



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 39302/10

In the matter between:

NDLOVU

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

SUMMARY

SPILG, J:

CIVIL PROCEDURE; EXPERT MEDICO-LEGAL REPORTS [esp. paras 109-121]

Failure to distinguish between fact, assumptions and reasons for decision resulting in failure to identify or consider and evaluate contradictions between primary source data (hospital records at time of accident) and plaintiff's say-so or secondary sources

Failure either to read documents and other experts' reports, despite their being identified as considered, or to qualify the conclusions reached by at least mentioning the existence of material contradictions between versions given by plaintiff to other experts

While accepting salutary practice of comprehensive medico-legal reports complying with Rule 36(8) qualifying as expert summaries for purpose of Rule 36(9) nonetheless reports should;

1. *Clearly distinguish what information is in fact derived from the primary source documents, secondary sources and the patient's say-so*
2. *Primary source documents in RAF cases will invariably be the hospital records (including paramedics reports) at time of accident*
3. *Clearly indicate whether the patient's assertions are accepted or merely assumed. If the expert accepts the patient's contentions as to the injuries sustained, their sequelae etc. where they are not self-evident from the primary documents then such acceptance itself constitutes opinion evidence; as such the expert should qualify himself or herself as capable of providing such opinion and set out the process of reasoning, on medical grounds within the expert's field of expertise, upon which the conclusion to support the patient's assertions is made.*

EVIDENCE: MEDICAL EXPERTS [esp. paras 109-122]

Criticism of;

1. *experts' failures to distinguish between empirical underlying source data on the one hand and information from secondary unsubstantiated sources or from the plaintiff on the other*
2. *Psychologists' reports unnecessarily lengthy and large tracts of the same passage repeated in same document*
3. *Lack of diligence and objectivity on the part of some experts*

Raised- lack of professional care, skill and diligence on part of experts may result in cost consequences even if party successful or in expert's fees being reduced, particularly in contingency fee cases where the expert's charges are a disbursement thereby reducing the ultimate award.

LEGAL PRACTITIONERS and FUND PERSONNEL [esp. paras 94-108]

Abysmal failure of those representing Fund or employed by it to properly prepare or cross-examine and its adverse impact on the judicial process.