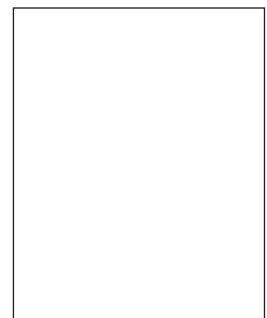
The Court held that any reasonable person who was placed in the position of the MEC would have foreseen that the lack of maintenance on the road, leading to potholes developing over a period of time, had the possibility of causing motor vehicle accidents and subsequently harming road users. The Court ruled in favour of Jacobs in holding that the MEC was the sole cause of the accident that occurred, due to its negligence in failing to inspect and maintain the road. Accordingly, the MEC was held fully (100%) liable for the damages suffered by Jacobs, as may be proved or agreed.

CONCLUSION

Various factors play a role in determining who bears liability in instances of damages arising from potholes and whether a driver contributed to an accident. Consideration must be given to prevailing traffic conditions, the state of the road, visibility, the speed at which the motorist is driving at, whether there are any warning signs present and the speed limits set. However, the maintenance of roads is a key responsibility and duty that falls on the local authorities of each respective provincial government. In instances that their negligence causes harm to road users, the liability of the damages incurred will fall upon them should it be evident that they have defaulted in their responsibilities.



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