

Emotional distress damages denied: High Court emphasises psychiatric proof

Claims for damages arising from emotional shock are often pursued without a full appreciation of the legal requirements that must be satisfied for success.



By [Jean-Paul Rudd](#) 20 Apr 2026



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One requirement in particular is frequently overlooked: the plaintiff must prove, through expert psychiatric evidence, that they have suffered a detectable psychiatric injury as opposed to mere emotional distress.

The recent High Court judgement in *G[...] K[...] M[...] v Lehurutshe Hospital and The MEC for Health, North West Province* provides a sobering reminder of the consequences of failing to meet this essential requirement. This article explores the facts of the case, the relevant legal framework, and the court's conclusions.

Facts of the case

The case concerns a deeply distressing incident at Lehurutshe Hospital in the North West Province. On 21 September 2020, the plaintiff gave birth to a stillborn baby. Due to the negligence of a hospital mortuary attendant, the remains of the plaintiff's baby were swapped with those of another deceased baby. As a result, the plaintiff's family was given the wrong baby to bury. The error was only discovered the following day, after the burial had taken place.

The plaintiff instituted action against the hospital and the MEC for Health, North West Province, claiming damages for the emotional shock suffered as a result of this negligent conduct. The defendants did not dispute that the mortuary attendant had been negligent or that the hospital owed a duty of care to the plaintiff.

The sole issue before the court was whether the plaintiff had proved the necessary requirements to succeed.

in a claim for damages arising from emotional shock.



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Legal framework

The legal framework governing claims for emotional shock in South African law is well established but demanding. The court outlined that for a plaintiff to succeed in a claim of this nature, they must prove not merely that they experienced trauma, grief, or nervous shock, but that they suffered a detectable psychiatric injury as a result of the defendant's negligence.

The court referred to *Road Accident Fund v Sauls [2002]*, in which the Supreme Court of Appeal held that to succeed in a claim for emotional shock, a plaintiff must prove not mere nervous shock or trauma, but that they had sustained a detectable psychiatric injury. This requirement serves to distinguish between the ordinary emotional suffering that may accompany distressing events and the more serious psychological harm that the law recognises as compensable.

The court further referred to *R K and Others v Minister of Basic Education and Others [2020] (SCA)*, in which reference was made to *Bester v Commercial Union*. In that case, the court held that psychological psychiatric injury constitutes "bodily injury" for purposes of delictual liability, and that there was no reason in our law why a claimant who suffered such an injury as a result of the negligent act of another should not be entitled to receive compensation.

The court emphasised that the plaintiff cannot simply allege shock; it must be substantiated by expert psychiatric evidence. This is because the diagnosis of psychiatric conditions requires specialised knowledge and expertise that falls outside the ordinary competence of the court.

Without such expert evidence, a court is unable to determine whether the plaintiff's symptoms amount to a recognised psychiatric illness or merely constitute normal emotional reactions to a distressing event.

The requirement of expert psychiatric evidence is not a mere technicality but serves an important gatekeeping function. It ensures that the law compensates genuine psychiatric harm while preventing a flood of claims based on ordinary emotional distress, which, however real and sympathetic, does not cross the threshold into compensable injury.



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Court's analysis

The court, per Maodi AJ, found that the defendants' negligence and breach of duty of care were clearly established. The swapping of the babies' remains was plainly the result of carelessness on the part of the mortuary attendant, and the hospital owed a duty of care to the plaintiff to ensure that such an error did not

occur. These elements of the plaintiff's claim were not in dispute.

However, the court found that the plaintiff's claim failed on the critical requirement of proving a detectable psychiatric injury. The plaintiff did not adduce any expert psychiatric evidence to establish a recognised psychiatric illness as a result of the incident.

While the court accepted that the plaintiff had undoubtedly experienced significant emotional distress and trauma as a result of the negligent swapping of the baby's remains, this was insufficient to ground a claim for damages in the absence of proof of a psychiatric injury.

The court emphasised that however sympathetic the circumstances, it was bound to apply the legal requirements consistently. The plaintiff bore the onus of proving all elements of the claim, including the existence of a detectable psychiatric injury. Having failed to discharge this onus, the claim could not succeed.

The court accordingly dismissed the plaintiff's claim with costs.



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Conclusion

The *G[...] K[...] M[...] v Lehurutshe Hospital* case serves as an important reminder of the stringent requirements that must be met in claims for damages arising from emotional shock. The judgment confirms that South African law draws a clear distinction between ordinary emotional distress, however severe, and detectable psychiatric injury that is compensable in law.

The decision underscores that plaintiffs in such cases must adduce expert psychiatric evidence to prove that they have suffered a recognised psychiatric illness; without such evidence, a claim will fail regardless of how distressing the underlying events may have been.

For medical practitioners and hospital administrators, the case highlights the importance of proper procedures in mortuaries and other sensitive areas where negligence can cause profound emotional harm.

For legal practitioners advising potential claimants, the judgment emphasises the critical importance of obtaining expert psychiatric evidence at an early stage to assess the viability of a claim for emotional shock.

The decision ultimately reflects the law's attempt to balance compassion for those who suffer genuine psychological harm with the need to maintain principled boundaries around the scope of delictual liability.

ABOUT JEAN-PAUL RUDD

Jean-Paul Rudd is a partner in Adams and Adams' Insurance Division. He has been with the firm since 2008 and was promoted to partnership in 2014. He specialises in insurance law, medical law, and general litigation, with a specific focus on: • Medical Negligence • Professional and Public Liability • General Liability Litigation • General Litigation • Regulatory Compliance. View my profile and articles...