IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 468/2018

In the matter between:

LISA MALONEY	**First Plaintiff**
LISA MALONEY OBO C [...] M [...]	**Second Plaintiff**
LISA MALONEY OBO J [...] M[...]	**Third Plaintiff**

and

ROAD ACCIDENT FUND	**Defendant**

JUDGMENT DELIVERED ELECTRONICALLY: THURSDAY, 14 APRIL 2022

NZIWENI AJ

[1] This case stems from very unfortunate and tragic events that occurred in 2014 and 2016. On 21 June 2014, a motorcycle driven by the late husband ("the deceased") of the First Plaintiff ("the Plaintiff"), and father to the Second and Third Plaintiffs, collided with another motor vehicle ("the insured driver"). The deceased suffered orthopaedic injuries. Pursuant to the motor vehicle collision ("the accident"), the deceased lodged a claim ("the first claim") against the Defendant, the Road Accident Fund ("the RAF").

[2] On 6 December 2016, two years and five months later, the deceased took his own life, by shooting himself at his home. The deceased's suicide occurred before the finalisation of the first claim against the RAF.

[3] On 17 January 2018, the Plaintiff issued summons against the RAF, for loss of support in her personal capacity, as well as her representative capacity on behalf of her two children [second claim against the RAF, stemming from the same accident].

[4] The Plaintiff, in this second claim, contends that the deceased's suicide and death are causally, factually and legally related to the injuries he suffered during the accident. Therefore, the action is brought on the basis that the accident led to the deceased's suicide. The Plaintiff, as the deceased's widow, seeks to hold the RAF liable. The Plaintiff thus claims for loss of support for herself and on behalf of her children. The RAF denies liability, as it disputes that any causation exists or can be proven by the Plaintiff.

[5] On 16 November 2018, the first claim was settled by the order of the North Gauteng High Court. At the time of the settlement, the executor of the deceased's estate had substituted him as a party to the litigation.

[6] Several witnesses testified in this trial and various documentary evidence, including expert reports, were handed in as exhibits.

[7] The Plaintiff testified that after the accident, the deceased was definitely not the husband that she married, and he was not the father he used to be to their children. He was not goal driven as he used to be. However, he never gave up. The deceased would say 'tomorrow is a new day no matter what'. She testified that, after the accident, there were times when she could see that his mood was low. The deceased never sought help from a psychologist. It was her testimony that the deceased did not believe that he was suffering from depression, or that depression existed. She, her

brother, and the deceased's mother, were concerned about his mental health, and they encouraged him to seek professional help.

[8] She testified that when she and the deceased consulted with Ms Mignon Coetzee, a clinical psychologist, there was no mention of the deceased's depression. In that consultation, the deceased mentioned that he was angry and frustrated. According to her, although she was diagnosed with depression prior to, and after, the accident, the deceased was never diagnosed with depression. She testified that in 2004, and again in 2016, she was diagnosed by a psychiatrist as having had a major depressive episode, that she has been with her psychiatrist for over 10 years, and has also been on prescribed medication. Though the deceased saw the benefits of the treatment, he was against medication and was not pro-psychiatrists. When she stopped working in August 2016, the deceased was not being treated for, and had not been diagnosed with, any depressive condition. In fact, the deceased historically did not suffer any significant illness and had never been diagnosed with depression, nor sought any psychological treatment. During his consultations with Ms Auret-Besselaar and Ms Coetzee, the deceased never complained about severe psychological distress.

[9] According to the Plaintiff, the deceased did not want to admit to being in a distressed state. It was her testimony that the deceased would say he was going through a rough time and that he would get through it. She did not tell Ms Auret-Besselaar and Ms Coetzee about the deceased's psychological problems, because she knew that it would not change his mind. Neither Ms Auret-Besselaar nor Ms Coetzee ever diagnosed the deceased with impaired judgment.

[10] Given the fact that Kwikot, where the deceased used to get plumbing work before the accident, had already fallen out in 2012, and the greater part of the deceased's income stemmed from caravan repairs, she testified that she was not sure what Ms Auret-Besselaar was referring to when she talked about accumulated debt increasing every month due to the deceased's inability to work as a plumber.

[11] The plumbing business had already significantly declined pre-accident; Ms Auret-Besselaar was not entirely correct when she stated in her report that the deceased experienced ongoing and extreme difficulty in attempting to cope with the physical demands of his plumbing enterprise.

[12] She was aware of the claim that had been lodged with the RAF after the accident. After the deceased's death, she was informed that that claim would still continue, but that it would not include any future loss of income; rather it would be for the medical expenses and suffering that the deceased incurred after the accident.

[13] The deceased ran Viconey Plumbing Close Corporation ("the CC"). She does not know what happened with the CC's financial statements for the periods of 2012-2014, as the CC did draw up statements for each year. It was her testimony that, contrary to what was stated by Ms Auret-Besselaar in her report, at the time of the accident, the deceased had not been working for seven days a week with six vans. Only two people had been working on the plumbing business, with one van.

[14] She further testified that Ms Auret-Besselaar's report also incorrectly stated that, after the accident, the plumbing business was reduced to five people, using two vans. She testified that things started to change for the CC two years before 2014, when Kwikot reduced their agents; the deceased then lost his contract with Kwikot. It was her testimony that this happened in 2012, not 2014. The bottom had fallen out of the plumbing business before the accident happened. There was a 60 percent drop in income. She also does not know why there are no financial statements for the caravan repair business, to prove its income.

[15] The deceased did not install carports before the accident. It is a bit too much and wrong to say that the deceased was making R550 000 per month before the accident.

[16] She further testified that Ms Crouse, the occupational therapist, was wrong when she testified that the deceased was not taking any pain medication. She was not aware that anyone had recommended that the deceased should see a pain therapist. The deceased was not receiving any optimal treatment for his pain except for taking painkillers; nor was he receiving treatment for his emotional wellbeing. Briefly, that was the Plaintiff's testimony.

[17] Mrs Boshoff testified that she is the deceased's mother. She had a special and very close relationship with the deceased. They were always in contact with each other, went to the same church and spent weekends together.

[18] After the accident, the deceased became withdrawn. According to Mrs Boshoff, his mood changed and he appeared to be absent minded. When the Kwikot contract ended he started to worry. After the accident, the deceased started to smoke more. She never expected the deceased to commit suicide; his suicide came 'from nowhere', as it were. The deceased never told her that he was not coping emotionally. There were no telltale signs to suggest that he was suicidal. He only mentioned the pain. She was never concerned that the deceased had any mental health problems after the accident.

