THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 803/13

In the matter between: Reportable

PRIMILDA JACOBS **FIRST APPELLANT**

CAROLINA CHRISTINA HENDRICKS **SECOND APPELLANT**

and

TRANSNET LTD t/a METRORAIL **FIRST RESPONDENT**

THE SOUTH AFRICAN RAIL COMMUTER CORPORATION LTD **SECOND RESPONDENT**

Neutral citation: *Jacobs v Transnet Ltd t/a Metrorail* (803/13) [2014] ZASCA 113 (17 September 2014)

Coram: Navsa ADP, Majiedt, Saldulker, Swain and Zondi JJA

Heard: **21 AUGUST 2014**

Delivered: **17 SEPTEMBER 2014**

Summary: Delict – negligence established where speed restriction imposed by the railway operator excessive on section of railway line where passenger train collided with stationary truck at level crossing – role of expert witness.

ORDER

On appeal from: Western Cape High Court, Cape Town (Ndita J sitting as court of first instance):

1. The appeal is upheld.

2. The order of the high court is set aside and substituted with the following:

   'The defendants are liable, jointly and severally, for such damages as the plaintiffs may prove to have sustained in the collision of 13 November 2006.

   The defendants are ordered, jointly and severally, to pay the plaintiffs' costs of suit.'

3. The respondents are ordered, jointly and severally, to pay the costs of the appeal.

JUDGMENT

Majiedt JA (Navsa ADP, Saldulker, Swain and Zondi JJA concurring):

[1] Calamity struck during the morning of 13 November 2006 when a high speed commuter train slammed into a stationary truck at the Croydon level crossing near Somerset West. Nineteen occupants of the truck, 18 of whom were seasonal farm workers, died in the collision and 12 others were injured – the worst incident of its kind in this country's history.

[2] The two appellants, Ms Primilda Jacobs and Ms Carolina Christina Hendricks, were among the injured. They instituted action in the Western Cape High Court, Cape Town, against the respondents for damages consequent upon the injuries sustained as a result of the collision. The

respondents are companies in the Transnet parastatal.[1] The first respondent (Metrorail) runs the railway line operations for Transnet while the second respondent (the Commuter Corporation) runs its rail commuter operations. In the high court Ndita J dismissed the actions (brought separately but consolidated into one trial, seemingly as a 'test case' for all the other pending damages claims arising from this incident), but granted leave to appeal to this court.

[3] The driver of the truck, Mr Gert Zeelie (Zeelie), perished in the collision. Several witnesses, including the first appellant, other survivors of the collision, the train driver and a number of experts testified in the high court. The common cause facts are briefly as follows:

(a) During the morning of 13 November 2006 at around 7 o'clock, the truck, driven by Zeelie and carrying 29 seasonal farm labourers in the rear and a Mr Morne Kershoff (Kershoff) in the front cab, was en route to a grape farm. It was Zeelie's first day of employment and the first time that he drove the truck, a 3 ton Mitsubishi Canter. He had never before traversed that particular route. For that reason, the truck owner's son, Kershoff, sat with Zeelie in the cab of the truck to give him directions to the farm. Kershoff pertinently cautioned Zeelie about the Croydon level crossing on their approach to it.

(b) Zeelie heeded the stop sign at the level crossing. At that moment Kershoff bent down to retrieve his pen which had fallen on the floor of the cab. He then became aware that the truck had edged forward and had stalled on the railway line. When he looked up, he observed Zeelie struggling to engage the truck's gears and, more alarmingly, the train hurtling towards them from the Somerset West side, ie from the right. Kershoff managed to extricate himself from the truck, as did some of the passengers at the back, before the train slammed into the truck.

(c) The impact of the collision severed the truck cab from the body and the latter was pushed about 510 metres along the railway line by the train until it came to a standstill. Aerial photographs depict several

[1]Established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989.

bodies strewn along the way and 3 bodies on the back of the truck. The cab burst into flames and was completely destroyed.

(d) The train driver, Ms Nomava Harriet Mxalisa (Mxalisa) caused the so called ‘dead man’s brake’ to engage by fleeing to the rear of the locomotive for self-preservation when she saw the stationary truck on the railway line ahead of her. She did not sustain any significant physical injuries. The ‘dead man’s brake’ is intended to monitor the train driver’s presence at the controls. Whenever the driver releases his or her hands from the steering control, this brake will engage automatically after about five seconds. The emergency brake, on the other hand, engages immediately when activated by the driver.

