



## 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

**Date:** 15 July 2022

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Frantzen v Road Accident Fund (331/2021) [2022] ZASCA 107 (15 July 2022)*

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The Supreme Court of Appeal (SCA) today dismissed an appeal with costs against the decision of the Gauteng Division of the High Court, Pretoria (the high court), wherein the appellant, Mr M A L Frantzen, instituted a claim against the respondent, the Road Accident Fund, for the payment of compensation for damages resulting from bodily injury caused by a motor vehicle accident in which he was involved on 8 April 2007 (the 2007 accident).

It was common cause that the appellant sustained a soft tissue injury of the neck, commonly known as whiplash injury, in the 2007 accident. It was also common cause that the appellant suffered from an involuntary movement disorder, dystonia. The appellant was 34 years old at the time of the accident and practiced as an advocate until he was rendered incapacitated by continuous episodes of dystonia. Dystonia results from an abnormality or damage in the regions of the brain that control movement. This abnormality causes muscles in the affected parts of the body to move uncontrollably or involuntarily. The onset of the appellant's dystonia occurred approximately 10 months after the 2007 accident.

The core issue between the parties was whether the dystonia was caused by the peripheral trauma to the appellant's neck, the whiplash injury. The SCA found that in answering the question of factual causation it had to be shown that 'but for' the 2007 accident, the appellant would not have suffered from dystonia. The enquiry was whether it was more probable than not that the involuntary movements suffered by the appellant were caused by the accident. This question did not have to be answered with absolute certainty, but had to be established on a balance of probabilities.

In determining the question of factual causation, the SCA considered the evidence of expert witnesses. Dr Johannes Smuts, a neurologist, gave expert evidence on behalf of the appellant. The respondent called Dr Percy Miller, a neurosurgeon, and Dr Donald Birrell, an orthopaedic surgeon, as its expert witnesses. According to Dr Smuts, the appellant's clinical picture (on which the experts agreed) had a direct temporal relation to the 2007 accident and the neck injury, whilst Dr Miller was of the opinion that it did not.

In advancing his opinion on the accident being the cause of the appellant's dystonia, Dr Smuts relied on an article titled, *Movement disorders induced by peripheral trauma* authored by José Cláudio Nobrega and others (*Nobrega*), who adopted the criteria devised by Dr Joseph Jankovic (a well-known author within the movement disorder community). This was sourced from Dr Jankovic's earlier article, *Post-traumatic movement disorders: central and peripheral mechanisms (Jankovic I)*, which advanced a case that peripheral trauma may cause dystonia and proposed a criteria of classifying cases in establishing the cause and effect relationship between the two.

The criteria used for diagnosis, as per the literature by Dr Jankovic (the Jankovic criteria) consisted of three requirements. Firstly, there must be trauma that is significant enough to warrant treatment within the period of at least two weeks; secondly, the dystonia must develop within one year from the period of trauma; and thirdly, the onset or the initial manifestation of the movement disorder must have been anatomically related to the site of the injury. Dr Smuts who had previously given three different opinions over the years, regarding the appellant's condition, was confident that the condition of the appellant conformed to this 'current' definition of post-traumatic dystonia and therefore decided that it was the most likely possibility for the cause of the appellant's medical condition.

The SCA found that what was to be tested was the logical basis and reasonableness of Dr Smuts's latest opinion, in which he embraced the Jankovic criteria. In this context, Dr Smuts's evidence had to be viewed as a whole. This, together with Dr Miller's counter-opinion. The relevant expertise of both experts in relation to their evidence was also considered.

The SCA found that the application of the first two ground rules of the Jankovic criteria to the appellant's dystonic picture presented no difficulties. The SCA found further that complications arose with the application of the third criterion, wherein Dr Jankovic suggested that the onset or the initial manifestation of the movement disorder must have been anatomically related to the site of the injury. The SCA was of the view that Dr Smuts's evidence did not adequately account for why the appellant's entire body, including the legs and the trunk, was affected, and how those body parts were anatomically related to the region of the injury that was caused by the accident, ie the neck and back. Dr Smuts did not explain how abnormal movements in different body parts were related to the neck injury encountered in the accident.

The SCA, accordingly, held that it had not been shown, on a balance of probabilities, that the soft tissue injury of the neck and back that the appellant sustained in the 2007 accident was causally connected to the involuntary movement disorder that manifested 10 months later. With other probable causes, ie use of medication, genetics and psychogenic origin being excluded, it was more probable than not that the dystonia was idiopathic and the whiplash sustained in the accident was simply a coincidence. The SCA, therefore, held that the judgment of the high court should stand.

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