



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE  
SUPREME COURT OF APPEAL**

26 November 2010

STATUS: Immediate

**N v ASHRAFF EBRAHIM**

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

The Supreme Court of Appeal (SCA) upheld an appeal against an order of the KwaZulu-Natal High Court, (Durban). The appellants wanted the award of damages to be increased.

The appellants are the parents of N, who suffered a massive brain injury during birth at the hands of the respondent. Seven months after his birth his mother discovered, for the first time, that her very difficult baby was severely cerebral palsied. The Respondent conceded that N's condition was the result of his negligence. The implication was manifest, in that as a result of the negligence of the respondent, N will never be able to lead the life of a normal person. N will never be able to walk, speak or eat unassisted and will need 24 hour care all his life. His quality of life and life expectancy have been immensely diminished due to the severity of his condition.

The trial that followed concerned only the amount of damages that N should receive. It was a marathon trial that lasted over a period of 12 months. There were many experts some from the United States of America, the United Kingdom and locally who testified. The main issue was the assessment of N's life expectancy as reduced by the injury, as it determines the period for calculation of his loss of income and future medical expenses.

The trial court determined his life expectancy as an additional 30 years and awarded N damages in the amount of R9 824 415.13. Shortly before the trial, the respondent made an offer to settle the claim for R12 000 000.00. This offer was not accepted by the appellants and the trial continued. The trial court found as the amount of

damages awarded to N fell short of the R12 000 000.00 offered by the respondent, the appellants were ordered to pay the costs of the respondent. N, as a result faced the risk of receiving very little money to accommodate his future needs.

The matter then went on appeal before the SCA. Many aspects formed the basis of the appeal were highly technical in nature but the most important aspects in contention concerned the life expectancy of N and the award made to him regarding his future medical expenses. The respondent lodged a cross-appeal.

The SCA increased the award primarily because it amended certain allocations in respect of future medical expenses. The majority of the court did not interfere with the trial court's finding that the life expectancy of N is an additional 30 years. The minority found a life expectancy of 35 additional years.

N's award was increased by the SCA with approximately R2 000 000.00. In addition, R 830 180.29 was awarded as trustee's fees to manage a trust fund, to be created for N from the award made.

The increase by the SCA pushed the total award made beyond the R12 000 000.00 offer made by the respondent prior to the trial with the effect that the SCA reversed the cost orders made by the trial court and ordered the respondent to pay the costs.

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