



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

7 September 2011

STATUS: Immediate

Van As v Road Accident Fund (346/10)

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

The Supreme Court of Appeal (the SCA) today dismissed the appeal and upheld an order of the Western Cape High Court (Cape Town) which held that the appellant's negligence was the sole cause of a motor vehicle collision.

The appellant claimed damages resulting from injuries he sustained in a motor vehicle collision and alleged that the insured driver had been negligent in not taking steps to avoid the collision. The trial proceeded on the issue of liability only, the extent of the appellant's damages standing over for later determination.

The issue on appeal was whether there was any negligence on the part of the insured driver. In this regard the enquiry was whether the reasonable person in the insured driver's position would have considered that the appellant's conduct prior to the collision constituted a potentially dangerous situation, would have foreseen the possibility of a collision and would have taken steps to guard against such occurrence. The evidence of the insured driver was that even though immediately before the collision he had observed the appellant to be looking backwards and forwards intermittently, the appellant was in control of his vehicle. He was also driving in his correct lane and there was no indication that he would move into the insured driver's lane and collide with the latter's truck. The insured driver had assumed that the appellant had seen his large vehicle with its lights on and that the appellant would pass him safely. Like the trial court, the SCA accepted the insured driver's evidence.

The SCA relying on *Santam Insurance Co Ltd v Nkosi* 1978 (2) SA 784 (A) at 792 B-C held that the *diligens paterfamilias* like the insured driver would not have read the situation as potentially dangerous with real possibilities of harm, warranting precautionary action. The SCA stated that the conduct of the insured driver did not fall short of what would have been expected of the reasonable person in the prevailing circumstances. The SCA stated further that the situation was not one of potential danger and subsequently held that in the circumstances, there could be no finding of negligence on the part of the insured driver.

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