[19] Ms Auret-Besselaar, an industrial psychologist and human resources consultant, did an assessment consultation with the deceased on 21 June 2016. Two years and some months later, on 19 October 2018, a report in respect of the assessment was compiled, only after the deceased had died by suicide. She also did an assessment of the Plaintiff on 3 April 2018.

[20] Ms Auret-Besselaar testified that she was initially briefed to investigate the deceased's loss of income claim. She then wrote a letter to the deceased's attorneys, but did not receive any feedback. Four months after that, she received an email stating that they would be consulting with the deceased the next day [17 October 2016]. She

then learnt, on 6 December 2016, that the deceased had taken his own life. The sudden death of the deceased necessitated a consideration of loss of support.

[21] When she consulted with the deceased, he was clearly emotionally distressed. He told her that he could not earn what he used to earn and the doctors could not fix him. He also informed her that he was in pain every day and that he felt trapped. She was worried that the deceased would self-harm, but not that he would commit suicide. During the consultation the deceased shouted that he was frustrated, and also stated the following:

'ek gaan self hierdie penne uit my been uit ruk'.

[22] She then wrote an email stating that the deceased was 'kwaad en moedeloos', and that he was despondent. According to her testimony, the deceased could not come to terms with the fact that he had permanent injuries, and the fact that he had to try to mitigate his losses by doing odd jobs. The deceased's limitations were permanent; he could not be restored to his former self.

[23] Ms Auret-Besselaar further testified that one could understand the deceased's intense anger, as he took a knock with Kwikot and he had been trying to regain his former self before the accident happened.

[24] It was her testimony that the deceased informed her that he was struggling to survive, he had had to move house to an area he disliked, he was in serious debt and had to borrow money.

[25] Ms Auret-Besselaar testified that she did have insight into Ms Crouse's report, and the orthopaedic report by Doctor Frans Steyn, who dealt with the deceased. Because they had written their reports before the deceased's death, she did not refer to them in her report. Their reports were not relevant for her purpose of determining

past loss. Later on, during cross-examination, she agreed that the reports of Doctor Steyn and Ms Crouse were entirely relevant to her report. However, she maintained that she was not wrong in not considering them, as her focus was to determine the deceased's earning capacity for then and the future.

[26] It was her view that, due to the deceased's death and the brief she had been given, her view did not tie up with the other experts' reports. She had been instructed to compile the report before 3 April 2018. Her instruction was that she should prepare a medico-legal report, presenting her expert opinion considering the loss of support to the Plaintiff after her husband died by suicide. She consulted with the Plaintiff on 3 April 2018 to obtain further information on the background and the career path of her husband.

[27] Her brief informed her that the deceased took his own life. She could not recall being told that the deceased died by suicide because of the accident. It was convincing to her that the Plaintiff told her that the deceased took his own life because of emotional distress and the state he was in. She also testified that she never thought that the deceased would ultimately take his own life.

[28] She concluded, in her report, that the deceased took his own life as a result of the injuries he sustained from the accident. According to her, she arrived at that conclusion because of the way the deceased presented to her. The deceased showed a distressed state. She further testified that she could see that the deceased's frustration was at a very intense degree. It was her testimony that throughout the consultation the deceased's frustration was boiling over. During her consultation with the deceased it was very evident that the deceased was agitated, frustrated, had intense anger, irritability and was despondent that he could not be fixed. When she asked the deceased how he was affected by the accident; the deceased responded that he knew that it affected him psychologically and that he kept boiling over far more than before. If a person saw the deceased that day and consulted with him, the person could have concluded that the deceased had severe psychological distress.

[29] It was not a huge shock to her when she learnt that the deceased died by suicide. She testified that, in her report, she stated that the deceased suffered chronic pain and severe psychological distress, ultimately resulting in his death by suicide on 06 December 2016. She also testified that her conclusion was not a diagnosis, but was what she observed.

[30] The fact that the deceased threatened to pull the screws out of his leg was a huge indication of self-harm. It was her testimony that by stating that there was a huge indication of self-harm, she was not diagnosing anything. She was concerned that the deceased would self-harm. According to her, she omitted to state the aspect of self-harm in her report.

[31] She conceded that it was wrong of her to make that conclusion, as it was outside of her expertise. She did not write in her raw notes that the deceased was extremely distressed. She also did not describe, in her raw notes, how the deceased presented himself as being extremely distressed.

[32] She further testified that from the Plaintiff's account as to how the deceased presented himself, it was reasonable to assume that a combination of these issues caused death by suicide. It was her testimony that the Plaintiff mentioned to her that, had the deceased not sustained the injuries in the accident, he would still be alive.

[33] According to her, the level of urgency for psychological intervention was lesser with the deceased, because he was still working and he had not shown signs of intending to commit suicide. It only prompted an email to say people must come on board to assess him and that he needed assistance.

[34] Ms Auret-Besselaar testified that she wanted Ms Mignon Coetzee to see the deceased for purposes of psychological intervention. During her assessment of the

deceased, he did not present himself as having mental health problems. That is her testimony in short.

[35] Ms Mignon Coetzee, a clinical psychologist, testified that, while the deceased was still alive, attorneys instructed her to conduct a psychological assessment of him for the purposes of the RAF claim in Pretoria [the first claim]. She did not assess the deceased for the purpose of the loss of support claim [the second claim]. Her report was only compiled on 19 June 2017.

[36] She assessed the deceased almost two and a half years after the accident. She only consulted with the deceased on 16 November 2016, and two to three weeks after the assessment, the deceased committed suicide. The morning after the deceased committed suicide, the attorneys informed her through an e-mail that the deceased had committed suicide. In essence, she did an assessment of the deceased 19 days before he committed suicide.

[37] The brief from the attorneys remained the same. She was told that she should complete her report, and she added a little bit of information regarding the deceased's suicide. After the deceased committed suicide, she consulted with the Plaintiff telephonically.

[38] According to her, the deceased steered away from any talk of psychological vulnerability or mental dysfunction. The deceased wanted to talk about past successes. It was her testimony that the deceased expressed ongoing determination to make his business work. Ms Coetzee also testified that the deceased reluctantly said that, in hindsight, he might have been depressed two years before his assessment by her, which was a month or two after the accident, but that he was just frustrated and angry, and in pain. She also mentioned that the deceased did not say that he was depressed at the time of his assessment.

[39] According to her the deceased felt like a failure, as he could not provide for his family, and the only emotions he willingly admitted to were irritability and aggression. She did not make a formal diagnosis of the deceased, because he did not meet the diagnostic criteria of a diagnosable mental illness; however, he was definitely not mentally well. Therefore, there must have been a degree of unclear thinking. It was her testimony that she tried to provide a description of the deceased's personality dynamics and the tremendous distress he was experiencing. In hindsight, it is clear to see that the deceased suffered from an impaired clarity of mind to have taken such drastic action. She conceded that in her report she did not use the terminology that the deceased had impaired judgment and an impaired mind, but stated that those were implied.

