IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: A32/14
Court *a quo* case No: 71126/2012

14/8/2014

In the matter between:

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
14/8/14
DATE
SIGNATURE

SUZAN TSHOLOFELO MOTHOBI Appellant

and

THE ROAD ACCIDENT FUND First Respondent

BOHLOLO LUCAS MOTHOBI Second Respondent

JUDGMENT

FOURIE, J:

[1] This is an appeal against the dismissal of an application in the unopposed motion Court of this Division. The appellant, who was the applicant in the Court *a quo*, launched an application for an order setting aside a settlement agreement concluded between the first and second respondent with regard to injuries which she had sustained in a motor vehicle accident when she was still a minor. Notwithstanding proper service of the application on both respondents, there was no appearance to oppose the application.

[2] The appellant is now almost 24 years of age. In her founding affidavit it is alleged that she sustained personal injuries in a motor vehicle

accident which took place on 9 August 2006. She was then almost 16 years old. The second respondent, who is her father, submitted a claim on her behalf to the first respondent on 22 September 2006. A copy of the statutory claim form is attached to the application as an annexure. On 4 April 2007 the claim was settled for the total amount of R10 400.00, being R400.00 for hospital/medical expenses and R10 000.00 for general damages. On 12 April 2012 her attorney wrote a letter to the first respondent requesting copies of the contents of her file, but no response was received.

[3] In her reasons for dismissing the application the learned Judge in the Court *a quo* stated, *inter alia*, that having regard to the information that was at the disposal of the first and second respondent at the time of the settlement, it cannot be contended that either of them acted prejudicially to the applicant. Unfortunately, I cannot agree with this conclusion.

[4] The principles relating to the rescission of a contract concluded on behalf of a minor are well established. It may be set aside if it is shown that it was substantially prejudicial to the minor at the time the agreement was concluded. (Road Accident Fund v Myhill 2013 (5) SA 426 (SCA) at 430, par 12).

[5] Paragraph 4 of the medical report to the statutory claim form relates to parts of the body injured and the degree of injuries. There are three standard categories to indicate the degree of the injuries, i.e. "minor", "fairly severe" or "severe". It has been indicated that the

appellant suffered "fairly severe" injuries to her back and pelvis. It is also stated that there was a "large abrasion on the (R) buttock (and) deep abrasion on the lumbar area of the back". The treatment given consisted, *inter alia*, of "admission in surgical ward and wound dressings". No permanent disability, future medical treatment or specialist treatment was foreseen at the time when the form was completed.

[6] During argument before us Mr Williams SC who appeared for the appellant, referred us to a recent colour photograph of the abrasion on the right buttock. It indicates, what appears to be, a large unsightly degloving injury. No doubt, this photograph was not at the disposal of the respondents when the settlement agreement was entered into. Of course, as was pointed out in the Myhill decision (*supra,* par 13) a Court must guard against being wise after the event and taking into account factors unknown at the time the claim was settled. However, Mr Williams SC has argued that on the probabilities it should be accepted that the appellant's father (second respondent) must have been aware that this is not a minor injury, but fairly severe. It is for this reason only that the photograph was shown to us.

[7] These abrasions, the one large and the other deep, described as "fairly severe" by the medical practitioner who completed the medical report should have been sufficient evidence to indicate that an award of R10 000.00 for general damages at the time when the offer was made would be completely inadequate. All the information contained in the medical report indicates, at first blush, that these injuries were by no

means insubstantial. I should also point out that according to the "offer and acceptance of settlement" there is no indication that any apportionment was applied. It therefore appears that the merits had by then already been conceded by the first respondent. This accords with the description given by the appellant in her founding affidavit that she was only a passenger in one of the vehicles concerned.

[8] Having regard to all these considerations I am of the view that the settlement agreement which was entered into between the first and second respondent was substantially prejudicial to the appellant and therefore it falls to be set aside. In the result I propose the following order:

(a) The appeal is upheld and the order of the Court *a quo* dismissing the application is set aside and replaced with:

"An order is granted in terms of prayers 1 and 2 of the notice of motion dated 6 December 2012."

(b) There shall be no order with regard to costs.

D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA

I agree, and it is so ordered.

T J RAULINGA
JUDGE OF THE HIGH COURT
PRETORIA

I agree.

P M MABUSE
JUDGE OF THE HIGH COURT
PRETORIA

Date: 7 August 2014