



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Road Accident Fund v P ZULU (50/11) [2011] ZASCA 223 (30 NOVEMBER 2011).

The Supreme Court of Appeal (SCA) today upheld an appeal against a judgment of the KwaZulu-Natal High Court, Durban. The court below had ordered the Road Accident Fund (RAF) to pay an amount of R19 227 337 as damages in favour of the first and third respondents for loss of support.

The first respondent, Mrs Philile Zulu, is the widow of Prof Mthembeni Zulu (the deceased), who was fatally injured in a motor vehicle collision on 18 October 1997. The second and third respondents were born from this marriage. The claim on behalf of the second respondent has already been settled between the parties.

The deceased was a prominent man in the field of academia and had the potential to achieve more. The issue on appeal was whether the deceased would have exercised the choice to move to the corporate track if and when an opportunity presented itself.

This court found that the trial judge erred in treating the deceased's entry into the corporate world in 2005 as a certainty. It further held that the judge erred in not applying any contingency deduction reflecting a possibility of the deceased remaining in academia, more so since there was no evidence which could have raised the probability of employment in the corporate sector to the level of certainty.

Having regard to all the evidence, the SCA held that there was a 40 per cent prospect that the deceased would have remained in academia, and a 60 per cent chance that he would have moved into the corporate sector from 2005

and earned a salary appropriate to the post of senior executive and thereafter assume promotion to CEO level. The SCA accordingly applied the contingency deduction which had the effect of reducing the award of damages by R5 million. In the result, the first and third respondents were awarded a total amount of R 14 123 406 for loss of support.

The appeal was accordingly upheld with costs whilst the cross-appeal was dismissed with costs.

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