

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE No. 95928/2016

In the matter between:

MFO, YOLISWA

APPLICANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT - LEAVE TO APPEAL

MAHOMED, AJ

The applicant applies for leave to appeal against a judgment I handed down on 16 March 2021, wherein I dismissed the claim against the Road Accident Fund. In my judgment, the evidence before me did not establish a causal link between the injuries complained of and the accident.

1. On the trial date, I was to determine only the quantum to be awarded, the merits had been conceded and an undertaking to pay future medical expenses was accepted.
2. The claimant relied essentially on hospital records and on reports of experts whom she consulted, approximately 6 years after the accident occurred.
3. In this application, Advocate Leopeng, appeared for the applicant and addressed me only in respect of the alleged head injuries.
4. Counsel submitted that the court should accept the medical literature of Dr D S Bell, which essentially, states that head injuries in minor children manifest later into adolescence and adulthood.
5. He submitted that the applicant's experts, Muriwewa, a clinical psychologist and Dr Leeuwen, an educational psychologist, both conducted tests and their results indicated deficits in cognition and a decline in scholastic performance, after the accident.
6. Counsel submitted further, that the hospital records reflect "hit head" and accordingly the claimant did suffer an injury to her head.
7. I reserved judgment and considered counsel's submissions and the literature he referred to me, as was accepted in **Pinane v RAF**

7702/06[2007] ZAGPHC 379, where the minor child sustained a head injury and was hospitalised for a few weeks.

JUDGMENT

8. The neurosurgeon's diagnosis of a mild concussion lacked logical reasoning.
9. In **L S Michael v Linksfield Park Clinic (Pty) Limited**¹, the Supreme Court of Appeals at 36, stated,

“what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning.”

10. In this matter, the neurosurgeon, Dr Okoli's diagnosis is, as follows:

“Acute Clinical Evidence of Brain Injury:

The claimant reports that she had no direct recall of the accident and only came to her senses after the accident and when she was lying the floor of the bus. This suggests she had brief altered awareness or post traumatic amnesia. She had no secondary neurological deterioration.”

- 10.1. He stated that her amnesia lasted about two minutes.

¹ 2001(3) SA 1188 (SCA) at 36

- 10.2. He recorded that she was asleep at the time of the accident.
- 10.3. He further recorded that from a neurosurgical perspective, she can secure a job in the open labour market.
11. I was not persuaded that the plaintiff suffered amnesia of a nature that could result in such serious long- term fallouts, as reported by the clinical psychologist.
12. I considered the plaintiff's account of events after she found herself on the floor of the bus, she reported she walked out the bus unassisted, waited on a grassy patch for an ambulance to take her and her mates to a hospital. She relayed a clear account of her visit to the hospital and her stay at the accommodation for two days where she and her mates awaited their bus to return home.
13. The hospital did not record any treatment for a head injury and her GCS reading was at normal on admission. She was not place under observation either.
14. The neurosurgeon assessed her whole person impairment for the head injury at 4%. However, he qualified her for general damages based on the report of the clinical psychologist.

15. The plaintiff consulted a clinical psychologist 5 years and 10 months after the accident. He conducted a series of tests and reported she suffered long term psychological and behavioural fall outs because of the injuries she sustained in the accident.
16. It is unnecessary to repeat the list of fallouts, they appear in my judgment.² However, it is noteworthy that, he “estimated” she was of average intelligence before the accident and his test results reflected that she was of a below average intelligence. He opined the decline must be due to the accident.
17. He further reported that her performance at school had deteriorated.
18. His does not report having read any school reports, nor has he recorded having read the educational psychologist’s report.
19. He relied solely on the plaintiff’s say so. He did not obtain or refer to any collateral evidence on her psychological condition or her behaviour.

² Judgment paragraphs 39-40

20. His report includes a comment by the plaintiff, “she failed in her final year because she chose difficult subjects.”³
21. The clinical psychologist concluded that the results of his tests, are “in line with the neurosurgeon’s diagnosis of a mild concussion.”
22. He estimated that her amnesia may have been for five minutes and he assessed her whole person impairment for her psychological and behavioural fallouts at 15%.
23. I am of the view the clinical psychologist report failed to present a pre and post -accident condition to support the alleged fallouts.
24. He did not link the fallouts he detected in his test results to the alleged injuries arising out of the accident. Mr Leopeng argued that if there were problems before the accident, the school reports would have noted them. However, none of those reports were available as evidence.
25. It is trite that a court is not bound by the opinions of experts. Their opinions serve as a guide to assist a court in areas in which the court has no

³ Judgment paragraph 54.1 ffg

expertise. A court is obliged to bring its own mind to bear on the proven facts, that is, looking at “the conspectus” of the evidence before it.

26. In my judgment⁴, I referred to **RAF v SM**⁵, where the SCA on similar facts accepted the evidence of an expert for the RAF, whose opinion was, that symptoms of a mild concussion resolve themselves within a few weeks to 6 months, and any long-term effects are due to “non accident related”, causes.
27. The report from the educational psychologist also failed to demonstrate a pre- and post-accident comparative.
28. He compiled a report on limited information.
29. He compiled a report based on two school reports prior to the accident and a statement of results of only three subjects, post-accident. I must add that this court has not seen the actual report, the subjects scores were included in the expert reports.

⁴ Paragraphs 59.3 - 60

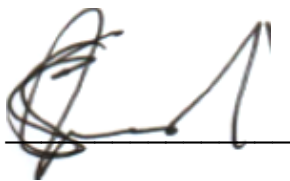
⁵ (2070/2018) [2019] ZASCA 103 (22 August 2019)

30. No school reports were before this court and no reasons were given as to why they were not in the evidence.
31. On my analysis of the scores in reports before the accident I noted a decline in performance. However, the plaintiff passed the remaining last term after the accident and therefore passed grade 9.
32. Reports for grades 10 and 11 were not available to him or to this court. In any assessment of the impact of head injuries on minor children, school reports serve as valuable objective evidence for assessment.
33. A statement of results of only three subjects in grade 12 was included in the evidence.
34. The scores for the three subjects were good to very good and demonstrated, on the probabilities, that the plaintiff was doing well post-accident, given that the final year at school usually involves more work and complexity in content.
35. The educational psychologist report was compiled through the reports by the plaintiff, only limited school reports and certain tests.
36. In my view the report is incomplete and cannot be relied upon to demonstrate a decline due to the injuries in the accident.

37. There was no evidence from collateral sources either on her emotional and psychological condition.
38. It is noteworthy that the plaintiff has two children, lives with her father and siblings, her mother is away at work and visits only once a month, and she is unemployed.
39. Neither of the psychologists considered the possible impact of those responsibilities and burdens on the young plaintiff.
 - 39.1. On this point, I must also mention that counsel agreed that his grounds of appeal at paragraph 1.6 of his notice is incorrect. He did not quote the judgment correctly.
40. I stated in my judgment that having looked at the conspectus of the evidence before me, I am of the view the plaintiff failed to prove that the injuries she suffered are because of the accident. She failed to prove the causal link/causation and accordingly the claim is dismissed.
41. The test for leave to appeal, is whether another court would on the evidence arrive at a different finding. I am not persuaded that another court will arrive at a different finding on the evidence in this case and accordingly the application must fail.

I make the following ORDER,

1. Leave to appeal is refused.
2. No order for costs.

A handwritten signature in dark ink, appearing to be 'MAHOMED, AJ', written over a horizontal line.

MAHOMED, AJ

Date of Hearing: 4 May 2021

Date of Judgment: 11 May 2021

Appearance for Applicant: Adv Leopeng

Instructed by: Godi Attorneys

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