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Municipal Liability in respect of maintenance of roads and pavements

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Introduction

1. Municipalities used to be able to rely on “municipal immunity”
2. If no statutory/common law duty to maintain roads or pavements, no obligation
3. Liability for positive acts only
4. Municipal liability required introduction of “new source of danger”



Moulang v Port Elizabeth Municipality 1958

- Hole in pavement – Plaintiff “turned” his ankle
- Court examined 4 “Municipal cases”
- Recognised hardship for the Plaintiff
- Main factor: expense to municipalities
- Reluctant to change well-established rules- remedy lies in legislation



Introduction Cont

5. Situation of municipal immunity changed by 2 cases:
 1. Cape Town Municipality v Butters (1996) (C)
 2. Cape Town Municipality v Bakkerud (2000) (SCA)



Cape Town Municipality v Butters 1996

- Plaintiff fell into canal – not first person to have done so
- Only kerbstone – no barrier
- Built-up area – used day and night
- Legal duty for Municipality to warn of danger/erect barrier?
- Test of liability: do the legal convictions of the community require municipality to take action
- Court: steps to be taken depend on facts of case



Cape Town Municipality v Bakkerud 2000

- Elderly lady stepped into a pothole
- Hole there for at least 6 months
- Court: “municipality cases” could no longer be regarded as authoritative
- Doctrine of general immunity no longer applies
- Common law principles of delictual liability apply



Bakkerud Cont

- But wrong to substitute doctrine of immunity with blanket imposition of general duty to repair roads, pavements and potholes
- Going too far to impose duty to maintain “billiard table-like surfaces”
- Sense of proportion called for
- Public should have care for own safety



Bakkerud Cont

- Plaintiff should place evidence before Court to conclude that legal duty to repair existed
- Relevant considerations:
 - Size and wealth of municipality
 - Size of potholes
 - Business of road/pavement



Judd v Nelson Mandela Municipality 2010

- 78 year-old lady – foot caught in raised pavement block in Bingley St, Central
- High density area: flats, churches, retirement villages, schools, restaurants, Technicon, Oval
- Heavy vehicular and pedestrian traffic
- No evidence that municipality lacked financial means, manpower, capacity, skills, etc to repair
- Municipality owed duty of care to community and Plaintiff



Judd Cont

- Test for negligence in *Kruger v Coetzee*
- Negligence arises when:
 - (a) a reasonable person in the position of the defendant
 - (i) would foresee the possibility of harm; and
 - (ii) take reasonable steps to avoid it.
 - (b) The defendant failed to take such steps.



Judd Cont

- Municipality had an excellent operating system in place
- System was not properly implemented
- Municipality found liable



Cronje v Nelson Mandela Bay Metropolitan Municipality 2010

- Plaintiff's foot got caught in crevice in pavement – Plaintiff fell and was injured
- Area: busy commercial hub in quiet residential area
- Pavement in poor condition for 10 years
- Plaintiff had never complained about pavement
- Municipality repaired pavement when Letter of Demand received
- Municipality could not afford full-time inspectors



Cronje Cont

- Municipality could not keep pavements in pristine condition
- Area was a hazard
- Street sweepers could have reported danger
- Plaintiff lived in area and was aware of danger
- Municipality 70% negligent, Plaintiff 30% negligent



Summary

1. Municipal immunity no longer applies
2. Courts look at acts and at omissions
3. Courts look at convictions of community to determine duty of care
4. Pavements do not have to be in pristine condition
5. But sense of proportion applies



Summary Cont

6. Courts look at facts of each case:

- Does the municipality have the financial means, manpower, capacity, skills to repair and maintain
- Did the municipality know/should it have known about the danger?
- Was there a system in place? (What steps were taken?)
- What is the danger - is the area busy/quiet?
- Should the Plaintiff have known better?



Conclusion

1. Municipalities can be held liable for positive acts and omissions
2. Wrongfulness depends on the legal convictions of the community
3. Steps must be taken and implemented properly
4. The courts do consider negligence on the part of the injured party



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