



**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 February 2026

**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*

*T N obo B N v The Member of the Executive Council for Health of the Eastern Cape Government and Others (Case no: 383/2023) [2026] ZASCA 14 (11 February 2026)*

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Today, the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Eastern Cape Division of the High Court, Bhisho (the High Court), with costs, including the costs of two counsel.

The matter arose from a claim for damages instituted on behalf of a minor child who suffered a catastrophic brain injury, resulting in spastic quadriplegic cerebral palsy, as a consequence of the negligent management of labour and delivery at a public hospital under the control of the Member of the Executive Council for Health, Eastern Cape (the MEC). Liability for negligence was conceded and the dispute before the High Court concerned the appropriate form of compensation for future medical care and related needs.

The High Court, following a lengthy trial with extensive expert evidence, developed the common law governing damages for personal injury. It departed from the long-established once-and-for-all rule, which requires that all damages, including future damages, be claimed in a single action and paid in a lump sum (the rule). Instead, the High Court ordered that future medical care be provided through a combination of state-delivered healthcare services and undertakings by the MEC, at her discretion, to pay or procure specified services as and when required.

The issue on appeal was whether this development of the common law was constitutionally permissible under ss 39(2) and 173 of the Constitution, and whether the High Court was justified in replacing a lump-sum damages award with the so-called public healthcare and undertaking to pay remedies (the remedies). The High Court's reasons for granting the remedies were (i) that the rule impedes the MEC in carrying out the obligation of realising access to healthcare for everyone in terms of s 27(2) of the Constitution; and (ii) that it does

not provide fully for the child, because more than 40% of the damages awarded is taken by lawyers as fees. The High Court stated that granting the remedies was an ‘incremental development’ of the common law.

The SCA disagreed. It held that the High Court had radically restructured the law of damages, disregarded the impact of its order on fundamental rights such as equality and dignity, created uncertainty and the prospect of ongoing litigation, and ignored its proper institutional role in the separation of powers. Parliament, not the courts, the SCA emphasised, is responsible for major law reform, because future medical care commitments such as the remedies, involve issues of social, economic and financial policy. The SCA found that on the evidence, it was irrational to conclude that the MEC would be able to provide lifelong future medical treatment for the child, or that future payments would reliably be made under the remedies. This shifted the risk of systemic failure by the Eastern Cape Department of Health, from the wrongdoer to a profoundly vulnerable child. Consequently, the remedies do not ensure full and effective compensation, to which the child is legally entitled.

The SCA concluded that the High Court’s development of the common law because attorneys were taking the bulk of damages awards as fees, is a misdirection. Misconduct by legal practitioners in relation to lump sum awards, must be regulated by legal professional bodies such as the Legal Practice Council,

Accordingly, the SCA set aside the High Court’s order and replaced it with an order restoring a conventional damages framework, including lump-sum compensation for agreed future medical and related care, provision for professional caregiving, therapy, assistive devices, transport, and case management. The matter was remitted to the High Court for the determination of outstanding quantum issues and for the establishment of a trust to administer the damages awarded on behalf of the minor child.

The appeal was upheld with costs, including the costs of two counsel.

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