

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)**

**Case No: 4200/2017**

In the matter between:

**CHRISTO LOUIS KLEINHANS  
(duly assisted by his mother and guardian  
BEVERLEY ANNE KLEINHANS)**

**Applicant**

And

**THE REGISTRAR OF THE HEALTH PROFESSIONS  
COUNCIL OF SOUTH AFRICA**

**First Respondent**

**THE HEALTH PROFESSIONS COUNCIL OF SOUTH  
AFRICA**

**Second Respondent**

**THE PRESIDING OFFICER OF THE ROAD ACCIDENT  
FUND APPEAL TRIBUNAL OF THE HEALTH  
PROFESSIONS COUNCIL OF SOUTH AFRICA**

**Third Respondent**

**ROAD ACCIDENT FUND**

**Fourth Respondent**

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**JUDGMENT**

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**BESHE J:**

[1] This is an application for the review and setting aside of the decision of the third respondent confirming the rejection of the applicant's Serious Injury Assessment Report by the fourth respondent.

[2] It is only the first, second and third respondents who are opposing the application. Fourth respondent has opted to abide the decision of this court.

[3] The applicant, a minor child who is duly assisted by his mother was injured in a motor vehicle collision at the time when he was a pedestrian and five (5) years old on 7 July 2012.

[4] Having been assessed by a number of experts, the reports by the experts were submitted to the Road Accident Fund. At some stage after the submission of the reports, Road Accident Fund indicated that they required the applicant to be assessed by Road Accident Fund's own experts. According to applicant's mother, the Road Accident Fund appointed **Mr Moolman**, clinical psychologist, to assess the applicant.

[5] It was after an assessment by **Mr Moolman** that the Road Accident Fund advised that they had rejected applicant's Serious Injury Assessment Report. After a further consideration or adjudication by the third respondent (Appeal Tribunal) the injuries of the applicant were found not to be serious. Thereby confirming the decision by the fourth respondent.

[6] Reasons for the decision were sought from second respondent. The response to the request for reasons was a referral to a letter that was sent to the applicant earlier, informing them of the outcome of the appeal. The following was recorded in the said letter:

"We refer to the above matter and hereby inform you that Road Accident Fund Appeal Tribunal resolved at its meeting held on 19 May 2017 as follows: -

- i. Patient 8-year-old boy involved in an accident during June 2012 when 5 years' old.
- ii. Injuries sustained included head injuries, soft tissue injury forehead, lips, abrasions right leg. Was treated as day patient, discharged same day.

- iii. Current complaints headaches.
- iv. Examination/assessment findings no orthopaedic injuries.
- v. Outcome diagnosis confirming minor head injury.
- vi. Dr Dippenaar awarded WPI 20%.

VII. The Panel was unanimous in its decision that the patient does not qualify under the narrative test as he sustained a non-serious musculoskeletal injury.”

[7] Applicant complains that this does not constitute proper reasons as required by *Section 5 of the Promotion of Administration Justice Act*<sup>1</sup> and that it should be presumed that the decision was taken without good reason.

[8] Third respondent’s decision is impugned on the basis that based on the expert reports before it, it cannot be said that they were properly considered:

- that it was unreasonable.
- the Tribunal failed to apply its mind in that it did not properly or fairly have regard to all the expert reports submitted.
- the decision was procedurally unfair in that the Tribunal irrationally and unreasonably failed to call for further assessments or submissions.
- it was not rationally connected to the information before the Tribunal.

[9] The application is opposed on the basis *inter alia* that:

- There was an unreasonable delay in launching the application.

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<sup>1</sup> Act 3 of 2000 (PAJA).

- The Tribunal took into account the various relevant considerations in reaching its decision.
- Did not give more weight to certain factors and less weight to others. And did not act irrationally or fail to apply its mind.

[10] **Dr. J Crosier** who deposed to first, second and third respondents' answering affidavit, drew the court's attention to *Regulation 3 (1) of the Road Accident Fund Regulations* which prescribed the method of assessing what injury can be categorised as constituting a serious injury. In particular *Regulation 3 (1) (b) (ii)*. If the injury resulted in 30% or more impairment of the Whole Person the injuries shall be assessed as serious.

