



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
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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Mahano v Road Accident Fund (20008/2014) [2015] ZASCA 23

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed the the appeal by Malefane Kemuel Mahano, Mmaputhi Grace Kubjana and Roland Sydney Thomsen (the appellants) and upheld the order of the North Gauteng Division, Pretoria, confirming that the Road Accident Fund Act: Regulations, GN R770 GG 31249, 21 July 2008 (the Regulations) do not impose a duty on the Minister of Transport to publish operational guidelines in respect of the assessment of injuries in determining whether a claimant qualifies for general damages (ie non-pecuniary loss), and that the assessments may be properly conducted where such operational guidelines have not been published.

The issue before the SCA was the interpretation of reg 3(1)(b)(iv) of the Regulations, which governs the Road Accident Fund's (the Fund's) liability to pay general damages to a claimant. In particular, the question was whether the regulation makes the application of the American Medical Association's Guides to the Evaluation of Permanent Impairment Sixth Edition (the AMA Guides) in the assessment of whether a third party's injury is 'serious' dependant on the existence of certain 'operational guidelines' as specified in the regulation.

The Regulations, which came into force on 1 August 2008, impose a threshold requirement for the Fund to pay general damages in that it must be satisfied that the injury has been correctly assessed as 'serious' in accordance with the method prescribed in the Regulations. The Regulations provide that a third party must submit to assessment by a medical practitioner, and the AMA Guides must be applied 'in accordance with the operational guidelines or amendments, if any, published by the Minister'. No operational guidelines had been published. The appellants argued that it was thus

legally impossible to comply with regulation 3, as it was not possible to apply the AMA Guides 'in accordance with' the operational guidelines.

The SCA, referring to the established principles of interpretation, held that both context and language clearly supported the court a quo's conclusion that the phrase 'if any' applied to and qualified both the publication of 'amendments' and also of 'operational requirements'. Thus, the legal duty to apply the AMA Guides 'in accordance with' operational guidelines only arose if any had been published. Accordingly, the appeal was dismissed.

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