



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 20 March 2015

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 Sweatman [2015] ZASCA 22

In 2005 the Road Accident Fund Act 56 of 1996 was amended to introduce various limitations on the amounts that could be claimed by people injured in road accidents. The amendments came into operation in 2008. In this case, the limitation in issue was in respect of the amount that can be claimed for loss of future income where the respondent, Ms Sweatman, then a teenager, was severely injured when she was run over by a car, such that her career path was impacted upon adversely. She instituted action against the Road Accident Fund in the Western Cape Division of the High Court claiming several million rand in damages for loss of income.

Prior to the amendment, damages for loss of income could be claimed in full. The amended s 17(4) of the Act now provides for a limitation –a cap – on the award that can be made. That limitation, referred to as the annual loss, is determined by notice in the Government Gazette: the section makes provision

for the amount to be adjusted on a quarterly basis. (The award made to dependents claiming for loss of support is subject to the same limitation.)

The question at issue here was the method to be used in the actuarial calculation to determine the actual loss suffered, and at which stage to apply the cap. The trial court concluded that the approach of the actuary who gave evidence for Ms Sweatman was correct: the court must determine the present value of the actual loss suffered, as actuarially calculated, taking into account all contingencies, including mortality, and then compare it with the annual loss as determined on the date of the accident. The lesser of the two amounts should then be awarded to the claimant.

The actuary for the Fund had argued that, although the calculation of the loss performed for Ms Sweatman was based on the conventional approach to such calculations, as accepted by courts over decades, the approach should be changed. The introduction of the cap had made him reconsider the conventional approach. His method of calculating the loss and applying the cap would have the result that substantially lesser sums would be payable to claimants by the Fund than would be the case on the conventional approach.

The SCA upheld the judgment of the trial court, finding that the purpose of introducing the cap was to limit the amounts payable and not to change the method of calculating the actual loss. To the extent that decisions in divisions of the high court were different, they were incorrect.