(e) The collision occurred just after 7am. The police arrived on the scene shortly thereafter. The Railway Safety Regulator’s[2] (the Regulator) investigators arrived from Johannesburg on that same afternoon. Pursuant to its investigations the Regulator afforded the railway operator (Metrorail) the following three alternative remedial measures – to eliminate the level crossing, to provide appropriate protection to the level crossing or to institute an appropriate speed restriction to mitigate the consequences of future collisions of this kind. The Regulator required Metrorail to revert with a plan of action based on the alternatives referred to above. Pending that decision it directed Metrorail to implement forthwith, a speed restriction of 40 km/h at that level crossing from the second whistle board on the railway line, ie 125 metres from the level crossing. As directed, Metrorail implemented the new speed limit of 40 km/h with immediate effect. It also improved the signage at the crossing.

(f) The level crossing is not controlled by a boom and flashing red lights. Prior to the collision the only signage on the road was a signboard some 120 metres from the crossing, warning of a railway crossing ahead, and a stop sign. Overhanging foliage and a vibacrete wall partially obscured the visibility to the left for train drivers approaching the crossing from the Somerset West side and for motor vehicle drivers approaching the intersection in an easterly direction (ie

[2]Established in terms of the National Railway Safety Regulator Act 16 of 2002.

from the left of trains travelling from the Somerset West side), as Zeelie did on that fateful morning.

(g) The railway line is a major commuter line from Strand to Cape Town. The speed restriction on that part of the railway line, determined by Metrorail, is 90 km/h. This is the speed normally designated for Metrorail trains, unless there are speed restrictions in place. The train was travelling at 96km/h shortly before the collision.[3] Whistle boards are located 400 metres and 125 metres from the crossing. Metrorail's standard procedures require a train driver to emit a cautionary siren once at the 400 metre board, and a continuous warning siren at the 125 metre board. While there was some conflicting evidence on whether Mxalisa had followed the standard procedures with regard to the cautionary sirens that day, it does appear that she in fact did so. The train driver would have a clear view of the railway track for a distance of about 700 metres from the crossing, but there is partial obstruction to the left as the train approaches the crossing, as stated above.

[4] The only issue before the high court was the alleged negligence on the part of the respondents in causing the collision. The appellants endeavoured to establish negligence on one or more of the following grounds:

(a) that the speed limit of 90 km/h was inappropriate and excessive for that particular crossing;

(b) that the road signage was inadequate to warn motorists of the crossing;

(c) that the respondents failed to put up a boom or barrier to prevent vehicles crossing the railway line simultaneously with the train;

(d) vicariously through Mxalisa's failure to sound the warning siren at the whistle boards and her failure to engage the emergency brake which would have lessened the impact considerably.

[3]This information was gleaned from the train's on board data recorder, the so called trip logger system of the microprocessor traction controller.

[5] A number of witnesses, including experts, testified for the appellants to establish these grounds of negligence, without any success. The high court found that 'the evidence presented [by] the plaintiffs failed to establish negligence on the part of the train driver, Ms Mxalisa and on the part of the defendants'. In this court both counsel for the appellants ultimately confined themselves in argument to ground 4(a) above, namely the question of whether the speed restriction was appropriate for that part of the railway line. In respect of the other grounds of negligence, it was accepted by the parties that the evidence showed that, in the event that there had been an absence thereof, it cannot be said that the collision would have been avoided. Put differently, even if the other acts of negligence had not been present the collision would in any event, because of the speed of the train, have occurred.

[6] The test for negligence has been authoritatively laid down as follows in *Kruger v Coetzee*:[4]

'For the purposes of liability *culpa* arises if –

(a) a *diligens paterfamilias* in the position of the defendant –

(i) would foresee the reasonable possibility of his conduct injuring another in his person on property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps.'

This test rests on two bases, namely reasonable foreseeability and the reasonable preventability of damage.[5] I consider each of these next.

[7] The foreseeability of harm at a place where rail and vehicular traffic intersect is unquestionable. More than a century ago the dangers associated with level crossings were recognized in *Worthington & others v Central South African Railways*[6] as follows:

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[4] *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E. See further: *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) paras 12 and 23; *Minister of Safety and Security v Carmichele* 2004 (3) SA 305 (SCA) para 45; *Transnet Ltd t/a Metrorail & another v Witter* 2008 (6) SA 549 (SCA) para 5.