[40] She testified that, notwithstanding the fact that she had not formally diagnosed the deceased, she nonetheless stated in her report that at the time of her assessment the deceased was suffering from depression.

[41] According to her, the deceased's poor health and chronic physical difficulties contributed to this drop in his mental state. She testified that this manifested through agitation, irritability, hopelessness, despondency, despair, anxiety and frustration. It was her testimony that these findings were based on her assessment in November 2016. Her experience of the deceased during the assessment was that he felt depressed, which is different from a psychiatric diagnosis.

[42] She testified that, based on her assessment, she thought the deceased was experiencing symptoms of depression. In her conclusion, she wanted to indicate that the deceased's mood was that of depression. She stated in her conclusion that the deceased was suffering from depression because she felt that the deceased was depressed. According to her the conclusion in her report conveyed that the deceased was not in a mentally well state and that one of the components of that unwell mental state was a depressive mood.

[43] She did not state in her conclusion that in her opinion the deceased was exhibiting symptoms of, or signs of, depression, because she assumed that a colleague would read into it. She assumed that her conclusion in her report would be understood the way she meant it. She agreed with Mr Loebenstein that her conclusion, as reflected in her report, was determined without recourse to formal symptom elicitation, which would have had heuristic value in establishing the deceased's mental status at the time.

[44] She also agreed with Mr Loebenstein that her notes suggested that the deceased had not been beset by suicidal ideation at the time.

[45] She testified that the deceased did not suffer from depression in a very typical way; he was agitated, irritated and in pain. According to her, that was what the deceased was showing to the world and he was carrying on. She was not surprised that the Plaintiff could not see the symptoms that were exhibited by the deceased, six months prior to the suicide; albeit the Plaintiff herself has a history of suffering from severe depression and receiving treatment as well as therapy for it.

[46] It was her testimony that the deceased's physicality was pretty much the essence of his personality. It was his identity, his currency, and the pride in his life.

[47] She testified that the Plaintiff provided them with useful information related to how the deceased responded to her mental health. It was her testimony that the deceased, during her consultation with him, volunteered first and elaborated on the physical restrictions. On further questioning, the deceased provided insight into more psychologically oriented complaints. The complaints included some anxiety, defensive driving and road rage. The deceased also expressed frustration about physical restrictions.

[48] She testified that immediately after the accident, the deceased had a more hopeful attitude. However, over time his body started to show wear and tear. The deceased was then confronted with long term irreversible damage, became more despairing, more frustrated, more hopeless, which led to the decision of the relevant Tuesday morning. The deceased did not use the word depressed and he did not regard himself as depressed, as any admission of psychological vulnerability was out of character for him. For men like the deceased, it was all about pain rather than psychological vulnerability. The deceased was a stereotypical man of action, not of expressed emotion. When she asked the deceased whether he ever felt that life was too much and not worth continuing, the deceased responded that he is 'moedeloos'. He did not say he was thinking of killing himself.

[49] She testified that the deceased's drop in physical functioning resulted in a drop in work performance. That led to a drop in the deceased's capacity to provide for his family. She testified that the impression she got from the deceased was that he was a man trapped inside a damaged body, with no alternative skills and no alternative qualifications.

[50] The deceased was in a corner. He did not report any suicidal ideation, or suicidal thoughts, and she was not alarmed to the extent that she felt she had to put crisis intervention in place. After she received the email informing her about the suicide, she went through her notes with a fine tooth comb, looking for clues she had missed.

[51] According to her, the nature of the deceased's psychological *sequelae* was significant distress associated with physical injuries. The significant distress manifested through frustration, anger, aggression, reduced self-esteem, a crisis of identity, and feelings of hopelessness and depression. It was thus her opinion that the deceased's suicide was a direct consequence of the impact the accident had on his life. According to her, the deceased's income generating potential was taken away and this was a mortal blow to him.

[52] Her conclusion that the deceased's suicide was a direct result of the accident was made on the basis of all the information she had at her disposal, mostly provided by the deceased. She also testified that not all people who exhibit the psychological *sequelae* that the deceased showed, would go on to commit suicide.

[53] Doctor Steyn, an orthopaedic surgeon, testified that he consulted with the deceased on 30 November 2015 (eighteen months after the accident). During his consultation, the deceased did not present with mood disturbance.

[54] Ms Benita Crouse, an occupational therapist, testified that she assessed the deceased on 23 February 2016 (20 months after the accident and nine months before the deceased took his life.) According to her, the deceased was not on any medication and she described his mood as free from any mood disturbance. It was her testimony that if a client presented with mood disorders she would probably record that.

Defence evidence

[55] Mr Loebenstein testified that when he worked at Groote Schuur Hospital, one of his main functions was to examine the suicides and attempted suicides. He has been a clinical psychologist since 1980. He also gave lectures in human behavior.

[56] He testified that he had had insight into all the medico-legal reports and the raw data of Ms Coetzee and Ms Auret-Besselaar. His opinion was dependent on his perusal of the documentation.

[57] According to him, based on the documentation that was placed before him, there was no indication that the deceased suffered from any recognised mental disorder. He holds the view that the deceased suffered from many symptoms which were consistent with the injuries sustained in the accident. He also testified that the

deceased did not make enough averments to Ms Coetzee to warrant a Diagnostic and Statistical Manual of Mental Disorders Five ("DSM-5") assessment.

[58] He testified that to make a retrospective assessment or diagnosis, was a hazardous enterprise. He testified that the small "d" for "depression" in Ms Coetzee's report signified that, in general, the deceased did not suffer from a mental disorder or a major depressive episode. He also testified that the deceased did not show signs of suicidal ideation before he took his own life.

[59] He testified that if regard was had to all the reports and the other evidence presented in court by other witnesses, he failed to see how the conclusion could be drawn that the suicide was a direct result of the accident. According to him, this was so because there was insufficient information available to be able to make the suggestion. He stated that there were no objective facts to support that conclusion. It was his testimony that there are nine symptoms of depression, as set out in the DSM-5. In this case, on the papers, there was insufficient evidence to make a diagnosis of a major depressive disorder and he was of the view that Ms Coetzee also felt the same.

Evaluation

[60] In order for the Plaintiff to succeed in discharging the onus of proof that rests upon her, the evidence presented must satisfy the court on a balance of probabilities that the deceased's suicide on 6 December 2016, is a direct or proximate result of the accident which occurred on 21 June 2014. This will of course depend on the facts and circumstances of this case.

