



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: 11 June 2024

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

Ubisi and Another v The Road Accident Fund (711/2023) [2024] ZASCA 93 (11 June 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal, further setting aside and replacing the order of the Gauteng Division of the High Court, Pretoria (the high court). The SCA made no order as to costs.

On 15 September 2017, the first respondent, Mr Matedewuja Kenneth Ubisi (Mr Ubisi), who was represented by the second respondent, Nel, van der Merwe and Smalman Incorporated (Smalman Inc), issued summons against the Road Accident Fund (the RAF) in the high court for a claim of R9 500 000. He alleged that he had sustained injuries in a motor vehicle accident, which entitled him to compensation for past and future medical expenses, past and future loss of earnings and general damages. The RAF filed a plea and disputed liability and the quantum of the claim. Liability was subsequently settled between the parties on 5 June 2019 and the RAF agreed to compensate Mr Ubisi for 100% of his proven or agreed damages.

The matter was set down for hearing in respect of quantum on 25 November 2021 before Mbongwe J. On the day of the hearing, the RAF sent an offer of settlement in respect of quantum to Smalman Inc. The offer was made in respect of general damages, loss of earnings and an undertaking in respect of future medical expenses and costs. The determination of quantum for past hospital and medical expenses was to be postponed sine die. On 16 February 2022, Smalman Inc accepted the offer on Mr Ubisi's behalf by way of notice of acceptance and prepared a draft order dated 6 May 2022, containing the settlement agreement. On 6 May 2022, the RAF consented to the draft order being made an order of court. The matter was placed on the settlement roll and heard by the high court on 5 June 2022. Mr Ubisi's counsel requested the court to make the settlement agreement an order of court as agreed by the parties.

The high court indicated that it was not a rubber stamp of settlement agreements and had to interrogate such offers and have oversight on such matters. The court also indicated to the parties that it was not satisfied with the amount agreed in respect of general damages, loss of earnings and the terms of the draft order. It reserved judgment to consider the proposed settlement.

On 1 August 2022, the high court set aside a settlement agreement concluded between the parties. It further ordered Smalman Inc to pay the costs of the action, including costs of Mr Ubisi's experts, de bonis propriis. The high court handed down a written judgment where it found that some of the terms of the settlement agreement were at odds with the report made by Mr Ubisi's industrial psychologist. The

high court found that the industrial psychologist's report confined Mr Ubisi to his pre-accident position at work and improperly qualified him for past and future loss of earnings. The court refused to award the agreed quantum of damages in respect of loss of earnings of R2 049 830.20, on the basis that the RAF tender was not justified. The high court also refused to award the R500 000 tendered for general damages on the basis that Mr Ubisi's general practitioner confirmed in his report that his whole person impairment (WPI) was 12% and below the 30% threshold, which was a clear indication that he did not qualify for general damages. The claim for payment of past hospital and medical expenses, although the parties had agreed that the determination of the quantum of this claim should be postponed, was effectively dismissed.

The issue before the SCA related to the powers of a court when parties have settled their dispute, without proceeding to litigation.

In addressing the issue, the SCA held that there was no longer a live dispute between the parties as they had settled their litigious dispute, thereby terminating the court's jurisdiction to pronounce on it. Although the high court was not obliged to make the settlement agreement an order of court, it had no power to set it aside when its validity was not placed in issue before it. The SCA further held that the high court was entitled to raise its concerns and leave it to the parties to decide whether they wanted to address the issues or not. If the parties chose not to address the issues, then the court could note in the court file that the settlement agreement is not made an order of court.

In addition to this, the SCA found that the high court's adverse finding of fraud and dishonesty against Mr Ubisi's legal representatives was inappropriate as the legal practitioners were not given notice or afforded an opportunity of a fair hearing before findings of dishonesty and impropriety were made against them and there was no evidence to sustain or justify the court's finding of fraud and dishonesty.

In the result, the SCA made an order upholding the appeal and further setting aside and replacing the high court's order.

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