Higher degree of care required when dealing with children

By Sandra Sithole

31 Jan 2020

The tragic death of 13-year-old, Enock Mpianzi from Parktown Boys' High School who drowned at a school orientation camp in the North West on 15 January 2020 has yet again brought into the spotlight the duty of those responsible for children and the standard of care required when dealing with children.

Image source: Getty Images

Enock's body was found two days later and questions have been asked of the school and the owners of the lodge at the campsite whether appropriate measures were taken to ensure that the children were safe to embark on a water-related activity without life jackets and without supervision.

It is negligent to act or fail to act in a way that causes reasonably foreseeable harm to another person. What separates true accidents from acts of negligence causing injury or death is the standard of care that is required in any given situation.

In dealing with liability cases, the general standard of care required is that of the notional reasonable person i.e. would a reasonable person have acted in the same way given the same circumstances.

However, when it comes to children, a high degree of care is required. Teachers owe young children in their care a legal

duty to act positively to prevent physical harm being sustained by them through misadventure.

Can parents sue if their child is injured at school?

6 Aug 2019

In the case of *Pro Tempo v van der Merwe [2016]*, the appellant Pro Tempo Akademie CC, ran a school which caters for learners who struggle with learning disabilities and which JM, a 13-year-old student, attended. The school erected steel rods around saplings on its playground, where senior students, including JM, played sport. JM was injured on a steel rod after leaning or sitting on it. His mother sued the school.

The court found that a prudent and careful person should have foreseen that sharp projections in the ground where children play are a source of danger to young children and sooner or later might result in injury. The duty of the teachers to take steps to prevent the harm arose from the fact that they accept the responsibility to care for the children.

The court said when inserting the dropper next to the tree in the general playing field where children were known to play ball games, the school created a hazardous and dangerous situation. The foreseeability of damage was therefore present.

In reaching its judgment, the court referred to the case of *Transvaal Provincial Administrator v Coley 1925 AD 24* where a 6-year-old girl lost her eye when she fell on a wooden stake that had been erected to protect the trees that had been planted in a portion of the playground.

In that case, the court held that:

> *"...a duty arose to prevent the stakes being a danger to children playing in the vicinity if such danger ought to have been apprehended. And the question whether danger ought to have been apprehended resolves itself into the inquiry whether a diligent paterfamilias, a reasonably prudent person, would have foreseen that they would likely cause harm – in which case they would have been bound either to remove them or to take other steps to obviate the danger."*

There are many other examples of case law which confirm the principle that higher duties of care are thrown on those who carry on activities or are in control of structures or property where children are known or should be known to be present.

In Enock's case, a failure to provide life jackets and proper supervision to pupils taking part in a hazardous water activity would create liability for the school. The foreseeability of harm was present. It would appear from the reported circumstances that the school ought to have provided life jackets for learners in its care and ensured that there was adult supervision of any activities which involved risk of injury or harm. A failure to do so falls short of the standard of care required of a reasonable person, especially one that is dealing with children.

Whilst indemnity forms and disclaimers are common-place, under common law the legal convictions of the community frown upon contracting out of liability for negligence causing harm to children. It will be difficult to see any court upholding an indemnity form or disclaimer notice on the present alleged facts of this case. No parent would have signed up for such conduct.

ABOUT THE AUTHOR

Sandra Sithole is a Partner at Webber Wentzel.