



THE 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: 1 December 2011
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

Neutral citation: *Gusha v The Road Accident Fund* (158/2011) [2011] ZASCA 242 (1 December 2011)

The appellant received severe bodily injuries in an accident caused by the motor vehicle in which he was a passenger being forced off the road by an oncoming unidentified motor vehicle. As the result of his injuries, the appellant was rendered a paraplegic. Attorneys acting on his behalf filed a prescribed claim form and eventually instituted action in the Gauteng North High Court, claiming damages from the Road Accident Fund on the appellant's behalf.

Before summons was issued, a claims handler acting on behalf of the RAF had concluded an agreement with the appellant's attorney in terms of which the RAF 'conceded the merits of the (appellant's) claim and accepted liability for the damages, still to be proven, which the (appellant) has suffered as a result of the bodily injuries he sustained in the accident'. When the matter was set down for trial, the parties agreed that the court should interpret this agreement as a separate issue. In this regard the appellant contended that the agreement amounted to an unqualified concession of liability on the part of the RAF whereas the latter

contended that it was not. This was of importance as the RAF indicated that it wished to apply to amend its pleadings to claim an apportionment of the damages on the basis of the appellant's contributory negligence in failing to wear a seatbelt.

The high court found in favour of the RAF and postponed the matter to enable the issue of the appellant's alleged contributory negligence to be ventilated together with the issues relating to the quantum of his damages. The appellant's appeal to the Supreme Court of Appeal was today upheld. The court concluded that the agreement amounted to an unconditional concession of liability on the part of the RAF which rendered it impermissible for it to thereafter attempt to introduce the appellant's alleged contributory negligence in order to seek a reduction of the extent of his liability. The appeal therefore succeeded with costs and the order of the high court replaced with an order declaring that on a proper construction of the agreement, the RAF is liable to the appellant for all of the damages he suffered as a result of the accident and is precluded from seeking to plead or rely upon any apportionment of such damages.

---ends---