



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 51356/2020

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**

Date: **22 May 2024**

Signature: 

In the matter between:

ROAD ACCIDENT FUND

Applicant

And

Adv. SAYED N.O

On behalf of L. CHASAMBA

Respondent

JUDGMENT

A. INTRODUCTION

[1] The applicant who is the defendant in the main action, is the Road Accident Fund (“RAF”) and is before court seeking leave to appeal an order granted on 04 October 2022. I will refer to the parties as in the action.

[2] The application for leave was heard on 23 October 2023.

[3] The plaintiff sued the RAF consequent to a motor vehicle accident which occurred on 04 November 2015. He had been a passenger in the vehicle at the time of the collision and was at the time aged six. He will turn 15 on 10 July 2024.¹

[4] The merits of the matter had been finalized previously with a court order confirming that the defendant is liable for 100% of the plaintiff's agreed or proven damages.

[5] When the matter was heard, Mr Grobler appeared for the plaintiff while Ms. Van Zyl represented the RAF. Comprehensive heads of argument were filed on behalf of the plaintiff. The *Curatrix ad litem* also prepared and filed a detailed report.

¹ Extrapolated from Mr Grobler's submissions – para 15 of court transcript.

- [6] The plaintiff sustained serious head and pelvic injuries with neurological and physical sequelae.
- [7] Both parties' legal representatives agreed that the plaintiff qualifies for general damages and that an award should be made in that regard.
- [8] Without belabouring this short judgment, it is adequate to state that the transcript of the hearing captures that the legal representatives of the parties discussed the matter, interrogated the documents and reached consensus even on the fair and just contingencies to be applied onto the calculations made by the Actuaries based on the latter's reports.
- [9] Having heard submissions on behalf of the plaintiff and the defendant, the court made the draft order an order of court as follows: An amount of R700,000.00 was awarded for general damages, and an amount of R8,518,638.00 was awarded for loss of earnings with the total amount coming to R9,218,638.00.
- [10] Quite strangely, the defendant's legal representatives started sending correspondence seeking reasons for the order which was made in open court on agreement by their legal representatives.
- [11] When that did not yield a result to their satisfaction, this application for leave to appeal was then launched on reasons that one can best describe as a fishing expedition. The application for leave to appeal is also accompanied by an

application for reasons. Both of those documents were seven months late i.e. seven months after the judgment and order were granted.

[12] The application for leave to appeal is opposed by the plaintiff.

[13] Mr. Grobler submitted on behalf of the plaintiff that there is a contradiction in the defendant's application in that on the one hand the defendant says that there is a reasonable prospect of success that is why they seek leave to appeal, but on the other hand they are not sure, that is why they ask the court for reasons. To compound the defendant's difficulties, these applications were delivered without any application for condonation despite the lengthy delay.

[14] This application is unfortunate in a lot of respects, including but not limited to being an abuse of the legal process and an incoherent inroad into the plaintiff's rights to justice in his perilous situation.

[15] The application falls woefully short of meeting the parameters which the legislature had in mind when enacting section 17 (1) of the Superior Courts Act 10 of 2013. It accordingly should fail.

[16] I find no reason in this case to depart from the established rule that costs should follow the outcome of the application. The abusive nature of the application, however, deserves censure by the court.

[17] In the circumstances, the following order is made:

The application for leave to appeal is dismissed with costs on an attorney and client scale.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of Judgment: 22 May 2024

On behalf of the Applicant: Adv. Grobler

Duly instructed by: Ehlers Attorneys; Pretoria

Ref: GE.8644GY

TN EHLERS

On behalf of the Respondent: Ms. Elaine Van Zyl

Duly instructed by: State Attorney, Pretoria

e-mail: ElaineVZ@raf.co.za

Ref: RAF2828/2021/CHASAMBA obo /Z04/ E Van Zyl.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 22 May 2024.