Common cause issues in this matter are that:

1. A motor vehicle accident that involved the deceased occurred on 21 June 2014.
2. When the motor vehicle accident occurred, there was negligence on the part of the insured driver.

3. The negligent act of the insured driver caused the deceased to suffer injury and pain.
4. The deceased died by suicide two years and five months after the accident.
5. The deceased was married to the Plaintiff at the time of his death and they had two minor children.
6. After the accident, the deceased did not admit to psychological impairment.
7. The deceased did not exhibit enough symptoms to warrant a Diagnostic and Statistical Manual of Mental Disorders Five (DSM-5) assessment.
8. There is no evidence in this matter that after the accident the deceased was diagnosed as suffering from a mental defect, or any other psychiatric diagnosis.
9. Ms Coetzee's report was compiled and completed after the deceased took his own life.
10. Ms Coetzee's initial brief from the deceased's attorneys only pertained to the first claim, which was ultimately settled with the RAF.
11. Ms Coetzee did not make a diagnosis of the deceased, because he did not meet the diagnostic criteria.
12. Ms Auret-Besselaar had an assessment consultation with the deceased on 21 June 2016, and her medico–legal report was compiled on 19 October 2018, only after the deceased had died by suicide.
13. Ms Auret-Besselaar did not make any specific diagnosis of mental disorder in her report, pursuant to her assessment of the deceased.

Submission by the parties

[61] Mr du Toit contended the following in the heads of argument on behalf of the Plaintiff:

> 'There can be no doubt that in the present matter the deceased would not have sustained the injuries had the accident not occurred. He would not have experienced the pain, discomfort and disability which rendered him incapable to continue working in any of his pre-accident capacities. His physicality would not have been affected and he would have able to re-ingeer (sic) himself as he had successfully done in the past on several occasions. He was in actual fact in the process of successfully going through this exercise again after the Kwikot referral system had changed. Then the accident occurred. He would have been able to expand the caravan refurbishment

> business and/or continue working as a plumber had the accident not occurred . . . in the present case, there is no available evidence to suggest the presence of a novus actus interveniens. There is a direct unbroken line between the accident and the deceased's suicide. The Kwikot referral system changed in 2012. When the accident occurred in 2016 the deceased had already made the necessary changes to continue working and grow his business . . .'

[62] It was strenuously argued by Mr Eia, on behalf of the Defendant, that, despite the deceased's death by suicide two and a half years after the accident, there was no suggestion in the evidence led on behalf of the Plaintiff that the deceased was not of sound mind, or that he suffered any impaired judgement. It was also vehemently argued on behalf of the Defendant that the deceased was never diagnosed before his death by suicide. The argument continued that the Defendant's conduct and the harm suffered by the Plaintiff was not sufficient to establish the presence of a legally relevant causal connection. According to the submissions made on behalf of the Defendant, a sufficiently close connection should exist before persons are called upon to compensate others.

Issues

[63] The Plaintiff would like the RAF to be held liable for the loss she and her children suffered pursuant to the deceased's suicide. The vital issue for determination in this case is primarily one of causation.

[64] Hence, the question for the court in this matter is whether the deceased's death by suicide on 06 December 2016, is a result of the orthopaedic injuries brought on by the accident, which occurred on 21 June 2014. Put differently, the question to be determined by this court is whether, had it not been for the orthopaedic injuries sustained during the accident, the deceased would have committed suicide, resulting in the Plaintiff's loss of support.

[65] Additionally this court also needs to determine whether there is a sufficient causal link between the negligent act and the suicide.

[66] The enquiries involved in causation are succinctly set out in *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) page 700E-702D, when Corbett CJ stated the following:

> 'As has previously been pointed out by this Court, in the law of delict causation involves two distinct enquiries. The first one is a factual one and relates to the question as to whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as "factual causation". The enquiry as to factual causation is generally conducted by applying the so called "but-for" test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; *aliter*, if it would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise. On the other hand, demonstration that the wrongful act was a *causa sine qua non* of the loss does not necessarily result in legal liability. The second enquiry then arises, vis whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called "legal causation". . . . Fleming *The Law of Torts* 7th ed at 173 sums up this second enquiry as follows:

"The second problem involves the question whether, or to what extent, the defendant should have to answer for the consequences which his conduct has actually helped to produce. As a matter of practical politics, some limitation must be placed upon legal responsibility, because the consequences of an act theoretically stretch into infinity. There must be a reasonable connection between the harm threatened and the harm done. This inquiry, unlike the first, presents a much larger area of choice in which legal policy and accepted value judgments must be the final arbiter of what balance to strike between the

claim to full reparation for the loss suffered by an innocent victim of another's culpable conduct and the excessive burden that would be imposed on human activity if a wrongdoer were held to answer for all the consequences of his default."

. . .

There remains the final and much-debated question as to whether International established legal causation. Here there are a number of factors which tend to separate cause and effect.

(1) *The time factor*

About two years elapsed between the respondent's negligent reporting on the financial statements and the loss sustained by International. As *Fleming (op cit* at 198) remarks, ". . . liability does not reach into infinity in time". Two years is, of course, nowhere near infinity, but in a situation such as the present one it does permit other facts to intervene and it does tend to dissipate the effect of the original wrongful act. By itself this is not a decisive factor, but it is one to be considered when viewing the overall picture.'

[67] The Plaintiff bears the onus of proving on a balance of probabilities that there is a link between the injuries sustained during the accident and the deceased's suicide.

The Law

[68] In *Lee v Minister for Correctional Services* 2013 (2) SA 144 (CC), at paragraphs 40-41, the following is stated regarding the test for causation:

'Although different theories have developed on causation, the one frequently employed by courts in determining factual causation, is the *conditio sine qua non* theory or but-for test. This test is not without problems, especially when determining whether a specific omission caused a certain consequence. According to this test the enquiry to determine a causal link, put in its simplest formulation, is whether "one fact follows from another". The test—

"may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; [otherwise] it

would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise."

[41] In the case of "positive" conduct or commission on the part of the defendant, the conduct is mentally removed to determine whether the relevant consequence would still have resulted. However, in the case of an omission the but-for test requires that a hypothetical positive act be inserted in the particular set of facts, the so-called mental removal of the defendant's omission. This means that reasonable conduct of the defendant would be inserted into the set of facts. However, as will be shown in detail later, the rule regarding the application of the test in positive acts and omission cases is not inflexible. There are cases in which the strict application of the rule would result in an injustice, hence a requirement for flexibility. The other reason is because it is not always easy to draw the line between a positive act and an omission. Indeed there is no magic formula by which one can generally establish a causal nexus. The existence of the nexus will be dependent on the facts of a particular case.' (Own emphasis supplied, internal footnotes omitted.)

