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: 25 September 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

M M K obo M K v Road Accident Fund (497/2024) [2025] ZASCA 136 (25 September 2025)

The Supreme Court of Appeal (SCA) dismissed an appeal against an order of the Limpopo Division of the High Court, Polokwane (the high court). It made no order regarding costs. The SCA also directed the Registrar of the Court to deliver a copy of the judgment to the Legal Practice Council of South Africa in relation to the conduct of the appellant's representatives.

The appeal was before the SCA with the special leave of the Court. The appellant had instituted a claim against the Road Accident Fund (RAF) on 16 October 2018, for damages arising from injuries allegedly sustained by her three-year-old child in a motor vehicle collision. The collision had occurred on 8 October 2013.

On 7 November 2018, the RAF had made an offer of settlement in relation to the liability of the RAF. The offer expressly confined its admissions to the negligence of the insured driver. The offer stated that all other issues other than the negligence of the insured driver remained in dispute. The offer was accepted by the appellant. The case came before the high court on 11 February 2019. On that occasion the RAF was not represented.

The high court (per Phatudi ADJP) granted an order that the RAF was 100% liable for such damages as the appellant could prove. The court also ordered that the RAF furnish an undertaking in terms of s 17(4)(*a*) of the Road Accident Fund Act, 56 of 1996 in respect of future medical treatment of the minor child.

Following this order several expert witnesses were qualified to testify by way of Rule 36(9) notices. The appellant's claim was also amended to reflect a substantial rise in the quantum of the claim.

On 8 November 2021, the matter came to trial before the high court. It proceeded by way of default since there was no appearance on behalf of the RAF. No evidence was presented. The matter was said to be confined to consideration of general damages and prospective loss of earning capacity. On 29 December 2021, the high court, per Semenya DJP dismissed the appellant's claims. Semenya DJP found that the appellant had failed to prove that the minor

child had suffered injuries in the collision. She also found that the expert opinions were based upon contradictory accounts of the injuries, as provided by the appellant. The opinions were therefore unreliable.

The appellant was granted leave to appeal to a full court of the Division. The full court dismissed the appeal. It found that the trial court was correct in its assessment of the expert evidence. The full court also found that the s 17(4)(*a*) undertaking did not imply that all of the elements of the delictual claim had been conceded.

On appeal to the SCA, the appellant contended that the Phatudi order was binding upon the full court and dispositive of the liability of the RAF. It was therefore not open to the trial court to find that the minor child had not suffered injuries and was not entitled to damages.

The SCA rejected the contention. It did so upon the basis that the Phatudi order contains no determination as to what injuries were suffered in the collision. There was no separate agreement which could inform the obligation to pay for future medical treatment. The appellant was required to prove those injuries.

The SCA further held that, the proof of general damages and those for loss of earning capacity, required the production of evidence to establish entitlement to such damages.

The SCA held that the trial court's assessment of the experts' reports, cannot be faulted. The fundamental difficulty for the appellant was the fact that no evidence was presented at the trial. The appellant did not testify to the facts, and despite reference to a 'damages affidavit' no such affidavit appears on the record. None of the experts deposed to affidavits confirming their opinions. The consequence is that the appellant had, as a matter of fact, adduced no evidence open which the trial court could have found for her.

The SCA raised concerns about the manner in which the case had been conducted by the appellant's representatives. It pointed out that the settlement offer did not make provision for an undertaking in terms of s 17(4)(*a*) of the RAF Act. Such undertaking was inconsistent with the express terms of the settlement offer. The Phatudi order was to this extent, incongruous in the light of the settlement agreement.

In prosecuting the appeal to the full court and before the SCA, the appellant's representatives had contended that the RAF had given an undertaking and that it was 'common cause' that the minor child had been injured in the collision. These submissions are in conflict with the terms of the settlement agreement. For this reason, the SCA directed that the judgment be made available to the Legal Practice Council of South Africa for its consideration and further action.

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