

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 74689/17

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. YES

06 June 2022

DATE

In the matter between:

**ROAD ACCIDENT FUND
RAF REF: 560/12431707/1024/11**

APPLICANT

ADV L SCHOLTZ N.O.

(On behalf of JOHANNES CASPER PIETERSE)

RESPONDENT

JUDGMENT - LEAVE TO APPEAL

CONRADIE AJ

INTRODUCTION

- [1]. On 24 August 2020, this Court handed down judgment, making the draft order an order of the court. Full reasons for the judgment were given by the Court on 1 November 2020.

- [2]. This is an application for leave to appeal which is confined to the issue of the amount which Court awarded to the Respondent in respect of his loss of earnings and specifically the contingencies applied by the Court. It follows that the order granted for the Past Medical Expenses and the amount granted for General Damages as well as the postulated income scenarios are not in dispute.

IN LIMINE:

- [3]. The Respondent argues that the Applicant filed its notice of leave to appeal on 27 October 2021, almost a year after the reasons for the judgment were given and that no application for condonation for non compliance with Rule 49 of the Uniform Rules of Court is made by the Applicant.

- [4]. The Applicant, despite receiving a letter from the Office of the Acting Judge President dated 11 March 2022 regarding the late filing of the application for the leave to appeal, did not file an application for condonation neither addressed the matter of condonation in its Application for Leave to Appeal or in its Heads of Argument.

- [5]. The Court can, on good cause shown, extend the period of fifteen days required by Rule 46. The Applicant has though failed to make such application and has not furnished the court with an explanation of the extreme late filing of the application. Based on this failure on its own, the Court cannot grant the application for leave to appeal.

THE MERITS:

- [6]. In order to prevent any further delay in the payment of the claims of the Respondent, I nevertheless deal with the merits of the Application for Leave to Appeal.

- [7]. The Applicant argues that the Court made the correct finding about the pre-accident status of the Respondent through the medico legal reports and in particular the finding recorded by Mr Ben Moodie, Industrial Psychologist who made the conclusion that in his pre-accident status, the Respondent had pre-existing psychological difficulties which he struggled with **and these cannot be ignored when making a determination of the contingency deduction on the proposed contingencies by the Respondent.** (My emphasis)

- [8]. The Applicant states in its Heads of Argument that *“the Court does not indicate in what way and manner the contingencies proposed by the respondent were considered to be reasonable given the pre-morbid difficulties and it is our contention that had the effect of the pre-existing difficulties been taken into consideration, a higher contingency than the one applied by the respondent would have been applicable in this matter.”*

- [9]. The Court had the benefit of the hearing of the testimony of all the experts during the trial and had the opportunity to question these experts in order to satisfy itself of the substance and detail of their evidence. The Applicant was, by its own choice unrepresented at the hearing.

- [10]. Prior to launching its application for leave to appeal, the Applicant did not obtain a transcription of the record of the hearing and in its application also does not make specific reference to the written reasons for the judgment. Unfortunately, I find the Application for Leave to Appeal to be slim on substance, poorly argued and at best a generic challenge of the judgment without criticising any particular reason for the judgment.
- [11]. I deal extensively in paragraphs 23 – 36 of the reasons for my judgment with Past and Future Loss of Income and how the contingency calculation was arrived at. The gist of the evidence of Industrial Psychologist Moodie and Educational Psychologist Du Plessis Emmerich, is that the Respondent, even in his injured state was expected to complete his studies and thus leaves no doubt that he would have completed his studies uninjured.
- [12]. It is trite that a trial court has wide discretion when it comes to determining contingencies. Having explained my consideration of the calculation of the contingency in detail in the reason for my judgment, I find it unnecessary to further illucidate on my reasoning. In any event, even if a moderately higher contingency deduction was allowed, it would be set off by the application of the RAF Amendment Act's cap.
- [13]. I have grave concerns about the Applicant's motives for launching this late application for leave to appeal and have to conclude that it is an attempt to further delay the payment of the Respondent's claims.
- [14]. The Court is of the view that there is no reasonable prospect or compelling grounds on which another court will come to a different conclusion than this Court.

ORDER

Having read the papers the following order is made:

1. The application is dismissed with costs.



T CONRADIE
ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANT:

ADV D MOSOMA

INSTRUCTED BY:

RAMULIFHO ATTORNEYS INC

FOR THE RESPONDENT:

ADV J BISSCHOFF

INSTRUCTED BY:

KRITZINGER ATTORNEYS