



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: 28 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

Van der Merwe v Road Accident Fund (584/2023) 2025 ZASCA 28 (28 March 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Division of the High Court, Pretoria (the high court).

The appellant, Ms Amoré van der Merwe instituted action in the high court against the respondent, the Road Accident Fund, for damages she suffered as a result of injuries she sustained in a motor vehicle accident. She claimed past hospital/medical and related expenses; past loss of earnings; future loss of earnings; estimated future medical expenses; and general damages. The stated motor vehicle accident occurred on 27 October 2012 and as a result, the appellant suffered severe orthopaedic injuries, which led to her receiving a total hip replacement in August 2014.

The respondent conceded to being fully liable on the merits and that only issues pertaining to the quantum had to be determined at the trial. The respondent further admitted liability to pay general damages claimed and undertook to furnish the appellant with a written undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996.

The appellant testified at the trial and called two expert witnesses, who testified that the latest medical evidence revealed a worsened condition, which presented the appellant with even fewer chances of being able to find and sustain work in a sedentary position (which they had

previously suggested). The respondent did not cross-examine the appellant and her witnesses. It closed its case without leading any evidence. However, for the first time, in closing argument the respondent's counsel raised 'an event' which he argued constituted a *novus actus interveniens* (new intervening cause), referring to a statement recorded in the appellant's Industrial Psychologist's report.

In that report it is recorded that, post-morbid, the appellant fell from stairs and sustained an injury to her right knee and lower back (the two injuries). The respondent's counsel's contention was that all the experts had examined the appellant after the fall. The appellant, however, did not mention the fall to all the experts, as a result a distinction was not made between the injuries sustained in the motor vehicle accident and those she sustained as a result of the fall. As such, so counsel argued, it could not be ascertained which parts of the appellant's loss of earning capacity could be ascribed to the initial injuries.

Lastly, he argued that for any cognitive deficits to have occurred, there would have had to be brain injury as a *conditio sine qua non*. He contended further that, regard could not be had to the appellant's qualifications, career history and the future aspirations as the foregoing did not occur in this case. Driven by the above, the respondent's counsel suggested postponement of the trial for the appellant's experts to rewrite their reports excluding the alleged *novus actus interveniens* or that the court ordered absolution from the instance.

The trial court embraced the defendant's counsel's argument and found that the two injuries constituted a *novus actus*. The trial court found itself unable to determine the quantum and granted absolution from the instance and leave to appeal its judgment to the full court. The full court confirmed the reasoning and order of the trial court and dismissed the appeal. The appellant subsequently approached the SCA for special leave to appeal, which was granted.

In the SCA counsel for the appellant argued that the trial court had erred in law and had misdirected itself in its finding. The SCA found that not only was the fall from the stairs not canvassed with the appellant and her expert witnesses during her evidence, but it was also not pleaded. That a party cannot be allowed to plead one case and attempt to present another case at the trial.

The SCA highlighted that even if the defence was properly raised, it lacked merit. The Court explained that a *novus actus* may neutralise the causative potency of the wrongdoer's original conduct. It may break the causal chain between the initial conduct and the liability attributed to the wrongdoer. To constitute a *novus actus*, the court expressed, the secondary act must not

be reasonably foreseeable. To this the SCA emphasised it would have been reasonably foreseeable that given the nature of the accident, the appellant may be prone to lose her balance and fall, referencing parties' expert's remarks and pre-dated medical records that underscore this foreseeability. The SCA found that the trial court erred in its findings.

In concluding, the SCA dismissed an application by the appellant to rebut the *novus actus* contention and ordered appellant's entitlement to the heads of damages that the respondent had agreed to. It remitted the quantification of loss of earnings to the trial court for determination.

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