THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 397/2023

In the matter between:

ADV W S COUGHLAN N O	**APPELLANT**

and

THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	**FIRST RESPONDENT**
THE REGISTRAR OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	**SECOND RESPONDENT**
THE ROAD ACCIDENT FUND	**THIRD RESPONDENT**
PROFESSOR S RATAEMANE	**FOURTH RESPONDENT**
DR M L MATHEY	**FIFTH RESPONDENT**
DR H LEKALAKALA	**SIXTH RESPONDENT**
PROFESSOR BASIL J PILLAY	**SEVENTH RESPONDENT**

Neutral citation: *Coughlan N O v Health Professions Council of South Africa & Others* (397/2023) [2024] ZASCA 135 (8 October 2024)

Coram: MOCUMIE and WEINER JJA and HENDRICKS, BAARTMAN and MASIPA AJJA

Heard: 29 August 2024

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 11H00 on ## 2024.

Summary: Road Accident Fund Tribunal (the Tribunal) – whether the powers conferred on the Tribunal are limited to determining the seriousness of the injury or extend to the issue of causation – whether in determining the seriousness of the injury, the Tribunal can consider the nexus between the accident and the resultant injury.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Kusevitsky J, sitting as court of first instance):

1 The appeal succeeds with costs.

2 The order of the high court is set aside and substituted with the following:

'(a) The decision of the Tribunal that Mr Daniels' injuries were not serious and do not qualify in terms of the narrative test is reviewed and set aside.

(b) The matter is referred back to the Tribunal which must comprise three psychiatrists and/or three psychiatrists and a clinical neuropsychologist for a decision on the seriousness of the injury.

(c) The issue of the nexus between the Applicant's injuries and the accident is to be determined in the action proceedings already instituted under case number 4183/12.

(d) The first, second and third respondents are to pay the applicant's costs jointly and severally, the one paying the other to be absolved.'

JUDGMENT

Masipa AJA (Mocumie and Weiner JJA and Hendricks and Baartman AJJA concurring):

[1] The appellant, acting as a curator on behalf of Mr Justin Rothney Daniels (Mr Daniels) instituted a claim for damages for injuries allegedly sustained from a motor vehicle accident. The action is defended by the third respondent in this appeal. In the course of the action, the appellant filed an interlocutory application for the review and setting aside of a decision by the fourth to seventh respondents under the auspices of the first respondent which was unopposed and was heard by Kusevitsky J in the Western Cape Division of the High Court, Cape Town (the high court). The high court granted an order which was unclear and unfavourable to the appellant. It is this order which the appellant appeals against with the leave of the high court.

[2] Mr Daniels allegedly sustained injuries from a motor vehicle collision on 19 November 2009. The first respondent, the Health Professions Council of South Africa (the HPCSA), is a juristic person established in terms of s 2(1) of the Health Professions Act 56 of 1974 (the HPA). It is the body responsible for the registration and regulation of health professionals in South Africa.[1] The second respondent is the registrar of the HPCSA, who serves as its accounting officer and secretary (the registrar).[2] The third respondent, the Road Accident Fund (the RAF), is a juristic person established in terms of s 2 of the Road Accident Fund Act 56 of 1997 (the RAF Act) to compensate claimants for any loss or damages wrongfully caused by the driving of motor vehicles.[3]

[3] The fourth to seventh respondents are members of the HPCSA due to their professional registration. The fourth respondent is a professor of psychology at Sefako Makgatho Heath Science University and the seventh respondent is a professor in clinical and neuropsychology at the University of KwaZulu-Natal. The fifth and sixth respondents are psychiatrists in private practice, in Pretoria. Together, these professionals form the Tribunal, appointed by the HPCSA under s 26 of the RAF Act and Regulation 3(8)(b) of the RAF Regulations, 2008, (the Regulations).

[4] Mr Daniels was a pedestrian when he was hit by a motor vehicle in a hit-and-run incident on 19 November 2009. He was able to walk to a police station afterwards but complained of lower back injury and a sore foot. He later presented himself at Tygerberg Hospital, where he was diagnosed with a mild head injury and noted for aggressive and irrational behaviour, which a doctor, Dr J Fourie concluded was attributed to substance abuse. The appellant claims that the bodily injuries sustained by Mr Daniels entitle him to compensation from the RAF in terms of s 17(1)(*b*)[4] of the RAF Act.