[5] *Premier, Western Cape v Faircape Property Developers (Pty) Ltd* 2003 (6) SA 13 (SCA) paras 41-42.

[6] *Worthington & others v Central South African Railways* 1905 TH 149 at 150-151. See further: *Celliers v South African Railways and Harbours* 1961 (2) SA 131 (T) at 135-136.

'The level-crossing itself is common both to the railway and to the public: Each has the right to pass over it, and to expect that due care will be exercised by the other to avoid mishaps; but it is quite clear from the nature of the case that a train cannot in the ordinary course be expected to pull up at a crossing to allow passengers by the public road to get over the crossing. The train must necessarily have the preference over passengers by road.

It is the duty of the traveller to look out for and wait for the train. At the same time a condition is attached to the preference which the railway has, and that is that the train ought to give due warning of its approach when it is nearing a level-crossing of this nature, so that persons might stop and allow the train to pass. *The train is bound, in my opinion, to give due and timely warning of its approach, and also not to be travelling at such an excessive rate of speed that the warning it might give should be of no avail. What is an excessive speed and what is due warning must entirely depend on the special circumstances of each case. Where there are obstructions to prevent persons travelling along the road from seeing an approaching train, or where there are any other circumstances which would make it difficult to ascertain that a train is approaching, then of course, better warning would have to be given, and the train would have to travel at a slower speed.'* (My emphasis).

[8] A train has the right of way at a level crossing.[7] Reasonable measures have to be put in place to prevent the foreseeable harm from occurring. In *Ngubane v South African Transport Services*[8] Kumleben JA, after restating the test for negligence as laid down in *Kruger v Coetzee*, adopted the following comments from Lawsa[9] and *Herschel v Mrupe:*[10]

'"Once it is established that a reasonable man would have foreseen the possibility of harm, the question arises whether he would have taken measures to prevent the occurrence of the foresseable harm. The answer depends on the circumstances of the case. There are, however, four basic considerations in each case which influence the reaction of the reasonable man in a situation posing a foreseeable risk of harm to others: *(a)* the degree or extent of the risk created by the actor's conduct; *(b)* the gravity of the possible consequences if the risk of harm materialises; *(c)* the utility of the actor's conduct; and *(d)* the burden of eliminating the risk of harm."

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[7] Ibid.
[8] *Ngubane v South African Transport Services* 1991 (1) SA 756 (A) at 776E-777C.
[9] JC van der Walt 'Delict' in Joubert LAWSA vol 8 para 43 at 78.
[10] *Herschel v Mrupe* 1954 (3) SA 464 (A) at 477A-C.

The first two considerations are recognised and discussed in the well-known and oft-quoted passage in *Herschel v Mrupe* 1954 (3) SA 464 (A) at 477A-C, which is as follows:

"No doubt there are many cases where once harm is foreseen it must be obvious to the reasonable man that he ought to take appropriate avoiding action. But the circumstances may be such that a reasonable man would foresee the possibility of harm but would nevertheless consider that the slightness of the chance that the risk would turn into actual harm, correlated with the probable lack of seriousness if it did, would require no precautionary action on his part. Apart from the cost or difficulty of taking precautions, which may be a factor to be considered by the reasonable man, there are two variables, the seriousness of the harm and the chances of its happening. If the harm would probably be serious if it happened the reasonable man would guard against it unless the chances of its happening were very slight. If, on the other hand, the harm, if it happened, would probably be trivial the reasonable man might not guard against it even if the chances of its happening were fair or substantial. An extensive gradation from remote possibility to near certainty and from insignificant inconvenience to deadly harm can, by way of illustration, be envisaged in relation to uneven patches and excavations in or near ways used by other persons."'

[9] The low level of protection at the crossing under consideration presented a substantial risk of very serious harm being caused in the event of a collision. Factors which played a significant role in this regard are:

(a) it was uncontrolled with no booms or other barriers;

(b) the overhanging foliage and vibacrete wall at the crossing partially obstructed the views of both an oncoming train driver and an approaching motor vehicle driver;

(c) the speed restriction of 90 km/h was at the highest end for trains on a railway line; and

(d) there was generally a fair amount of vehicular and pedestrian traffic at that level crossing, due to the farm labourers' houses and the farms being located nearby. On the uncontested evidence of the investigating officer, Warrant Officer Niemand, schoolchildren cross there on a daily basis and families live in the vicinity. On the day of the incident a number of schoolchildren who had witnessed the collision

and its aftermath had to be removed from the scene and were given trauma counselling.

