



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 15 November 2012
Status: Immediate

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.

Road Accident Fund v Oupa William Lebeko

The Supreme Court of Appeal (SCA) today upheld, with costs, an appeal by the Road Accident Fund (RAF).

The respondent, while walking along a road in Vosloorus, was knocked down by a passing motor vehicle. As a result, he sustained a fracture of the femur and a concussive brain injury. He claimed damages from the RAF in respect of past and future medical and hospital expenses, past and future loss of earnings, general damages for pain and suffering; disability and loss of amenities of life. His claim amounted to R3.8 million. The merits were conceded by the appellant.

The RAF entered a special plea and contended that the respondent had not fully complied with the regulations of the Road Accident Fund Act 56 of 1996 in regard to the assessment of non-pecuniary damages.

The appellant submitted that the procedure was not complete because it had rejected the

assessment and the resultant dispute had not been referred to and determined by the appeal tribunal provided for in the regulations.

The Road Accident Fund Act limits non-pecuniary damages to a 'serious injury' and regulation 3 prescribes the procedure to be employed in assessing whether the injury upon which the claim is based, is serious or not.

After the fund had rejected the assessment reports, the respondent proceeded to trial without seeking to have the assessment dealt with by the appeal tribunal. In dealing with the special plea, the South Gauteng High Court, Johannesburg from which this appeal stems, rejected the reasons for the appellant's rejection of the assessment report as irrational, unsound, irrelevant and unsustainable. It dismissed the special plea with costs and proceeded to rely on the assessment reports despite the Fund's rejection.

The SCA found that it is not for the high court to determine whether or not an injury is 'serious'. It found further that this was the task of the appeal tribunal.

The SCA nonetheless granted the respondent leave to exercise his right to appeal to the appeal tribunal within 90 days of this judgment, and held further that the matter be postponed in the high court until such time the prescribed procedure was completed.