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[1] Section 3 of the Health Professions Act 56 of 1974 (the HPA).
[2] Section 12(2) of the HPA.
[3] Section 3 of the Road Accident Fund Act (the RAF Act).
[4] Section 17(1)(*b*) of the RAF Act provides:
'(1) The Fund or an agent shall—
. . .
(*b*) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or

[5] The appellant's claim on behalf of Mr Daniels includes compensation for non-pecuniary loss (general damages). For the claim to be successful, his injuries must be classified as 'serious' in terms of s 17 of the RAF Act. This requires an assessment by a medical practitioner registered in terms of the HPA, as prescribed in s 17(1A)(*b*)[5] of the RAF Act and Regulation 3(1). The criteria for assessment, as stated in s 17(1A)(*a*)[6] and Regulation 3 (1), include a whole person impairment (WPI) rating of above 30% before applying the narrative test. The assessment must comply with the American Medical Association Guides (the AMA Guides).

[6] Mr Daniels was assessed by Dr K Le Févre, a psychiatrist who completed the relevant RAF4 form and reported that Mr Daniels suffered a WPI of 35%, indicating a severe long-term mental and behavioural disturbance. On 24 October 2011, Mr Daniels lodged his claim with the RAF. The RAF then required additional assessment by its own a psychiatrist, Professor T Zabow who also found that Mr Daniels had a WPI exceeding 30% and suffered from severe long-term mental or behavioural disturbance. Professor Zabow noted that the head injury triggered a chronic psychotic illness not previously evident. Both assessments confirmed that Mr Daniels' injuries were classified as serious.

[7] The RAF called for a further assessment by Dr CF Kieck, a neurosurgeon, who disagreed with Dr Le Févre and Professor Zabow. Dr Kieck found that Mr Daniels had not suffered a brain injury from the collision but experienced severe psychotic episodes due to substance abuse involving cannabis and methamphetamine (tik). This conclusion was supported by Mr Daniels' medical history including the hospital psychiatric conclusion by Dr J Fourie who identified substance abuse psychosis and

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damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury. . . shall be paid by way of a lump sum.'

[5] Section 17(1A)(b) of the RAF Act provides:
'(*b*) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).'

[6] Section 17(1A)(a) of the RAF Act provides:
'(1A)(*a*) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.'

schizophrenia, which, he determined, was unrelated to the alleged minor head injury. On 17 July 2013, attorneys for the RAF notified Mr Daniels' attorneys that the RAF rejected Dr Le Févre's RAF4 assessment.

[8] The appellant disputed Dr Kieck's assessment, arguing that it was based on a neurosurgeon's report rather than that of a psychiatrist. He lodged a dispute with the HPCSA registrar as provided in Regulation 3(4) and relied on the assessments by Dr Le Févre and Professor Zabow. Additionally, the appellant obtained a medico-legal report from a clinical psychologist, Ms Mignon Coetzee, who concluded that Mr Daniels' pre-accident drug use did not trigger any psychotic symptoms. She found that the accident marked the sudden onset of a psychotic disorder, with no evidence of major pre-morbid neurocognitive deficit. She concluded that there was no reason to suggest a pre-morbid condition such as schizophrenia. Industrial psychologist Mr Gregory Shapiro also provided a report, indicating that Mr Daniels suffered primary cognitive injuries that restricted his cognitive functioning.

[9] A tribunal was constituted comprising three orthopaedic surgeons and a neurosurgeon to determine whether the injury could be classified as 'serious' (the first tribunal). The appellant was unhappy with its decision. On review, the high court, found that the HPCSA constituted the tribunal irregularly. A second tribunal was established, consisting of two orthopaedic surgeons and a neurologist. It concluded that Mr Daniels' psychosis was due to substance abuse, with no nexus to the accident and a minor head trauma. It also found that Mr Daniels' injuries were not serious and did not qualify for general damages.

