



## 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** 30 March 2017

**STATUS** Immediate

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

***The Premier of the Western Cape Provincial Government NO v Rochelle Madalyn Kiewitz OBO Jaydin Kiewitz (158/2016) [2017] ZASCA 41 (30 March 2017)***

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### MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed an appeal against a judgment by the Western Cape Division of the High Court in terms of which the appellant's 'plea in mitigation' was dismissed.

The respondent had sued the appellant, the provincial government, for damages suffered by her minor son, arising out of medical negligence. The issue in this appeal was whether a claimant in a medical negligence matter is obliged to accept a tender for future medical treatment at a provincial healthcare facility instead of receiving a monetary payment for future medical expenses.

The court held that the plea in mitigation would offend against two well established common law rules. The first is that compensation in bodily injury matters must sound in money. The very purpose of an award for delictual damages is that it seeks to place the injured party in the same position they would have been in, absent the wrongful conduct. The second is the 'once and for all' rule that a plaintiff in a delictual claim must claim and be compensated once, and only once, for all damages suffered including both past and future losses.

For these reasons the Supreme Court of Appeal dismissed the attempt by the appellant to oblige the respondent to mitigate her loss by accepting health services that were free of charge as opposed to health services based on exorbitant private health care costs.

Whether an undertaking should be provided in lieu of future medical expenses is a policy decision that needs to be made by the legislature. Any changes to the common law must be effected by legislative intervention rather than by the courts.

Consequently, the appeal was dismissed.

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