

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA
MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

Road Accident Fund v Shabangu and another

Supreme Court of Appeal -75/03

Hearing date: 16 March 2004

Judgment date: 30 March 2004

No legal duty owed to the Road Accident Fund by an attorney who innocently submits a claim on behalf of an imposter. In any event no negligence established. Liability limited to fraud.

Media Summary of Judgment

From: The Registrar, Supreme Court of Appeal

Date: 30 March 2004

Status: Immediate

On 30 March in *Road Accident Fund v Shabangu and Another* the Supreme Court of Appeal decided that an attorney and his firm who innocently submitted a claim to the Road Accident Fund on behalf of a client, who was perpetrating a fraud on the Fund, was not liable to repay to the Fund the amount for which the claim was settled.

The client claimed to be the widow of a person killed in a motor vehicle accident. Believing that she was, the attorney submitted the claim, which the Fund settled and the attorney signed a discharge form. It later transpired that the client was an impostor and in addition, that the Fund was not statutorily liable to pay anything to the true widow because of the circumstances under which the deceased had been killed.

The Fund's argument that the attorney had warranted that he had acted on behalf of the impersonated widow, was rejected by the court. So was the Fund's argument that the attorney was liable because he had negligently misrepresented that he acted on behalf of the impersonated widow, and because he had not ascertained the identity of the impostor before he submitted the claim or paid over the settlement. The court held that the attorney was not obliged in law to look after the interests of the Fund and further held, on the facts, that the attorney had not been negligent. Liability of an attorney in such cases would only arise, the court held, where the attorney himself had been fraudulent.