[10] All the experts called by the appellants opined that the 90 km/h speed restriction was excessive. These experts were –

(a) Mr Daniel Leonardus van Onselen, (Van Onselen) a mechanical engineer who had worked for, inter alia, the South African Railways for 20 years, who stated that the speed limit was too high, given the fact that there are people living in the built up area close by, without any protective fencing. A further factor in this regard was the limited vision from both sides due to the vegetation and the vibacrete wall.

(b) Mr Timothy Spencer, a town planner who made an assessment of the collision scene. He testified that the speed limit should have been reduced due to the fact that the crossing is poorly controlled, there is low visibility and the crossing is on an urban residential edge.

(c) Mr Konrad Walter Lötter (Lötter), a mechanical engineer and managing director of Du Métier (Pty) Ltd (Du Métier) who had been tasked by the Road Traffic Management Corporation (RTMC) to investigate the collision.[11] Mr Lötter concluded that the level crossing warranted either booms as a preventive measure or the lowering of the speed restriction on that section of the railway line. In the latter regard he recommended the reduction of the speed limit from 90km/h to 50km/h.

(d) Lastly, and most importantly, the three inspectors from the Regulator, Mr Eric Nkwinika (Nkwinika), Mr Dick Arnold and Dr Chris Dutton, produced a unanimous report dated 19 December 2006 after their investigation in which they concluded, inter alia, that: ‘This road/rail interface is considered to be a high risk. it is therefore disconcerting to note that the operator deems it appropriate to allow trains to operate at a section speed of 90 km/h in an environment of unprotected level crossings’. It afforded the three alternative remedial measures mentioned in para 3(e) above and directed Metrorail to

[11]Du Métier had a contract with the RTMC at that time to investigate all motor vehicle related incidents where there were more than five fatalities.

implement forthwith a reduced speed limit of 40 km/h for that level crossing from the second whistle board.

[11] It is necessary to elaborate on the functions and powers of the Regulator generally and on its report and the testimony of Nkwinika on behalf of the Regulators' investigating team in particular. As the name depicts, the Regulator was established to enhance rail safety operations. Its objects, set out in s 5 of the National Railway Safety Regulator Act 16 of 2002 (the Act) are to:

> '(*a*) oversee safety of railway transport while operators remain responsible for such safety within their areas of responsibility;
> (*b*) promote improved safety performance in the railway transport industry in order to promote the use of rail as a mode of transportation;
> (*c*) develop any regulations that are required in terms of this Act;
> (*d*) monitor and ensure compliance with this Act; and
> (*e*) give effect to the objects of this Act.'

It has the power to conduct, inter alia, investigations in respect of railway safety.[12] The Regulator is granted extensive powers to conduct its investigations into railway occurrences. This includes the power to conduct hearings with sworn oral evidence, to summon any person to appear before it or to produce a document of object in his or her custody or under his or her control and to enter any premises for the purposes of such investigation.[13] The Regulator's report on this incident runs into 17 pages, including the annexures. As stated, its investigating team arrived from Johannesburg on the scene that same afternoon. Its final report is dated 19 December 2006. The report is detailed and bears testimony to an extensive investigation.

[12] The only expert witness whose opinion does not accord with these strong views of an excessive speed restriction on that railway section, is Mr Louis de Villiers Roodt (Roodt), a civil engineer who specializes in transportation engineering. He testified in support of the respondents' case. In his opinion the level crossing was appropriately classified as a protection level 3A crossing, ie one where there was low usage by vehicular traffic. This

[12]Section 7(2)(*o*) of the Act, read with section 38 thereof.
[13]Section 38 of the Act.

classification emanates from Volume 2 Chapter 7 entitled ‘Signage for Railway Crossings’ of the South African Road Traffic Signs Manual (the Manual). He regarded the speed restriction of 90 km/h as appropriate, given the low usage of the road and the excellent visibility in excess of 400 metres, which is more than the required sight distance for trains travelling at speeds of up to 100 km/h. With regard to a reduction of the speed limit as a preventive measure he opined in his report that ‘[o]perating trains at lower speed will not necessarily result in safer conditions, as negligent drivers will adapt to the lower speed and still cross the lines with high risk’. It is of some significance that Roodt’s report is dated 27 September 2012, less than 3 weeks before the trial commenced on 8 October 2012.