[69] The deceased unfortunately is not in a position to testify and shed some light to what happened to his state of mind that critical morning. The Plaintiff in her endeavours to prove her case against the RAF, testified herself, called the deceased's mother as a witness, and placed before this court evidence proffered by various experts. Consequently, at this trial the Plaintiff attempted to establish her case through expert testimony and circumstantial evidence. On the other hand, the RAF also called its own expert witness, who questioned the validity of Coetzee's conclusion.

[70] It is settled that causation can be proven from either direct or circumstantial evidence. However, the issue of causation cannot be left to speculation. There can be no question that there should be evidentiary support for the facts upon which the Plaintiff relies to establish causation. I am acutely aware of what was stated in the *Lee* matter, supra, at paragraph 56:

'The law recognises science in requiring proof of factual causation of harm before liability for that harm is legally imposed on a defendant, but the method of proof in a courtroom is not the method of scientific proof. The law does not require proof equivalent to a control sample in scientific investigation.'

Could Auret-Besselaar and Coetzee reliably determine the cause of the deceased's suicide?

[71] Ms Coetzee's evidence reveals that her conclusion was mainly premised on the fact that the deceased exhibited the following: agitation, irritability, hopelessness, despondency, despair, anxiety and frustration. She also testified that the significant distress manifested through frustration, anger, aggression, reduced self-esteem, a crisis of identity, feelings of hopelessness and depression. According to her, the nature of the deceased's psychological *sequelae* was significant distress associated with physical injuries.

[72] Importantly, Ms Coetzee admitted in her testimony that her conclusion that the deceased's mindset was impaired, was made in hindsight. At this critical juncture it is significant to note that Mr Loebenstein testified that, to make a retrospective assessment or diagnosis makes for a hazardous enterprise. Significantly, this testimony was not challenged. She also testified that it was only in hindsight that it was clear for her to see that there was an impaired clarity of mind present, for the deceased to have taken such drastic action.

[73] The fact that Coetzee mentioned that it was not a huge shock to her when she learnt that the deceased died by suicide, is neither here nor there in establishing causation. Similarly, the mere fact that the deceased was, *inter alia*, angry, despondent and frustrated, does not prove that he took his life because of the accident.

[74] The evidence of Coetzee on its own eloquently reveals that most of her opinions are personal opinions, as they are without diagnosis. She admitted this much when she, for instance, testified that she stated in her conclusion that the deceased was suffering from depression because she felt that the deceased was depressed (my own emphasis).

[75] Another revealing and fundamental aspect about Ms Coetzee's evidence, is that she even agreed with Mr Loebenstein that her conclusion, as reflected in her report, was determined without recourse to formal symptom elicitation, which would have had heuristic value in establishing the deceased's mental status at the time. It is also not clear why she testified that the deceased was in a corner. More so, when in the same breath she also gave testimony to the effect that the deceased did not report any suicidal ideation, or suicidal thoughts, and she was not alarmed to the extent that she felt she had to put crisis intervention in place.

[76] Ms Coetzee's testimony became even more illuminating when she testified that after she received an email informing her about the deceased's suicide, she went through her notes with fine tooth comb, looking for clues she missed. Surely, if she had to go through her notes after she heard about the suicide, looking for clues she missed, by necessary implication, this signifies that when Ms Coetzee assessed the deceased she never saw the suicide coming. I can thus not quite understand on what basis she concluded that the deceased's suicide resulted directly from the accident. Auret-Besselaar testified that the level of urgency for psychological intervention was lesser with the deceased, because he was still working and he had not done anything to himself yet.

[77] Equally true, Ms Auret-Besselaar also testified that she never thought that the deceased would ultimately take his own life. More fundamentally, Ms Auret-Besselaar testified that she was worried that the deceased would self-harm, but not that he would take his own life. This particular piece of evidence of Ms Auret-Besselaar, and that of Ms Coetzee, suggesting that they did not see the suicide coming, calls for particular scrutiny.

[78] More so, if regard is had to the Plaintiff's testimony and that of the deceased's mother: they also testified that the deceased did not show any signs of suicide. Similarly, the Plaintiff, in spite of the fact that she stated in her testimony that after the

accident the deceased was definitely not the husband and father they were used to, still stated that the deceased was not a quitter and that he used to say tomorrow is a new day no matter what. This, coupled with what Ms Coetzee and Ms Auret-Besselaar testified about, clearly shows that there is evidence in this matter tending to prove that the deceased cannot be described as someone who had a gloomy outlook in life, after the accident. Additionally, according to the Plaintiff, albeit she and the deceased had an argument on the morning of the suicide, the deceased continued on and went to work.

[79] In the present case, notwithstanding what is stated above, it is pertinent to note that both Ms Coetzee and Ms Auret-Besselaar were at pains to point out, after the deceased's suicide, that the deceased suffered from psychological distress and that he took his life as a result of his injuries sustained during the accident. Ms Auret-Besselaar opined that the deceased took his life because of his physical incapability to perform, run his business as before, and to be restored to his former self.

[80] In this matter, there is no evidence to show that because the deceased exhibited aggression, irritation and frustration, his risk of committing suicide was increased. For that matter, these delineated factors do not negate other possible causes of suicide. It is also significant to note that Ms Coetzee did not testify that suicide is a virtual certainty if a person exhibits such symptoms.

[81] Additionally, it is rather distinctly odd and questionable that Ms Auret-Besselaar testified that the Plaintiff convinced her, when she [the Plaintiff] tendered an opinion to her [Ms Auret-Besselaar], that the deceased took his own life because of emotional distress and the state he was in. Ms Auret-Besselaar also testified that the Plaintiff mentioned to her that had the deceased not sustained the injuries in the accident he would still be alive.

[82] Surely, whatever the Plaintiff told Ms Auret-Besselaar was not specialised knowledge. Plainly, the conclusion which the Plaintiff opined to Ms Auret-Besselaar, falls outside the knowledge of a layperson. It is seriously mind boggling how Ms Auret-Besselaar could find the opinion of a layperson, as to the cause of death, convincing, whereas, on the other hand, she found the reports of Dr. Steyn and Ms Crouse, who happened to be skilled people, irrelevant.

[83] Demonstrably, there is no justification for the latitude which Ms Auret-Besselaar accorded the Plaintiff to draw such an inference, regardless of whether the inference was drawn from a combination of the Plaintiff's experiences. Undoubtedly a layperson's personal knowledge does not qualify him/her to give an opinion on technical or specialised areas. Ms Auret-Besselaar further does not state on what foundation the Plaintiff based her conclusion that the deceased took his life as a result of emotional distress.

[84] For that matter, regard must be had to the testimony of Ms Coetzee, who categorically stated that not all people who exhibit the same psychological *sequelae* as the deceased, go on to commit suicide.

