A needle in the burger: when the facts don’t speak for themselves

If a customer finds something sharp in their food, it may seem obvious that the restaurant should be held responsible. But in *Beyerskloof Wine Bar v Williams*, the Western Cape High Court’s Full Bench reached a different conclusion.

The case concerned a customer who swallowed a needle-like object while eating a hamburger. Despite the discomfort and medical treatment that followed, the court found that the restaurant was not legally liable.

What happened?

In October 2020, Ms Williams was eating with her husband when something became lodged in her throat. At Stellenbosch Mediclinic, X-rays revealed a needle-like object. Attempts to remove it, including surgery, were unsuccessful. She spent five days in hospital while doctors monitored its progress until it passed naturally.

Ms Williams sued the restaurant for damages.

The trial court’s decision

The trial court found in Ms Williams’s favour. It reasoned that a needle would not ordinarily end up in a hamburger unless someone had been careless. Since the restaurant could not explain how it got there, the court found it negligent.

The five elements of delict

The Full Bench stressed that suffering harm does not automatically establish delictual liability.

A plaintiff must prove all five elements of a delict: conduct, wrongfulness, fault, causation and harm.

Each element must be proved on a balance of probabilities. In this case, the main question was whether the restaurant had been negligent in serving the food.

How the trial court approached the case

The trial court relied on a principle known as *res ipsa loquitur*, meaning "the thing speaks for itself". It held that the presence of a needle suggested negligence and expected the restaurant to explain how it entered the food. It also criticised the general manager for not giving more detail about the kitchen, staff and preparation process.

Why the Full Bench disagreed on appeal

The Full Bench identified key errors in the trial court's approach.

First, *res ipsa loquitur* does not create a presumption of negligence or shift the onus. Referring to *Sardi v Standard and General Insurance* and *Arthur v Bezuidenhout and Mieny*, the court confirmed that it is simply an argument to be considered when weighing the probabilities. The plaintiff retains the burden of proof throughout, and the court must assess all the evidence before deciding whether negligence has been proved.

Second, control over the food ingredients did not mean the restaurant controlled the unknown object. There was no evidence showing where the object had entered the burger or how it got there.

Finally, the trial court had confused the principle of *res ipsa loquitur* with the legal test for negligence.

Was the harm foreseeable and preventable?

Applying the well-established test for negligence, the appeal court considered whether a reasonable restaurant would have **foreseen** the risk and taken reasonable steps to **prevent** it.

The appeal court found that the risk was not reasonably foreseeable. The restaurant bought its patties and buns from established suppliers, checked deliveries, trained staff in food-safety procedures and did not use metal brushes on its grills. The manager's evidence that no similar incident had occurred was not challenged. Ms Williams could not say whether the object was in the bun, patty or garnish, or how it had got there. On these facts, the restaurant had no clear reason to anticipate the risk.

The appeal court also considered what reasonable steps the restaurant could have taken, even if the risk had been foreseeable. Suggestions such as X-raying every

ingredient, dismantling each one or scanning every plate with a metal detector were unrealistic. The law does not require businesses to take unreasonable precautions to prevent harm.

Because the evidence did not establish how the object entered the food, the appeal court found that negligence and causation had not been proven. The claim therefore failed and the restaurant was therefore not liable for the Plaintiff's claim.

No strict liability for defective products

The Full Bench also rejected the suggestion that a restaurant should be strictly liable for unsafe food. Following the Supreme Court of Appeal's decision in *Wagener v Pharmacare*, it confirmed that South African common law requires fault for a claim of this kind. Any introduction of strict liability would be a matter for the Legislature.

The outcome

The appeal succeeded and the claim was dismissed. Ms Williams was ordered to pay the restaurant's costs of the trial, both applications for leave to appeal and the appeal, including counsel's fees on Scale C.

Practical lessons for food businesses

The judgment does not mean restaurants can ignore food safety. The restaurant's evidence about its suppliers, delivery checks, staff training and equipment helped its case. Food businesses should maintain sensible safety procedures and keep records showing that they follow them.

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