THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 2 October 2017

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.

ROAD ACCIDENT FUND
V
KHOMOTSO POLLY MPHIRIME

The issue in this appeal was whether the Road Accident Fund was entitled to discharge its liability to pay for the cost of employing a domestic servant required by a person injured in a motor vehicle accident by way of issuing an undertaking under s 17(4)*(a)* of the Road Accident Fund Act 56 of 1996. The court a quo held that, pursuant to the amendment of that Act but by the Road Accident Fund Amendment Act 19 of 2005, it was no longer competent for the Fund to be able to do so. Its judgment in this regard has been followed in certain subsequent cases but not in others. The matter came before the Supreme Court of Appeal to determine the issue.

The parties were agreed that prior to the amendment of the Act effected by Act 19 of 2005, it had been permissible for the Fund to pay for the cost of a domestic assistant by way of an undertaking under s 17(4)*(a)*. After the amendment, however, the section provided for the cost of a service rendered to an injured party to be dealt with by an undertaking in terms of a tariff as contemplated in s 17(4)*(b)*. Under the latter section a tariff had been provided in respect of health services.

The Constitutional Court, in *Law Society of South Africa v Minister for Transport* 2011 (1) SA 400 (CC) held that the tariff which had been prescribed was unconstitutional and therefore ordered that until a new tariff was prescribed, the Road Accident Fund was obliged to compensate injured parties as if they had been injured before the amendment effected by Act 19 of 2005 came into operation. Despite this order having been given seven years' ago, a fresh tariff has not been prescribed. Thus the position today, as it was when judgment was given in the court a quo, is as it was immediately prior to 1 August 2008, namely, that the cost of employment a domestic assistant could be dealt with by way of an undertaking under s 17(4)*(a)*. The court a quo had therefore erred in conducting that an undertaking could not be given.

The appeal therefore succeeded and the Fund was ordered to furnish the respondent with such an undertaking.