[10] Another review was launched with the high court citing that the second tribunal lacked appropriate medical expertise and failed to consider the reports of Dr Le Févre, Professor Zabow, and Ms Coetzee. The review application was unopposed, resulting in a consent order that set aside the second tribunal findings. In terms of this order, the matter was then remitted to the HPCSA to be heard by a new tribunal comprising three psychiatrists and/or three psychiatrists and a clinical neuropsychologist. The order interdicted the Tribunal from making a finding on the causal nexus of Mr Daniels' injury and the accident.

[11] Contrary to the court order, the third tribunal comprised two psychiatrists, a neuropsychologist and a psychologist. After considering all available evidence, the Tribunal concluded that Mr Daniels' injuries were non-serious according to the narrative test. This conclusion was largely based on the compelling opinion of Dr Kieck.

[12] A third review application was launched in the high court. The grounds of review were that:
(a) the third tribunal committed a patent error which rendered the process procedurally unfair;
(b) the tribunal failed to consider the most relevant considerations in arriving at their conclusion;
(c) the totality of the tribunal's findings seems to be based on the opinion of Dr Kieck, a neurosurgeon who is not an expert in the field of psychiatry and therefore lacked the requisite qualifications to express any psychiatric conclusion; and
(d) the third tribunal committed the same error as the second Tribunal by making findings or decisions on the issue of nexus.

[13] Little was said about the procedural irregularity when the matter was presented before the high court. According to the appellant, the Tribunal failed to consider Ms Coetzee's comprehensive report. In her report, Ms Coetzee, having assessed Mr Daniels' head injury and psychological functioning, confirmed that while Dr Kieck ruled out a traumatic brain injury, it is noteworthy that Mr Daniels presented with symptoms such as dizziness, headaches, and sleepiness following the accident. These symptoms were subsequently followed by the acute onset of psychosis. She concluded that the head injury was of a mild concussive nature exacerbated by an Acute Stress Reaction from the trauma of the accident. Although rare, it was well documented in medical literature. She noted no trace of psychosis prior to the accident.

[14] The appellant contended that although the Tribunal mentioned that it considered Ms Coetzee's report, its reasons suggested otherwise. The Tribunal concluded that Mr Daniels' behaviour was attributed to withdrawal symptoms from substance abuse and that the accident did not cause any serious head injury. The

appellant contended further that the tribunal failed to consider the history, which demonstrated that the accident was the underlying cause of Mr Daniels' fallout.

[15] Significantly, the Tribunal found that Dr Le Févre and Professor Zabow's reports were superficial and ignored the history of cannabis and methamphetamine abuse, which caused the hospital admission. According to the appellant, the Tribunal ignored the collateral history that everything arose post-accident. The appellant contended that the Tribunal relied on Dr Kieck's report to arrive at its conclusion and fell into the trap of addressing the issue of causality and/or nexus, which it was not empowered to do, as interdicted by the high court, such conclusion being beyond the Tribunal's powers.

[16] The appellant contended further that the Tribunal's task was to determine whether the effects of the injury were serious concerning the WPI assessment or the narrative test. It was not called upon to decide on the cause of the injury. By addressing the causality issue, the Tribunal acted *ultra vires* its powers as prescribed in Regulation 3(11).

[17] Arising from the decision of the Tribunal, the appellant launched a third review application. It is pivotal to set out the relief sought by the appellant before the high court. It was as follows:

'1. Reviewing and/or correcting and/or setting aside the decision of the Health Professions Council of South Africa Appeal Tribunal, which Tribunal consisted of the Fourth to Seventh Respondents, which decision was made on 19 August 2020, declaring in terms of Regulations (1)(b)(i)(aa), 3(11)(g) and (i) and 3(13) of the Road Accident Fund Regulations, of 2008, that the injuries sustained by the Applicant was classified as non-serious in terms of the Narrative Test.

2. Directing that the issue of the Applicant's psychosis and the nexus thereof to the accident he was involved in, be determined by this Honourable Court in a trial in the event of the Third Respondent disputing this issue.

