



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

31 May 2012

STATUS: Immediate

DR R RAATH v J J G NEL (473/11)

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 upheld to a limited extent an appeal against a judgment in the North Gauteng High Court, Pretoria, which had awarded damages suffered by the respondent, a Mokopane businessman, in respect of the sequelae of a failed intubation performed by the appellant, an anaesthetist. The SCA held that the trial court erred in distinguishing the present matter on the facts from the judgment of this court in *Rudman v Road Accident Fund* 2003 (2) SA 234 (SCA). The SCA held that *Rudman* applied in respect of the respondent's damages incurred for the period until the respondent had sold all his shares and loan account in one of his companies, Koos Nel Auto (Pty) Ltd, to his family trust, the Koos Nel Trust. In respect of that period the respondent had proved that, but for the failed intubation and his resultant depression which caused him to neglect the business of Koos Nel Auto, resulting in it incurring losses, his loan account in the trust would have been worth more. In respect of the period after the shares and loan account had been sold to the family trust, however, the loss suffered was that of the trust and not axiomatically that of the respondent. Absent any evidence as to the respondent's loss in his personal estate, his claim in respect of damages for that particular period had to fail, as was decided in *Rudman*. The SCA dismissed the appeal against the awards for future medical and hospital expenses and for general damages.

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