(iii) An injury which does not result in 30% or more impairment of the Whole Person may only be assessed as serious if that injury:

Resulted in long term impairment or loss of body function;

Constitutes permanent serious disfigurement;

Resulted in severe long term mental or severe long term behavioural disturbance or disorder.

[11] According to a Serious Injury Assessment Report compiled by **Dr. J Dippenaar**, (10 March 2015) the applicant was diagnosed with traumatic brain injury. He was of the view that the injury resulted in serious cognitive and memory impairment. He commented that:

Applicant suffered significant brain injury during the accident. He has severe memory, learning and cognitive impairments. Gave applicant's impairment rating as 20% WPI.

**Dr. Estelle De Wit**, a Clinical Psychologist who after perusing several other reports and conducting certain tests came to the following conclusion:

“Based on the assessment, the examiner diagnosed Christo with cognitive disorder due to head injury and below average intelligence.”

[12] **Dr. LL Lankester**, a neurosurgeon, concluded that the head injury sustained by Christo was a minor head injury and he has not been left with any localising neurological signs.

[13] The applicant was also assessed by Road Accident Fund’s experts, a Clinical Psychologist **Bilué Moolman** who after the assessment came to the following conclusion:

The plaintiff’s level of cognitive functioning has deteriorated as a result of the motor vehicle accident.

There has been a personality change as his behaviour is different from pre-morbid behaviour.

There are no physical injuries that have limited the plaintiff’s daily functioning.

The plaintiff has experienced significant psychological sequelae as a result of probable frontal lobe damage.

The plaintiff has experienced loss of amenities of life with regards to the psychological sequelae as a result of the motor vehicle accident.

[14] Apart from impugning the procedural manner in which the decision of the Tribunal was reached, applicant questions the constitution of the Tribunal. This is also apparent from the bulk of the prayers in the notice of motion. Namely:

“3. That the matter be referred back to the Road Accident Fund Appeal Tribunal for reconsideration, which tribunal shall be differently constituted to the tribunal of first instance (“the newly constituted Appeal Tribunal”) and shall consist of Medical Practitioners properly registered as such under the Health Professions Act 56 of 1974 as required by regulation 3(8), read with regulation 1 of the Regulations;

4. The newly constituted Appeal Tribunal is ordered to deal with the appeal in accordance with the Regulations (which were applicable at the time of the collision in which the minor was injured) and after having due regard to these application papers and the reasons which this Honourable Court may provide when granting this order (if any);

5. That the newly constituted Appeal Tribunal is ordered to notify the First Respondent of its findings within 90 calendar days after the matter is referred to it by the First Respondent (as contemplated in regulation 3(12) of the Regulations), or such additional period as the First Respondent may on application from the newly constituted Appeal Tribunal authorise in writing, which additional period shall not exceed 14 calendar days.”

[15] In a bid to support this prayer, the deponent to the founding affidavit states that it has come to light that **Dr. Crosier** and **Dr. Lambrecht** are properly registered. The registration status of **Dr. Reid** and **Dr. Szabo** seem “questionable”. There is no neurologist, **Dr. R Reid**, that is registered with second respondent (the only person registered as such is **Dr. J Reid**, the only **Dr. Szabo** who appears on the website and who has a qualification which indicates that he / she is an Orthopaedic Surgeon

appears to be suspended. On the preceding subparagraph the deponent to the founding affidavit states that the applicant's attorney will depose to a confirmatory affidavit that he has attempted to check the registration status of each of the members of the Tribunal that considered applicant's appeal.

[16] The said attorney, in his confirmatory affidavit states:

"[5] I have read the affidavit deposed to by the applicant and confirm the correctness and accuracy of correspondence exchanged between the parties to which he makes reference."