3. Directing further that in the event of this Honourable Court finding that a causal link exists between the Applicant's psychosis and the accident in question, that the Applicant's injuries are indeed serious, as contemplated in Section 8(1)(c)(ii) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

4. Directing that the Respondent's pay the costs of this application including the costs of two counsel.

5. Granting [the] Applicant such and/or alternative relief as this Honourable Court may deem fit.'

[18] The high court directed its analysis towards whether the Tribunal had failed to consider, or had insufficiently evaluated, the report submitted by Ms. Coetzee. It reasoned that Tribunal's unfavourable ruling did not mean that medical experts overlooked relevant information. The high court further noted that the Tribunal found the reports by Dr Le Févre and Professor Zabow unreliable, specifically highlighting that Dr Le Févre did not consider Mr Daniels' history of substance abuse as the cause of his condition. Consequently, the high court concluded that this ground of review lacked merit.

[19] The high court then addressed what it termed the 'nexus issue'. It correctly stated that the Tribunal's role is to determine whether an injury is serious using the prescribed method. It relied on *Road Accident Appeal Tribunal v Gouws and Another (Gouws)*,[7] which confirmed that the Tribunal's powers under the legislation are narrowly circumscribed meaning that the Tribunal does not have the final say on causation issues. Relying on *Road Accident Fund v Duma and Three Similar Cases (Duma)*,[8] it concluded that the decision on whether an injury meets the threshold of an award for general damages lies within the purview of the RAF, not the court.

[20] The high court acknowledged that it was accepted that Mr Daniels had suffered a mild traumatic brain injury, referring to this as 'medical causation'. It viewed this as a nexus finding that linked the injury to the motor vehicle collision. The Tribunal had concluded that the mild brain injury from the collision did not cause the psychosis, which was deemed substance-induced, with Mr Daniels' symptoms likely stemming from drug withdrawal. The high court regarded this conclusion as merely an expert opinion on the probable cause of Mr Daniels' condition, typical in personal injury claims. It emphasised that while medical practitioners may express opinions on the relationship between the injury and a collision, courts are not bound by these opinions and will make independent decisions. The high court found it was unnecessary for the

[7] *Road Accident Appeal Tribunal and Others v Gouws and Another* [2017] ZASCA 188; [2018] 1 All SA 701 (SCA); 2018 (3) SA 413 (SCA) para 36.
[8] *Road Accident Fund v Duma and Three Similar Cases (Health Professions Council of South Africa as Amicus Curiae)* [2012] ZASCA 169; [2013] 1 ALL SA 543 (SCA); 2013 (6) SA 9 (SCA) para 19.

Tribunal to determine the applicability of the narrative test and concluded that the Tribunal's explanation did not constitute a nexus finding on causation, nor did it exceed its powers. Consequently, the high court dismissed the 'nexus' argument.

[21] Regarding Dr Kieck's suitability as an expert to address the causality of the head injury, the high court found that the Tribunal had determined that Mr Daniels suffered a mild injury and did not base this conclusion solely on Dr Kieck's report. It found that the Tribunal reviewed medical literature to support its findings. It concluded that the appellant's challenge lacked merit. Having found no valid grounds for review, the high court concluded that it lacked the requisite basis to remit the matter back to the HPCSA. Furthermore, the high court, in accordance with the principles articulated in *Duma*,[9] determined that adjudicating the seriousness of the injuries fell outside the scope of its authority.

[22] Consequent upon these findings, the high court made the following order:

'1. The issue of the Applicant's psychosis and nexus thereof to the accident he was involved in is to be determined in the action proceedings already instituted under case number 4183/12.

2. Costs to stand over for later determination.'

It is this order that the appellant now appeals.

[23] The principal issue before us for determination is whether the Tribunal exceeded its authority by addressing the causality between Mr Daniels' psychosis and the accident. The appellant argues that this was beyond the Tribunal's mandate and that the Tribunal's reliance on the report from Dr Kieck, a neurosurgeon, rather than those of Dr Le Févre and Professor Zabow both psychiatrists, was erroneous.

[24] The Tribunal's role is narrowly circumscribed to assessing the seriousness of injuries. It is not tasked with determining the cause of the injury, which is a matter reserved for judicial determination. *Duma* makes it clear that causality is a question for the courts, and the Tribunal's findings should be confined to medical assessments regarding the seriousness of the injury, irrespective of the cause.

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[9] Ibid para 19.

