



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 41903/2019

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED 2021-05-31	 SIGNATURE
DATE	

In the matter between:

OBAKENG KEOHITLHETSE

APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

Delivered: This Judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 31 May 2021.

JUDGMENT

PHAHLAMOHLAKA, AJ

BACKGROUND

- [1] On 11 January 2021 I handed down judgment in favour of the applicant against the Road Accident Fund (the respondent) for payment of the amount of R5 781 926.06 (Five million seven hundred and eighty-one thousand nine hundred and twenty-six rand and six cents) as compensation for damages suffered as a result of a motor vehicle accident.
- [2] The applicant is now applying for leave to appeal the judgement. The application was heard by way of video conferencing and therefore the matter will be determined accordingly. The application is unopposed.
- [3] The leave to appeal is sought to the full bench of this division and the grounds for the application appear in the Notice of application for leave to appeal dated 26 January 2021. The application was heard on 29th April 2021.

GROUND FOR LEAVE TO APPEAL

[4] The Applicant contends that the appeal would have reasonable prospects of success and that there are compelling reasons why the appeal should be heard.

[5] The application is premised on the following two aspects;

5.1 Firstly, it is in relation to my finding that the plaintiff suffered no past loss because at the time of the hearing of the matter the plaintiff was a scholar; and

5.2 Secondly, the Applicant contends that the contingencies applied were higher than the normal and therefore this is a misdirection on my part.

APPLICABLE LAW

[6] The principles governing the application are currently governed by the Superior Courts Act 10 of 2013 which would provide the statutory matrix.

[7] Section 17(1) of Act 10 of 2013 provides as follows:

“Leave to appeal may only be granted where the judge or judges concerned are of the opinion that:

(a)(i) the appeal would have a reasonable prospect of success; or

- (ii) there is some other compelling reason why the appeal should be heard, including the conflicting judgments under consideration.”

- [8] The court in *Mgezeni Gasbat Nxumalo v The National Bargaining Council for the Chemical Industry (NBCCI) and others* JR1170/2013 (unreported) summarized the approach to an application for Leave to Appeal as follows:

“The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that is sought to be taken on appeal. As the respondent observe, the use of the word “would” in Section 17(1)(a)(i) are indicative of a raising of the threshold since previously, all that was required for the Applicant to demonstrate was that there was a reasonable prospect that another court might come to a different conclusion”.

- [9] In order to be successful, the applicant must therefore show that another court would come to a different conclusion.

SUMMARY OF ARGUMENTS

- [10] Counsel for the applicant correctly pronounced that at the time of hearing of this matter the plaintiff was a scholar. The aspects of past loss of earnings are therefore a factual one and it is not an issue for postulation. I am not convinced that another court would come to a different conclusion on this aspect and therefore the application on this ground stands to fail.

[11] Counsel for the applicant further argued that the contingency deduction I applied for future loss of earning capacity were higher than normal and therefore, counsel submitted, another court would come to a different contingency deduction.

[12] It is trite that contingency deductions are within the discretions of the court. One must be mindful, however that the discretion must be applied judicially. I have been referred to Robert Koch as authority for and appropriate contingency declaration to be applied. One should not lose sight of the fact that Koch provides a guide on the percentage of contingencies on the subject. The court ought to apply its mind on what is the appropriate contingency to be applied to avoid being just a rubber stamp.

[13] It is a well-established principle that contingency deductions depend upon a number of factors and ranges between 5% and 50% depending on the merits of each case. I have not been criticised on the principle but rather on the amount of the percentage of contingencies I applied and therefore I am of the view that another court would not come to a different conclusion in this regard.

CONCLUSION

[14] The applicant has not presented a convincing argument that another court would find that there was past loss of earnings, and on the issue of contingencies how did I fail to exercise my discretion judicially.

[15] The argument by the applicant with regards to the percentage of contingencies to be applied is therefore not convincing.

[16] In my view, after having carefully considered the Applicant's stated grounds for leave to appeal and the submissions, there is nothing that persuades me that another court would come with different conclusion.

In the premises, I conclude that no proper case has been made out for leave to appeal to be granted

ORDER

[17] In the result I make the following order:

17.1 The application for leave to appeal is dismissed.

K.F PHAHLAMOHHLAKA

Acting Judge of the High
Court, Gauteng division,
Pretoria.

Date of Hearing : 29 April 2021

Date of Judgement: : 31 May 2021

Heard on : 29 April 2021

For the Applicant : Adv. LD Haskins

Instructed by : Mbowane Attorneys

For the Respondent : No appearance

Date of Judgement : 31 May 2021