



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 13 December 2017

STATUS Immediate

RAF & others v Gouws & another (056/2017) [2017] ZASCA 188

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal (SCA) dismissed an appeal brought by the appellants, the Road Accident Appeal Tribunal (the Tribunal) and others against a judgment of the Gauteng Division of the High Court, Pretoria (the court a quo), in favour of the respondent, Mr Lartz Gouws (Mr Gouws). The issue at the nub of this appeal concerned the question as to whether it is within the Tribunal's statutory remit to finally determine the nexus between the injuries allegedly sustained, on which a claim for compensation is premised, and the driving of a motor vehicle.

The dispute between the parties which gave rise to this appeal emanates from the following factual background. Mr Gouws allegedly sustained injuries as a result of being struck by a motor vehicle on 24 July 2010, whilst walking in a parking area and being flung over two vehicles in the vicinity. On 16 August 2012 Mr Gouws lodged a claim for compensation with The Road Accident Fund (the Fund), a statutory insurer, under s 17 of the Road Accident Fund Act 56 of 1996 (the Act). In terms of s 17(1) of the Act, the Fund's liability is limited to compensating a third party for general damages – or non-pecuniary loss, as it is called in the section – to instances where he or she suffered 'serious injuries' within the meaning of s 17(1A) of the Act.

At present, there are three methods of determining what constitutes a serious injury for purposes of the Act. They are identified in Regulation 3 of the Road Accident Fund Regulations (the Regulations). Firstly, the Minister of Transport may publish, after consultation with the Minister of Health, a list of injuries which are for purposes of section 17 of the Act not to be regarded as serious injuries. No injury shall be assessed as serious if that injury meets the description of an injury which appears on the list. Secondly, if the injury resulted in 30 percent or more Impairment of the 'Whole Person as provided in the AMA Guides', the injury shall be assessed as serious. Thirdly, an injury which does not result in 30 percent or more Impairment of the Whole Person may only be assessed as serious if that injury resulted in a serious long-term impairment or loss of a body function, constituted

permanent serious disfigurement, resulted in severe long-term mental or severe long-term behavioural disturbance or disorder or resulted in loss of a foetus.

Prior to the submission of his claim for compensation, Mr Gouws submitted himself to an assessment by a medical practitioner as required by the Regulations. In her assessment, Dr de Graad concluded that Mr Gouws required a shoulder replacement on the left and an arthrodesis of the left thumb. At the time of his accident Mr Gouws was a shift boss at a mine. Dr de Graad believed that the injuries restricted him from doing his normal work. She considered Mr Gouws to have suffered serious long term impairment or loss of a body function. On 18 October 2012 Mr Gouws' claim for compensation in relation to general damages was rejected by the Fund on the erroneous basis that Dr de Graad had not assessed the injury as being serious. Mr Gouws was aggrieved and resorted to an appeal.

In the event of a dispute arising concerning the assessment by a medical practitioner, the Regulations provide for an appeal process to the Tribunal consisting of three independent medical practitioners appointed by the Registrar of the second appellant, the Health Professions Council of South Africa (HPCSA). Mr Gouws' appeal was adjudicated at a formal level in accordance with the Regulations. On 26 August 2014, Mr Gouws was informed of the outcome of his appeal. The Tribunal upheld the Fund's rejection of the serious assessment injury report. It did so on the basis that it could not find a link between Mr Gouws' serious injury and the driving of a motor vehicle. It noted that Mr Gouws was a karate instructor.

In the court a quo, it was held that there was nothing in the language of the legislation concerned which empowered the Tribunal to determine whether the injuries assessed by it were caused by or arose from the driving of a motor vehicle. It therefore reviewed and set aside the decision of the Tribunal and it remitted the matter to the Tribunal for reconsideration by a different panel to be constituted by the Registrar of the HPCSA.

Before the SCA the Tribunal accepted that there was no express provision in the Act or the Regulations that conferred on it the power to determine finally whether the injuries submitted to it for assessment were caused by or arose out of the driving of a motor vehicle. Counsel on behalf of the Tribunal persisted with the position adopted in the court a quo, namely that it was implicit in the legislation that the Tribunal had that power. It was submitted on behalf of the Tribunal that the scheme of the Act and the Regulations was to ensure that deserving and qualifying claims are met. This, so it was argued, could only be achieved if the cause and the extent of the injury or injuries involved were determined. Section 17 of the Act, so it was contended, makes it clear that the injury for which a claimant is to be compensated must be caused by or arise from the driving of a motor vehicle

The SCA rejected the submissions on behalf of the Tribunal. The power contended for was far reaching. It was oppressive to claimants and denied them access to courts on an issue traditionally reserved for adjudication by them. Such dramatic change had to be expressly catered for. Furthermore, the power given to the Tribunal was to decide the question of the seriousness of the injury and was not of a broad discretionary kind, allowing for the power contended for to be implied. A finding against the suggested power does not enervate the provisions of the Act. The Fund maintains the right to challenge or concede causation. The Tribunal does not have the power to decide finally the question of causation.

The appeal was dismissed with costs.