



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 04 April 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Department of Labour: The Compensation Commissioner v Botha (326/2020) [2021] ZASCA 38 (04 April 2022)

The Supreme Court of Appeal (SCA) today upheld an appeal and cross-appeal in part, thus setting aside the order of the court a quo and remitting the matter to a Tribunal set up in terms of s 91(3) of Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended (COIDA). The appellant was ordered to pay the costs of the appeal, in accordance with the *Biowatch* principle.

The appellant, the Compensation Commissioner (the Commissioner), appealed against a judgment of the North Gauteng Division of the High Court, Pretoria (Leso AJ and Baqwa J) (the high court), sitting as a court of appeal, in terms of s 91(5) of COIDA. The high court reversed the decision of a tribunal, set up in terms of s 91(3) of COIDA, not to award any compensation to the respondent. It granted an order setting aside the decision of the tribunal and declaring the respondent, who was the appellant in the high court, to be 60% permanently disabled. The appellant, the respondent in the high court, was ordered to calculate the amount owing to the respondent within 30 days of the order. No order was made as to costs. The respondent filed a cross-appeal against the high court's order, contending that although correct in upholding his appeal, the high court erred in determining that he was 60% permanently disabled. He contended that he was 100% permanently disabled and should not have been deprived of his costs, as he was substantially successful.

The central issue in the appeal was whether there was a causal connection between the accident that occurred whilst the respondent was on duty and the permanent disability which he, admittedly, suffered. The SCA found that the first inquiry was whether any causal link had been established between the injury suffered on duty and the permanent disablement of the respondent. On the facts, it was clear that the whiplash injury exacerbated the pre-existing injuries. The doctors who examined the respondent all certified that they were satisfied that the injury had been caused by the accident. The tribunal itself found that the whiplash injury aggravated a pre-existing neck injury. A causal link had thus been established.

The second inquiry was to what extent the pre-existing injury contributed to the respondent's current status. The SCA found that that was impossible to establish on the medical records before the court. What was however apparent from the evidence was that the respondent had suffered permanent disablement. The question then was the extent of the respondent's disablement and how his previous medical history impacted on his present disablement.

The SCA held that the respondent was to obtain medical reports which detail the extent to which the pre-existing injuries caused the respondent's current permanent disablement. Once these had been procured, the SCA held, the matter should be remitted to the tribunal for determination of the compensation payable with the benefit of proper medical evidence. The SCA held further that strict time limits were to be imposed on the tribunal to make its determination within six months.

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