THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 29 May 2013
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

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Neutral citation: *Road Accident Fund v Myhill NO* (505/2012) [2013] ZASCA 73 (29 May 2013)

In March 1997 two minor children of Ms S Swalibe were injured when they were run down by a motor vehicle which had swerved onto its incorrect side of the road. In due course Ms Swalibe sued the appellant for damages on behalf of her children, both of whom had sustained severe head injuries. The appellant offered to settle by paying R5 600 in respect of one child and R4 900 in respect of the other. Probably on the recommendation of her attorney, in May 1999 Ms Swalibe signed discharge forms accepting the two offers.

Ten years later, the respondent, a practising advocate, was appointed as curator *ad litem* to represent the two minors in civil proceedings against the appellant and, in due course, he sued for an order setting aside the settlement agreements and claiming substantial damages for the two children. The high court was called upon merely to decide whether the settlements should be recognised as binding or set aside. It set them aside. With leave of the high court, the appellant appealed to the Supreme Court of Appeal.

The Supreme Court of Appeal found that the two children had been substantially prejudiced by the settlements. Not only had the amounts offered taken no account of the real possibility that both children had developed post-traumatic epilepsy, and were for that reason inadequate, but it also made no provision for future medical expenses which was a likely contingency. Moreover the amounts offered had been reduced by the appellant's assessment that Ms Swalibe herself had been contributorily negligent in regard to the collision and had set-off an amount against her children's claims its assessment of her liability to it. It was contended that this

was permissible by reason of the third paragraph of Voet 16:2:8. The Supreme Court of Appeal however ruled that the passage relied upon had been based on an acceptance that no prejudice would be caused to the minors if set-off was to operate, and that the time has now come to rule that a debtor liable to a minor child, when sued by the child's custodian parent, may not set-off against its liability to the child any amount that it may personally be owed by the custodian.

As a result of the offers that the appellant made failing to take account of the possibility of the children suffering from epilepsy or any amount in respect of future medical expenses, and due to the impermissible reduction of the claims by reason of the apportionment, both children had been substantially prejudiced by their acceptance. The Supreme Court of Appeal therefore ruled that the high court had correctly found that the agreement should be set aside and dismissed the appeal.

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