



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

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

Evraikane
SIGNATURE

DATE: 24 October 2022

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

CASE: 12325/15

In matter between

KALI MOTLATSI MARCUS

Appellant

and

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT

1. This is an application for leave to appeal to the Full Bench of this division against the whole judgment and order I granted by default on 8 July 2021. The judgment dismissed the appellant's claim for loss of earnings following a motor vehicle collision against the Respondent including the costs of the legal practitioners.
2. This application is continuing in default against the Respondent, the notice of the application for leave to appeal was duly served. It is trite that an application for leave to appeal a decision of a single judge of the High Court is regulated firstly by Rule 49 of the Uniform Rules of Court. In this instance it was requested not at the time of the judgment or order but after the judgment was delivered.
3. The grounds of appeal as captured in the notice of appeal in short without rehashing them is that I erred in finding that the Appellant:
 - 3.1 suffered no past and future loss of earning or earning capacity, misquoted principles in decided cases and further,
 - 3.2 disregarded the evidence as agreed upon by the experts,
 - 3.3 not giving due weight of experts' evidence presented;
 - 3.4 ignoring the fact that the earning capacity of the Appellant was compromised by the head injury and the fact that the Appellant would have furthered his academic qualification but for the accident; and
 - 3.5 ignoring the actuarial calculations on both the past and future loss of earning.
4. Secondly, section 17 of Act 10 of the Superior Court 2013, imposes substantive law provisions applicable to applications for leave to appeal. It stipulates that leave "*may only be given*" where the judge or judges concerned is/ are of the opinion that certain jurisdictional facts exist namely: the appeal would have a reasonable prospect of success or the existence of some other compelling

reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

5. During the oral argument, Counsel for the Applicant confirmed that the court *aquo* erred in disregarding the joint minutes of the industrial psychologists, the neurological report even though there is no neurophysical impairment and the Appellant suffered mild brain injury.
6. Further, Counsel confirmed that the court *aquo* was correct in dismissing the Appellant's claim for past loss of earnings as he suffered no such loss. Secondly, the contingency used in the calculations on the loss of earnings with a result of R 7 519 070 for both the past and future earnings was not correct. The submission was that a higher contingency was appropriate as it will bring the Appellant's future loss within an acceptable range of either R3 891 625 or R 3 298 435.
7. The oral submissions by Counsel introduced new assertions not covered in the grounds of appeal filed of record. Rule 49(1)(b) requires an Appellant to set out its grounds of appeal succinctly and in unambiguous terms to enable the other litigants if there any and the court to understand and respond appropriately to the assertions of the Appellant (my italics). This is not what transpired in this leave to appeal during oral evidence. During the oral argument Counsel agreed with some the findings in my judgment yet the ground of appeal disagreed with everything in the judgment.
8. Rule 17 of Act 10 of 2013 has raised *the threshold for granting leave to appeal against a judgment of a High Court* per Bertelsmann J in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC), the test on whether to grant leave to appeal is no longer based on the principle of a *reasonable prospect of success* but on a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

9. Clearly the discourt from both the grounds of appeal and the submission disavow the new threshold.
10. I accordingly find that there is no reasonable prospect that another court would come to a different conclusion.

I thus order as follows:

1. The leave to appeal is dismissed.
2. No order as to cost is made

tvraikane

RAIKANE AJ

ELECTRONICALLY SIGNED

Date of Hearing: 26 September 2022

Judgment: This judgment will be delivered electronically by email to the legal representative. The time of hand down will be deemed to be 24 October.