[13] Roodt was a poor witness. He was evasive and argumentative during cross-examination and loathe to make concessions where it was plainly required. He reluctantly conceded that his view on the speed limit was based on the information he had at the time. When asked whether he still held that view he was only prepared to concede that the speed limit ‘can be lower’. The following extract from his cross-examination is revealing:

‘[Mr Corbett, for the second plaintiff/appellant]: . . . Do you still hold the view you set out in your report, that 90 was a reasonable speed at this crossing?

Your Ladyship, *yes, provided that the accident did not happen*.

[Court:] Sorry? – *Sorry, no, I take that back*.

[Court:] I did not hear the last bit? – *Yes, just give it a yes’*. (My emphasis).

When pressed further under cross-examination, he disagreed with Lotter, Van Onselen and the Regulator’s conclusions on this aspect. Roodt evidently compiled his report under great pressure of time and with unseemly haste – within two days. This is in stark contrast to the detailed, meticulous report prepared by the Regulator. His testimony smacks of stark bias in favour of his client, Transnet.

[14] The high court was faced with conflicting expert opinions on this issue of an excessive speed limit. It is for the court to decide which, if any, to

accept.[14] Regrettably it failed to undertake this exercise. No finding was made on the reliability of the various expert opinions. There were no reasons advanced for the implied rejection of the appellants' experts and, in particular, the Regulator's opinion that the speed restriction was excessive for that section of the railway line.

[15] It is well established that an expert is required to assist the court, not the party for whom he or she testifies.[15] Objectivity is the central prerequisite for his or her opinions. In assessing an expert's credibility an appellate court can test his or her underlying reasoning and is in no worse a position than a trial court in that respect. Diemont JA put it thus in *Stock v Stock*:[16]

'An expert . . . must be made to understand that he is there to assist the Court. If he is to be helpful he must be neutral. The evidence of such a witness is of little value where he, or she, is partisan and consistently asserts the cause of the party who calls him. I may add that when it comes to assessing the credibility of such a witness, this Court can test his reasoning and is accordingly to that extent in as good a position as the trial court was.'

[16] This court is at large to assess the expert evidence on the record before it and to decide which one, if any, of the two conflicting opinions is to be preferred. On the objective facts the appellants' experts' opinions are preferable over that of Roodt. Their reports are detailed and extensive and contain compelling motivations for their conclusions that 90 km/h was an excessive speed restriction for that crossing. This is particularly true in respect of the Regulator's report. They treated this tragic incident with the urgency it deserved, had their investigators on the scene on the same day and conducted extensive investigations which culminated in a detailed, well motivated report.

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[14] *Buthelezi v Ndaba* 2013 (5) SA 437 (SCA) para 14: 'Yet that determination [of negligence] is bound to be informed by the opinions of experts in the field which are often in conflict, as has happened in this case. In that event the court's determination must depend on an analysis of the cogency of the underlying reasoning which led the experts to their conflicting opinions'.

[15] *Stock v Stock* 1981 (3) SA 1280 (A) at 1296E-F; *P v P* 2007 (5) SA 94 (SCA) paras 18 and 21.

[16] *Stock v Stock* at 1296F; and see *Jackson v Jackson* 2002 (2) SA 303 (SCA) at 324B-C (para 16 of the judgment of Scott JA).

[17] The urgency for Roodt apparently only concerned the finalisation of his report within two days. He brushed over this aspect in his report and his opinion, set out in para 12 above, is startling. It is difficult to comprehend his conclusion that a lower speed limit will be of no help, since it will merely encourage negligent drivers to take further risks to cross in front of oncoming trains. As stated, his testimony was of a poor quality and it lacked impartiality and objectivity. His opinion lacks proper motivation and can be discarded.

[18] On the accepted evidence the speed restriction of 90 km/h was excessive for that railway section. The possibility of harm was reasonably foreseeable for the reasons already stated. The preventive measure of reducing the speed limit to 40 km/h was eminently reasonable. On the common cause facts (on which even Roodt agreed), this reduced speed limit would have delayed the train's journey by a mere eight seconds, without any expense to the respondents. And on the common cause facts if the train had been travelling at 40 km/h from the second whistle board, the collision would have been avoided since the train would have been able to stop in time.

