

## Supreme Court of Appeal of South Africa

### MEDIA SUMMARY

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The Supreme Court of Appeal today upheld an appeal by Mutual and Federal Insurance Company against a judgment of the Full Court of the Natal Provincial Division dismissing its appeal against a judgment of the Durban High Court given against it. The appellant had insured the respondent against, among others, loss of gross profit following interruption of, or interference with, the latter's business during the period of insurance. On 18 March 2000 a fire caused major damage to the respondent's business premises with the result that the business was brought to a standstill for two months. It suffered from the impact of the damage for a period in excess of 12 months.

The respondent issued summons against the appellant for payment of the sum of R3 000 000, being the maximum sum insured, with interest, although the total financial loss it allegedly suffered was calculated at R4 141 052.

The insurance policy at issue provided that the amount to be paid for loss of gross profit due to a reduction in turnover 'shall be the sum produced by applying the rate of gross profit to the amount by which the turnover during the indemnity period shall, in consequence of the damage fall short of the standard turnover'. However, a proviso in the relevant clause states that the amount

payable 'shall be proportionately reduced if the sum insured in respect of gross profit is less than the sum produced by applying the rate of gross profit to the annual turnover where the maximum indemnity period is 12 months or less'. The period of indemnity was 12 months.

The parties agreed the standard turnover at R9 058 770, by applying certain adjustments to the actual turnover of the respondent's business during the twelve months immediately before the date of the damage. The adjustments are applied so as to arrive at a figure that will represent as nearly as may be reasonably practicable the result which, but for the damage, would have been obtained during the relative period after the damage, in this case the indemnity period.

In applying the proviso when calculating the amount to be paid as indemnity for loss of gross profit the trial court, and the Full Court on appeal held that it was not necessary to apply any adjustments to the annual turnover, which is defined in the same terms as the standard turnover for a 12 month period. The result was that when the gross rate of profit (which was agreed between the parties) was applied to the unadjusted annual turnover the product was less than the sum insured. The trial court declined to reduce the agreed loss of gross profit of R2 651 588 and granted judgment in favour of the respondent in that amount plus interest. The judgment was confirmed on appeal by the Full Court.

The SCA, in allowing the appeal, held that since the period over which the standard turnover was determined is the same as the

period over which the annual turnover is to be calculated, the same adjustments applied for the standard turnover should have been applied in determining the annual turnover, with the result that the figure for both must necessarily be the same (R9 058 770). When the agreed rate of gross profit (57%) is applied to the annual turnover the result produced is R5 163 495. The insured amount being less than this sum, the amount payable as indemnity must be reduced proportionately in terms of the proviso. The sum agreed as indemnity (R2 651 585) was reduced accordingly.

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