The rest of the founding affidavit where it refers to him does not seem to be confirmed. It was only in a supplementary affidavit that was sworn to on the same date as with the replying affidavit that reference is made to a document that advised the applicant of the composition of the Tribunal. Even then, the purpose is to refer to the correct document. Nothing is said about what it was alleged he did regarding his investigation as to the validity of the Tribunal or the status of its members.

[17] No objection was raised about the composition of the Tribunal by or on behalf of the applicant.

[18] **Dr. Crosier** denies that the members of the Tribunal are not properly registered. He also outlines the procedure that was followed when considering the

appeal. After which they noted and found that for reasons stated in “BAK4” the applicant’s injuries did not qualify under the narrative test. He further stated that whilst some of the reports applicant relies upon makes use of words such as “severe”. It is not given that the injuries were indeed severe. That the Tribunal ascertained that the head injuries were minor. That there were no orthopaedic injuries. He also stated that the applicant was discharged on the same day.

[19] Is there a factual dispute as to whether or not the Tribunal was properly constituted? I think not. Apart from an indication that evidence will be given by applicant’s attorney in this regard, no such evidence was produced. The little information in this regard as to what may have given rise to the belief or suspicion that the Tribunal was not properly constituted amount to hearsay evidence which was never confirmed by the applicant’s attorney. Besides what does it mean for a website to create doubts about the registration status of the members of the Tribunal.

[20] According to the respondents, the Tribunal was properly constituted. In any event in my view this has to be decided on the version of the respondent.

[21] In my view the applicant has not made out a case for the referral of the matter back to a differently constituted Road Accident Fund Appeal Tribunal for reconsideration.

[22] A number of grounds that are listed under *Section 6 (2) of the Promotion of Administrative Justice Act* are cited by the applicant as grounds why the Tribunal's decision should be reviewed and set aside.

[23] As indicated earlier, the applicant also complained that the reasons provided by the respondents for the decision taken do not constitute adequate reasons. I am unable to agree with the applicant in this regard. In my view, adequate reasons were provided. They may be brief, constituting only one page and in point form, but they are specific to the issue, they are clear and contain sufficient detail.

[24] In determining whether the applicant has made out a case for the setting aside of the third respondent's decision, I will be alive to the principle that was enunciated in a matter involving the ***Pharmaceutical Manufacturers Association of South Africa***<sup>2</sup> where the following was stated:

“As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary's decision; viewed objectively, is rational, a court cannot interfere with the decision simply because it disagrees with it or considers that the power was exercised inappropriately.”

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<sup>2</sup> 2000 (2) SA 647 CC at 85.

In ***MEC for Environmental Affairs and Development Planning v Garisms CC***<sup>3</sup> the Supreme Court of Appeal had this to say:

“The law remains, as we see it, that when a functionary is entrusted with a discretion, the weight to be attached to particular factors, or how far a particular factor affects the eventual determination of the issue, is a matter for the functionary to decide, and so long as it acts in good faith (and reasonably and rationally) a court of law cannot interfere.”

[25] The procedure adopted by the Tribunal in considering the matter, and the factors considered to reach the decision it did, are set out in the answering affidavit. Based on this, I am unable to find that the decision was not rationally connected to the information before the Tribunal. Nor am I persuaded that in the circumstances, the decision was unreasonable or that the Tribunal failed to apply its mind. The expert reports were considered individually by four appropriately qualified members of the Tribunal who thereafter at a meeting were in agreement that the applicant's injuries do not qualify under the narrative test as he sustained a non-serious musculoskeletal injury.

[26] In my view, the decision arrived at by the Tribunal was rationally connected to and was supported by the evidence that was before the Tribunal. I am of the view that the applicant has not succeeded in making out a case for the relief sought.

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<sup>3</sup> [2013] ZACSA 82 at [22].

[27] Accordingly the application is dismissed with costs.

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**NG BESHE**  
**JUDGE OF THE HIGH COURT**

**APPEARANCES**

For the Applicant : Adv: JJ Nepgen and Adv: PT Marais

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Date Heard : 13 December 2018

Date Reserved : 13 December 2018

Date Delivered : 26 March 2019