[19] The respondents' primary contention in respect of this issue was that the speed limit was justified. In this regard they relied heavily on the provisions contained in the Manual and on Roodt's testimony. As already stated, the level crossing was categorized as a protection level 3A crossing, ie one of low risk due to low vehicular traffic usage on that road.[17] Roodt explained in his report that the road which intersects the railway line at that crossing is not a public road, but a servitude for access to the Faure Winery Farms. The railway crossing class designation for a single high speed railway line, with excellent sight distance such as the present one, has a minimum protection level of 3A, as was the case here. He stated further that additional safety measures, for instance flashing red lights or booms, were not warranted at the crossing, given the low traffic volumes and speed, the lack of through traffic, local knowledge of the hazard and lack of an accident history.

[17] See para 12 above.

[20] In respect of the classification of the level crossing, it was the respondents' case, as advanced by Roodt's report and his testimony, that an upgrade to a higher level of protection could only have occurred within the prescripts of the Manual. Those prescripts contain the following criteria for upgrades to flashing red lights and a boom – three accidents in one year or five accidents over a three year period.[18] The prescripts apply in respect of the road signage and the safety measures at a level crossing. When questioned about the speed restrictions, the respondents' counsel informed us that this particular speed restriction was imposed by Metrorail, as is the case with all speed restrictions. According to counsel Metrorail uses the same aforementioned criteria for road signage and level crossing protection upgrades in respect of the speed restriction designation. But different considerations come into play as far as the speed limit is concerned. This is a troubling approach. It is tantamount to measuring risk and the prevention of foreseeable harm in terms of accidents occurring as far as the speed limit is concerned – unless and until a certain number of accidents occur over a given period, no additional precautionary measures will be instituted. This is an unreasonable approach to preventing foreseeable harm from occurring. The factors enumerated in para 9 above should have alerted the respondents to the need for a review of the speed limit. To literally wait for an accident to happen is to neglect the legal duty imposed upon the respondents to implement reasonable preventive measures to avert the eminently foreseeable harm at that hazardous uncontrolled level crossing. Moreover, and in any event, the prescripts applicable to road signage and level crossing protection were simply transposed as criteria to review the appropriateness of the speed limit for that railway section. Different factors may conceivably inform a decision to reduce speed as opposed to a review of road signage or level crossing protection. One that comes to mind is for instance a curve on the railway line close to the level crossing. The respondents have failed to implement reasonable preventive measures.

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[18]Paragraph 7.2.4.2(a) of the Manual reads as follows: 'The use of flashing red disc signals should, in conjunction with adequate advance warning signs, be used to control vehicles at a railway crossing when warranted by one or more of the following conditions: (a) when a crossing has an accident history involving at least three vehicle/train accidents in one year, or alternatively five vehicle/train accidents in three years and/or…'

[21] In summary: on the facts and in the circumstances of this particular case, the harm of the train colliding with a vehicle at the uncontrolled, minimally protected level crossing was reasonably foreseeable. The respondents failed to take adequate reasonable steps to prevent the materialisation of the harm, namely by reducing the speed restriction to 40 km/h on that part of the railway line from the second whistle board. Such a reduction would have entailed no cost at all to the respondents. On the uncontested evidence this simple precautionary measure would have averted the collision altogether. In the circumstances the respondents are jointly and severally liable for the damages caused by the collision. The appeal must therefore succeed.

[22] I make the following order:

1. The appeal is upheld.
2. The order of the high court is set aside and substituted with the following:

   'The defendants are liable, jointly and severally, for such damages as the plaintiffs may prove to have sustained in the collision of 13 November 2006.

   The defendants are ordered, jointly and severally, to pay the plaintiffs' costs of suit.'
3. The respondents are ordered, jointly and severally, to pay the costs of the appeal.

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S A MAJIEDT

JUDGE OF APPEAL

APPEARANCES

For First Appellant:	M J M Bridgman
Instructed by:	Ighsaan Sadien Attorneys, Cape Town
For Second Appellant:	P A Corbett
Instructed by:	Malcolm Lyons & Brivik Inc, Cape Town
	Matsepes Attorneys, Bloemfontein
For Respondents:	D J Jacobs (SC) with H Rademeyer
Instructed by:	Werksmans Inc. Jan de Villiers, Cape Town
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