

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date 21 September 2005

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

**DR HENK DOUW LOUWRENS V JAMES PETER OLDWAGE**

[1] The SCA today upheld an appeal by a vascular surgeon, Dr Henk Douw Louwrens, against the decision of the Cape High Court which had found that he had been negligent in diagnosing a patient, Mr James Peter Oldwage, with a serious vascular disease in his right leg instead of a degenerated disc in his spine.

[2] The correctness of the diagnosis was dependent on objective evidence of Mr Oldwage's condition (an angiogram) and on what Mr Oldwage had told his general practitioner, Dr Simons, and then Dr Louwrens about his symptoms. In this regard there were two contradictory versions. Mr Oldwage said that when he saw the two doctors he complained only of pain in the back. But the doctors said he told them that he had pain in the right leg. Further investigation by Dr

Louwrens and an angiogram revealed that the arteries in his right leg were occluded.

[3] After surgery by Dr Louwrens, Mr Oldwage said he was still suffering from pain. There was a dispute as to whether this was the same pain he had originally complained of or whether the later pain arose from some other problem. Subsequently he went to see a neurosurgeon, Dr Kieck, who discovered that he had disc degeneration in the L4/5 of his vertebrae. Dr Kieck did a back operation which relieved Mr Oldwage of his back pain.

[4] Mr Oldwage's case was also that he had not given Dr Louwrens consent to operate and that when he performed the surgery (an iliac bi-femoral by-pass) on him the risks involved (ie of steal and claudication) were not explained to him. There was evidence that after the neurosurgery by Dr Kieck, the patient's other leg, which had not been previously affected, became claudicated, with resultant cramping. It was however never quite established whether Mr Oldwage had had the neurogical problem before or after he saw Dr Louwrens. The medical evidence also showed that Mr Oldwage had severe arterial disease and in addition that he was a heavy smoker. The medical experts were agreed that the risk of claudification occurring as a result of the surgical procedure performed by Dr Louwrens was very minimal and that, if it did

occur, it was something that could easily be corrected by means of a minor operation.

[5] The SCA found that Mr Oldwage's evidence as to his physical fitness before he had consulted Drs Simon and the defendant was contradicted in several respects by that of his estranged wife and his brother, both of whom gave evidence on his behalf. The SCA found that Mr Oldwage's version was improbable, in particular, his assertion that notwithstanding his complaint about pain in his back, Dr Simons and the defendant had focused on the right leg, which was not giving him problems.

[6] On all the evidence the SCA found the version of Dr Louwrens supported by the other doctors to be more probable. The decision of the Cape High Court was set aside and replaced with an order dismissing Mr Oldwage's claim with costs.