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: 19 March 2025

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

Tosholo v Road Accident Fund (875/2023) [2025] ZASCA 21 (19 March 2025)

Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it dismissed the appellant's appeal against an order of the Western Cape Division of the High Court, Cape Town (the high court).

On 9 July 2012, the appellant, Ms Phozisa Tosholo, was a passenger in a motor vehicle that was involved in an accident, where she sustained injuries. Whilst a patient at hospital, she was approached by an agent of the respondent, the Road Accident Fund (the RAF), who advised her to approach the RAF offices in the hospital to claim for her injuries. She subsequently lodged a claim for damages at those RAF offices. The RAF directly negotiated a settlement with the appellant (the direct claim) and on 18 November 2013, the appellant signed an offer of settlement of her claim in terms of which she agreed to be paid about R17 000.

After receiving the settlement amount, the appellant consulted attorneys who lodged a new claim with the RAF on 4 June 2014. The RAF rejected this, stating that a claim had already been lodged and they could not register another claim. On 29 August 2024, the appellant's attorneys issued summons against the RAF for general damages, past and future loss of earnings and past and future medical expenses. Medical evaluations were conducted and by early 2017, all these reports and associated joint minutes were in place. On 30 June 2017, the RAF acknowledged the previous settlement but suggested reopening and reassessing the claim. When no offer was made, the appellant's attorneys lodged an interim payment application, which the RAF opposed, stating that the claim was a duplicate of a claim which had been settled as a direct claim. The appellant then withdrew that application and the initial summons and issued a new summons on 17 January 2018, alleging under-settlement due to the RAF's failure in its duty of care. The high court upheld the RAF's two special pleas that the claim was settled in 2013 and had prescribed. The appellant appealed this decision to the SCA, with leave of the high court.

The issues for determination before the SCA were whether the appellant's claim was compromised and settled; and whether the appellant's claim had prescribed.

The SCA found that the appellant's claim had been compromised and settled, as evidenced by the signed settlement agreement with the RAF in 2013. This agreement constituted a binding compromise, discharging the RAF from further liability and rendering the claim *res judicata*. The SCA upheld the high court's finding that no legal dispute (*lis*) remained between the parties. As a result, the SCA dismissed the appeal and held that it was unnecessary to consider the second special plea of prescription. The SCA condemned both the RAF and the appellant's attorneys for the manner in which they handled the matter, noting that delays and failures in communication prolonged litigation unnecessarily. Despite these shortcomings, no order as to costs was made, and the appellant's attorneys were urged not to seek any fees from the appellant due to their poor handling of the claim.

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