[85] Furthermore, it is hard to accept the opinion put forth by Ms Auret-Besselaar, that the deceased's threat to pull the screws out of his leg was a huge indication of self-harm, because her evidence in this regard lacks the factual and scientific basis for her profound conclusion. It is noteworthy that Ms Auret-Besselaar also stated that she did not make a diagnosis in this regard. Moreover, it was Ms Auret-Besselaar's testimony that she also relied on hindsight.

[87] Another oddity in the testimony of the Plaintiff's experts, is the fact that Ms Coetzee testified that her findings were based on her assessment of the deceased on 16 November 2016, almost three weeks before the deceased died by suicide; in spite of the fact that she did not recommend treatment for the deceased, close to the

deceased's death. However, in her report, she stated that the deceased was feeling depressed, was suffering from depression, and was not mentally well.

[88] Ms Auret-Besselaar and Ms Coetzee would like this court to find that the deceased was unable to control the act of suicide because of a mental condition caused by the negligent act. The question that aptly arises is whether the evidence presented supports the findings of both Ms Auret-Besselaar and Ms Coetzee.

[89] While it is conceivable that a person who is suffering from depression may take his life, it must however be stressed, in this matter, that it is common cause that the deceased was never diagnosed with depression whilst he was alive. The deceased was also never assessed for suicide risk. Because there is no psychiatric diagnosis in this matter, it is rather difficult to elucidate the deceased's conduct on the morning he died by suicide.

[90] As previously mentioned, the Plaintiff in this matter is expected to link the negligent act to the deceased's suicide, in order to complete the chain of causation. I firmly believe that in a suicide situation with a history of a negligent act, in order for this court to find that the suicide was a direct result of the injuries sustained during the negligent act, as concluded by Ms Coetzee, the Plaintiff needs to prove, firstly, that the injury sustained by the deceased triggered a mental condition; secondly, that the mental condition caused the deceased to act irrationally, with uncontrollable impulse. In other words, it must be proven that the suicide is a direct result of the psychiatric condition. [As it is averred in the in the instant case that the deceased suffered from depression.].

[91] It is thus not enough to just prove that the injuries sustained in the accident affected the deceased's reasoning or mental health.

[92] At the risk of repeating myself, it must be stressed that the link between the negligent act, the mental disorder and the suicide should be established on a balance of probabilities. It is not adequate to simply claim that the deceased, before he took his own life, suffered from a mental disorder and that the disorder caused the suicide. There should be evidence which shows that a close connection exists between the negligent act and its factual consequences.

[93] In the *Lee* matter, supra, although in different context, at paragraph 68, the Constitutional Court made the following remarks regarding legal causation:

'Having found that a causal link exists, for completeness, the next enquiry regarding legal liability becomes relevant even though legal causation was not an issue before us. It involves the question whether the defendant should be held liable. There must be a reasonable connection between the breach and the harm done. This serves to limit liability because the consequences of an act or omission might stretch into infinity. The respondent did not suggest that the harm was too remote.' (Own emphasis supplied, internal footnotes omitted.)

[94] In the instant case, the Plaintiff expects this court to make a finding on a balance of probabilities that when the deceased took his life he did not act rationally, due to the injuries he sustained during the accident. However, no evidence was placed before this court to prove this. The evidence in this matter does not show that there is a diagnosis that would have shown that the deceased's suicide was caused by the accident, which resulted in an underlying mental defect, which prevented him from making a rational decision.

[95] Ms Coetzee simply concluded that the deceased's suicide was a direct result of the accident. There is no evidential material proffered by Ms Coetzee to support this conclusion, save to say that the conclusion was made on the basis of all the information she had at her disposal, which was mostly provided by the deceased when he was still alive. Surely, the reliance placed on information sourced from the deceased cannot stand, because it is the testimony of Ms Coetzee that the deceased,

amongst others, did not want to admit to psychological impairments. She also testified that after she assessed the deceased she did not expect the deceased to commit suicide. As already indicated, it was also her testimony that not all people who exhibit the psychological *sequelae* that the deceased did, commit suicide.

[96] Critically, Ms Auret-Besselaar, in her testimony, indicated that the deceased, during her assessment of him, did not present as having mental health problems. Ms Coetzee, during cross examination, testified that she agreed with Mr Loebenstein that her conclusion, as reflected in her report, was determined without recourse to formal symptom elicitation, which would have had heuristic value in establishing the deceased's mental status at the time. Neither Ms Coetzee nor Ms Auret-Besselaar foresaw that the decease would commit suicide because of his injuries, based on what he presented during their assessment of him.

[97] Though it is foreseeable that an individual may sustain injuries in a motor vehicle accident, which causes them to pass away, it is not, however, reasonably foreseeable that a person who sustained injuries in a motor vehicle accident would commit suicide.

[98] The Plaintiff placed much reliance on *Road Accident Fund v Russell* 2001 (2) SA 34 (SCA). In my view, this case is distinguishable from the *Russel* matter. In *Russel*, the Supreme Court of Appeal, stated the following at paragraphs 1-4:

'. . . the deceased. . . sustained severe multiple injuries as a result of a motor collision, *inter alia* concussion with brain damage, scalp lacerations, multiple rib fractures, a contusion of the left lung, a fracture of the right humerus, a fracture of the right femur, a fracture of the right lower tibia, and a fracture dislocation of the left metatarpals. . . . It is clear from the evidence of the respondent that the collision completely transformed the deceased, not only disabling him physically but moreover seriously affecting his interpersonal relationships. . . . The collision, however, had rendered him intolerant, impatient, irritable, subject to angry outbursts and lacking libido. . . . Approximately two months prior to the deceased's death the respondent took the decision to admit the deceased to the nursing home. The decision was not taken lightly. It was thrust upon her by events. Shortly before the deceased's admission

to the nursing home, the respondent discovered the deceased on the roof of their house. It seemed to her that he must have crawled up the staircase, as he could not walk. The respondent concluded that the deceased intended committing suicide. The other incident related to an apparent overdose of pills, which required hospitalisation.' (Own emphasis supplied.)

[99] Further, at paragraph 11:

> 'Although Prof Schlebusch conceded that the deceased suffered from severe depression, albeit not major depression, he was constrained to admit that depression is a brain dysfunction. He furthermore reluctantly conceded, but only as a possibility, that the most significant contributing factor to the depression was the deceased's brain injury. Such injury was consistent with his irritability, inappropriate behaviour, inability to control outbursts, lack of short-term memory, reduced concentration and loss of fine motor control functions. In her testimony the respondent had described all these manifestations of the deceased's altered personality and conduct. Finally, Prof Schlebusch conceded that there was a clear relationship between the deceased's depression and the suicide.'

