

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO:

16972/1997

5

DATE:

21 SEPTEMBER 2010

In the matter between:

ROAD ACCIDENT FUND

Applicant

10 and

MAGDALENA LECHNER

Respondent

JUDGMENT

15

APPLICATION FOR LEAVE TO APPEAL

KLOPPER, AJ:

20 This is an application for leave to appeal, specifically to the
Supreme Court of Appeal, the judgment of this Court delivered
on 12 August 2010 in which an order comprising a number of
substantial amounts was made against the applicant in this
application ordering it to pay these amounts to the respondent,
who was, in fact, the plaintiff in the original matter.

25

/DH

/...

I have taken cognizance of the argument on both sides. Firstly that as far as the applicant is concerned, it believes that after a consideration of all the evidence and all the relevant aspects in this particular matter, and a proper consideration of the
5 evidence and the law, that the medical, hospital and ancillary expenses which were paid by the institution, the KKH and the PKKH, are indeed collateral benefits and that they should be deducted from the plaintiff's award of damages.

10 On the other side there is the argument that this is not the case if the evidence is considered and also the argument that the applicant has not really indicated with any amount of clarity where the criticism lies and where the Court, in fact, erred in coming to its conclusion.

15

I am acutely aware of the approach in an instance where leave to appeal is sought. That at this particular stage the Court is expected to stand back and to once again reconsider whether another Court or another forum in the light of the
20 circumstances could come to another conclusion and therefore that the applicant has a reasonable prospect of success.

I don't think there can be any dispute about the fact that if one considers the nature of the proceedings in this particular
25 matter and the extent to which counsel in this matter had to go

/DH

/...

in order to place the facts before the Court and to argue the situation in Germany, that it cannot be said that a matter of this nature and this particular matter is a complex matter.

5 And it's not simply a matter that can be concluded superficially. If one looks at the arguments of counsel on both sides in this regard, it is pretty obvious that a number of factors and a number of issues have to be considered before one can reach a conclusion.

10

At the same time I'm not persuaded at this stage that my judgment was incorrect and, of course, I abide by what I have said in my judgment. I think, I can summarise it to a great extent by referring to the well-known case which I quote in my
15 judgment of Standard General Insurance Company Limited v Dugmore 1997(1) SA 33 (A) where the Court really in that particular case once again indicates the complexity of a matter such as this and the fact that it is difficult to determine in the end what benefits should be deducted and what benefits stand
20 not to be deducted, and that there are really no hard or fast rules or principles that can be applied.

In that particular matter at 41 and 42 the Court says, quoting Boberg:

25

/DH

/...

“The existence of the collateral source rule can therefore not be doubted; to what benefits it applies is determined casuistically; where the rule itself is without logical foundation, it cannot be expected of
5 logic to circumscribe its ambit.”

The Court goes on to say:

“It now seems to be generally accepted that there is
10 no single test to determine which benefits are collateral and which are deductible. Both in our country and in England it is acknowledged that policy considerations of fairness ultimately play a determinative role.”

15

I think that describes basically the approach and the fact that the approach is often based on the circumstances of each particular case.

20 And if I understand the applicant correctly, it is in applying these principles that it believes that this Court has erred in reaching its conclusion. It is true perhaps that the applicant has not with any particular clarity indicated what precisely it has in mind when it does criticise the Court on various issues.

25 I accept that for purposes of this application the applicant has

/DH

/...

decided not to comprehensively deal with these aspects and will at a later stage probably deal with them.

I am, despite the strong arguments by Mr Duminy that this
5 Court should not merely grant leave to appeal simply because
a certain issue has not been decided in a higher court, of the
view that if I consider all the aspects that were argued in this
particular matter, there is in my view a reasonable possibility,
based on the principles that were dealt with in this matter, that
10 another Court could reach a different conclusion and therefore
that there is, in my view, a reasonable possibility or prospect
of success.

Bearing in mind the complexity of the matter and the
15 importance for the applicant in this matter (and also the fact
that it would seem that there has been a difference of opinion
in various matters which are dealt with, both in argument and
in the judgment) I am also of the view that the matter should
be considered by the Supreme Court of Appeal and not by a
20 full bench of this court.

The end result is therefore that I believe that leave to appeal
to the SCA should be granted, and I grant that order, and I
also order that the costs in this application are to be costs in
25 the appeal.

HD/

5

KLOPPER, AJ

16972/97

6

JUDGMENT