[100] In *Russel*, the deceased had brain damage; it was conceded that the deceased was suffering from depression. The depression was linked to the brain injury and the brain injury was linked to the accident. Additionally, in *Russel* the expert also conceded that there was a clear relationship between the deceased's depression and the suicide. Clearly, the circumstances of the two cases are entirely different.

[101] Of particular importance in this matter is the reliability of the experts' opinions. The question here is not the reasonableness of the conclusion made by Ms Coetzee, but the reasonableness of the approach which she adopted in coming to her conclusion. The issue therefore is whether Ms Coetzee could reliably determine the cause of the suicide.

[102] In a case such as the present one, expert evidence must be relied on to establish the causal link between the liability producing incident and the alleged harm resulting therefrom. Evidence of an expert witness is of significant importance in litigation that is technical in nature, or involving specialised areas of knowledge, or where the issue in question is not within the knowledge or scope of the court. Perhaps more importantly, an expert witness is not there to guarantee that a certain verdict is given. The purpose of the expert evidence is to give fair, non-partisan and independent testimony, which will *inter alia* guide and assist the court in its determination of the issue. An expert witness should have a degree of objectivity regarding the proceedings.

[103] The courts should always be astute to distinguish between reliable expert opinion and the subjective belief of an expert. When it is provided with an expert opinion, the court should not simply accept the *ipse dixit* opinion, but should make sure that the opinion is reliable by scrutinising in detail the expert's reasoning and the evidence.

[104] It is now settled that in order for an expert witness to be of assistance to the court, the expert in his/ her testimony should not simply express a view based on personal perspectives, preferences, beliefs or unsupported speculation and conjecture. The expert opinion should be founded on a sound basis and should remove the issue from the realm of speculation or subjective beliefs.

[105] In the instant case there is no evidence connecting the symptoms observed by both Ms Auret-Besselaar and Ms Coetzee, to the suicide. Neither Ms Coetzee nor Ms Auret-Besselaar testified that after assessing the deceased they discovered that the symptoms which he deceased exhibited increased his chances of committing suicide. Instead, the evidence evinces that Ms Coetzee 'diagnosed' that the deceased was depressed, in hindsight. Upon careful consideration of the reasoning and the methodology used by both Ms Coetzee and Ms Auret-Besselaar, I get the distinct

impression that both their opinions, particularly the conclusion of Ms Coetzee, do not rise above subjective belief or unsupported speculation.

[106] Surely the fact that the deceased, amongst others, was angry, frustrated, despondent and suffering from pain when they last saw him, does not mean that he was clinically depressed and does not support a contention that a depression which has its genesis from the accident contributed to the deceased's suicide.

In *Hing v Road Accident Fund* 2014 (3) SA 350,on page 360-361, at paragraph 23, the following was enunciated:

> "I do not think that the trial judge can be faulted for deciding that the content of Dr George's report did not establish that the first appellant had suffered an identified psychiatric injury. That the judge was justified in holding that manifesting some symptoms of post-traumatic stress syndrome did not equate to a diagnosis that the appellant was suffering from the disorder itself was confirmed in the evidence of Ms Elspeth Burke, a clinical psychologist who testified at the trial in support of the appellants claims. Quite apart from anything else, nothing in Dr George's report would go to explain why the appellant could not arrange the rental of her apartments. The symptoms of post-traumatic stress identified in the reports of both Dr George and Ms Burke manifested only in anxiety about driving according to his report."

[107] Though I fully appreciate that it is settled now that the standard of proof for causation is not certainties but probabilities, I however simply cannot fathom how the results of Ms Coetzee's assessment of the deceased, sufficiently supports her conclusion. Both the testimonies of Ms Coetzee and Ms Auret-Besselaar do not in the least sufficiently establish that the accident probably or more likely than not, caused the deceased to commit suicide. In my view, there is a great deal of quantum leap or analytical gap between the information obtained by Ms Coetzee during her assessment of the deceased and her proffered conclusion. Little wonder she also sought to rely on hindsight, because her assessment of the deceased does not support her opinion.

[108] There are significant red flags in both the testimonies of Ms Coetzee and Ms Auret-Besselaar that cast doubt on their opinion evidence. The evidence in this matter reveals the following:

- That after the accident the deceased was never diagnosed with any mental illness or depression.
- That the deceased never exhibited suicide ideation.
- The accident happened two years and five months before the suicide of the deceased.
- The deceased indicated to Ms Coetzee that he is determined to make things work.
- Ms Coetzee testified that, immediately after the accident, the deceased had a more hopeful attitude.
- There is no evidence that indicates that the deceased, immediately after the accident, suffered from depression.

[109] However, it is to be noted that when it comes to these above delineated factors, it is not clear in Ms Coetzee's evidence as to how she fits them into the causal issue. The question which aptly begs is: how then can it be said that the accident is the proximate cause or direct cause of the suicide. It is mind boggling that Ms Coetzee's conclusion, without more, can be so definitive in the context of this case. It is readily apparent from Ms Auret-Besselaar's evidence that the only hint of physical injury the deceased expressed to her when she consulted with him, was that of ripping the surgical screws from his leg. Surely, the expression does not lead only to the conclusion that the deceased was suggesting suicide or self-harm, but could also represent feeling of distress from pain.

[110] This court cannot just ignore the fact that Ms Coetzee never diagnosed the deceased with depression, she admitted that the deceased did not meet the diagnostic criteria of a diagnosable mental illness, but she still held the view that he was definitely not mentally well. The inevitable corollary of this is that, in the context of this case, it is not clear from the testimony of Ms Coetzee how she could extrapolate her conclusion from her assessment.

[111] Additionally, her testimony that her conclusion, that the deceased's suicide was a direct result of the accident, was made on the basis of all the information she had at her disposal, which was mostly provided by the deceased, is rather bizarre, particularly if regard is had to the fact that the deceased did not want to admit to psychological impairments.

[112] Over and above that, it is a curious feature of this case that none of the Plaintiff's witnesses, including Ms Coetzee, testified that the deceased's suicide was foreseeable after the accident. How can it then be said that the accident was the actual cause of the deceased's suicide?

[113] I am well alive to the fact that it is not required of the Plaintiff to exclude all other possible explanations of causation. The Plaintiff is required to prove on a mere balance of probabilities that her view of causation is the correct one.

[114] It is evident that Ms Coetzee never even entertained thoughts of other reasons which could have possibly led to the suicide.

[115] What evidence is there to show that the accident was the direct cause of the suicide, as proffered by Ms Coetzee? Particularly given the fact that she testified that she could not make a diagnosis that the deceased was suffering from depression, with the symptoms she observed on the deceased. How then could she manage to go further, after the death of the deceased, and opine that the accident was the direct cause of suicide? Nothing in the evidence presented in this matter supports her conclusion. Quite plainly, Ms Coetzee's testimony appears to be an assumption. Even the evidence presented by both the Plaintiff and Ms Auret-Besselaar did not take the case of the Plaintiff any further in stablishing causation.

[116] The evidence in this matter reveals that little was known of the deceased's state of mind at the time of his suicide. The fact that it is common cause that there was a negligent act, does not prove causation. On top of that, or perhaps more importantly, the fact that the deceased exhibited anger, frustration, mood changes and felt useless after the accident, also does not prove causation.

[117] I get the distinct impression that both Ms Coetzee and Ms Auret-Besselaar buckled under the pressure of the litigation. Hence, I do not think that they did what they did consciously.

The fact that when they assessed the deceased, they did not forthrightly come to the conclusion that the deceased was depressed, is illuminating. Another question that begs to be asked is, if Ms Auret-Besselaar and Ms Coetzee, during their assessments of the deceased, were of the view or suspected that he suffered from depression, which threatened his life, why did they not immediately subject him to the DMS-5 assessment so that they could make a proper diagnosis and refer him for treatment.

[118] More worrying in this matter is the fact that the methodology underpinning Ms Coetzee's and Ms Auret-Besselaar's conclusions, is not clear. This court cannot sufficiently establish that the conclusions of both Ms Auret-Besselaar and Ms Coetzee are based on any demonstrably valid and sound methodology. It is my view that the methodology used by both Ms Auret-Besselaar and Ms Coetzee in coming to their conclusions, is not reliable.

[119] Mr Eia, on behalf of the RAF, cannot be faulted for contending the following in his heads of argument:

'It is common cause that the deceased did not meet the diagnosis criteria for being "depressed". He did not suffer a mental illness of impaired judgment. As such, there is no causal nexus between the deceased's and the Plaintiff's claim for loss of support arising out of the deceased's motor vehicle accident's injuries.'

[120] Demonstrated very sharply here is the fact that the conclusions reached by the Ms Coetzee and Ms Auret-Besselaar are shaky. For instance, there is no apparent basis for associating or connecting what they observed from the deceased during their assessment of him, with his suicide. Consequently, in the context of this case it is difficult to trace the source of the suicide.

[121] The evidence of both Ms Auret-Besselaar and Ms Coetzee fail to properly show how they suddenly arrived at their conclusions, which they did after the death of the deceased. I get the distinct impression that they did not rely on tangible evidence to come to their conclusions. This reveals a shortcoming in the testimony of the experts, as it suggests that their conclusions fall in the realm of personal belief or opinion, guess work and speculation. Furthermore, Ms Auret-Besselaar's own evidence, that in hindsight the deceased was suffering from depression, casts considerable doubt on whether her conclusion and her initial assessment of the deceased rests upon reliable foundations.

[122] Given the evidence placed before this court, there are insufficient indications of reliability to find on a balance of probabilities that the accident caused the deceased to commit suicide. In *Hing*, supra, the full bench opined as follows in pargraphs 29H-30J:

> ". . .This approach entails that in claims in which the occurrence of a psychiatric injury is in dispute the psychiatric evidence adduced to support the proposition must be clear and cogently reasoned, and it should be preceded by summaries that properly fulfil the requirements of Uniform Rule 36(9)*(b)*. For the reasons given, the expert evidence tendered in the appellant's case did not measure up to the indicated principles and rules.
>
> [30] I thus conclude that no basis has been made out to upset the trial I court's finding that it had not been proved that the first appellant had sustained a psychiatric injury. There was in any event a body of anecdotal evidence to which the court could properly have had regard to find that even if the first appellant had sustained a psychiatric injury, its effects were not such as to prevent her from renting out her apartments."

[123] Sufficiency of reliability is critical in cases involving expert witnesses. If this court accepts the evidence of Ms Coetzee and Ms Auret-Besselaar as being reliable, it would mean that the court's expectations, on the required level of reliability of expert evidence, are very low.

[124] Inasmuch as it can be suggested that the evidence of Mr Loebenstein was merely based on reading the reports of other experts, it is clear, however, that in the context of this case, his evidence absolutely makes sense. There is no question about that. I do not accept that argument that this court cannot accept the evidence of Mr Loebenstein as reliable. After all, in accordance with the well-established principles, an expert can provide an opinion on the findings or report of another expert.

[125] More critically, in the instant case there is not enough supportive evidence to explain why the deceased committed suicide. Furthermore, looking at the facts as a whole, I do not accept that the evidence in this matter makes it clear that the accident is the direct or proximate cause of the deceased's suicide. Additionally, even if the Plaintiff sought to rely on circumstantial evidence, in the context of this matter, the inference which the Plaintiff seeks that this court should draw, is not the most readily apparent and acceptable inference from a number of possible inferences. In the context of this case it is not sufficient merely to say that, 'but for the negligent act, the deceased would not have committed suicide'.

Finally, I find what is stated in Hing's matter, supra, apt in this matter when the court stated the following at paragraph 41C:

> "[41] As the cases just referred to illustrate, the crucial question in a case like the second appellant's is really one of causation, more particularly 'legal causation'. Legal causation as a requirement serves as a moderating tool to regulate a defendant's liability so as to keep it within bounds which legal policy would consider reasonable. .

[126] In the instant case, upon close and careful scrutiny of the evidence presented in this matter, I cannot find that the Plaintiff established the causal connection between

the accident and the suicide. The evidence cited by both Ms Auret-Besselaar and Ms Coetzee is insufficient to discharge the onus of proof upon the Plaintiff.

Costs

[127] It is settled that a successful party should be awarded his costs. Equally trite is that an award of costs is in the discretion of the court. This court is expected to exercise its discretion judicially. Access to justice is very critical in a constitutional democracy. Though normally the costs follow the event, however in this matter I am of the view that this Court should depart from that rule.

[128] In the context of this matter, I cannot fault the Plaintiff for pursuing the claim for loss of support, when she had experts who assured her that the cause of death of her husband was the accident. I earnestly hold the view that in the circumstances of this case, I cannot mulct her with the legal costs incurred by the RAF.

[129] **In the result I make the following order:**

1. The Plaintiff's claim is dismissed;
2. Each party to pay its or her own costs.

CN NZIWENI

Acting Judge of the High Court

Appearances

Counsel for the Plaintiff	Adv AJ Du Toit
Instructed by:	DSC Attorneys
	Mr J Potgieter

Counsel for the Defendant:	Adv P Eia
Instructed by:	State Attorney
	S Masoet Maduray