[25] Notably, both Dr Le Févre and Professor Zabow, experts in psychiatry, assessed Mr Daniels as having sustained a serious injury with a WPI exceeding 30%. However, the Tribunal relied on the assessment of Dr Kieck, a neurosurgeon, whose expertise in psychiatric matters is contested by the appellant. Regulation 3(8)(*b*) prescribes the composition of the Tribunal as three independent medical practitioners with expertise in the relevant medical field. While we are not placed in a position to definitively determine whether the Tribunal members met these requirements, there is no evidence to suggest that they did. It remains unclear whether the court order of 19 November 2019 was communicated to the registrar as it was evidently not complied with.

[26] In defiance of the court order, the registrar appointed two psychiatrists, a neuropsychologist, and a psychologist failing to ensure that the Tribunal was constituted as was agreed. One of the challenges raised by the appellant was the Tribunal's reliance on a neurosurgeon over psychiatrists, especially considering that one of those psychiatrists was the RAF's expert. Two psychiatrists agreed on the seriousness of Mr Daniels' injuries, making it logical that experts in the relevant field of psychiatry should have been appointed. Importantly, the Tribunal relied on the neurosurgeon's report which focused heavily on causality, an issue beyond the Tribunal's authority.

[27] While it is within the purview of the Tribunal to determine the seriousness of the injury, they must consider relevant factors and not exceed their authority. The Tribunal's decision appears to pivot on a misapprehension of its powers by delving into the causal link between the accident and Mr Daniels' psychosis. While Dr Kieck's report may have been relevant for assessing the physical aspects of Mr Daniels' injury, his conclusion regarding the causality and psychiatric implications overstepped and should not have been determinative.

[28] It follows that, the Tribunal exceeded its powers by making findings on causality, a matter reserved for the courts. Its reliance on an expert outside the relevant field of psychiatry may have compromised the legitimacy of its decision. However, I am not in a position to determine this issue which should be left to the

medical professionals. In my view, had the Tribunal been constituted as agreed, it would likely have reached an appropriate decision. That said, I am mindful that an appeal lies against the decision of the court and not its reasoning.[10]

[29] What the high court was called upon to determine was whether to review, correct, or set aside the decision of the Tribunal, which classified Mr Daniels' injury as non-serious under the narrative Test. However, the high court did not determine this issue, as is discernible from its order, despite repeatedly mentioning it in its reasoning. It accordingly failed to resolve all the issues which were placed before it for determination.

[30] In *Spilhaus Property Holdings (Pty) Limited and Others v Mobile Telephone Networks (Pty) Ltd and Another*[11] the Constitutional Court held that it is desirable for lower courts to decide all issues raised in a matter before it. Litigants are entitled to a decision on all issues, particularly where they have an option to further appeal, as this benefits the appellate court by providing reasoning on all issues. The high court's failure to pronounce on the whether the Tribunal exceeded its authority in its order constituted a misdirection especially given the significant consequences for the appellant. This issue is crucial given the wording of s 17(1A) of the RAF Act. Without a finding on this issue, the appellant is effectively barred from pursuing a claim for general damages. The Tribunal's finding has effectively closed the door on Mr Daniels' claim for non-pecuniary loss.

[31] Citing *Gouws*,[12] the high court reasoned that the Tribunal's findings on the issue of causation constituted an expression of opinion, which it deemed permissible. In *Gouws,* this Court held that the determination of causation lies solely within the authority of the court and not the Tribunal. The position was encapsulated as follows:
'The medical practitioner who conducts the initial assessment of the seriousness of the injury is not, in making that assessment, precluded from expressing a view on whether the injury was caused by or arose from the driving of a motor vehicle. In the event of the medical practitioner casting doubt on whether there was a link between the alleged injury and the

[10] *Tavakoli and Another v Bantry Hills (Pty) Ltd* [2018] ZASCA159; 2019 (3) SA 163 (SCA) at para 3.
[11] *Spilhaus Property Holdings (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Another* [2019] ZACC 16; 2019 BCLR 772 (CC0; 2019 (4) SA 406 (CC) paras 44-45.
[12] *Gouws* fn 7 para 33.

driving of a motor vehicle, the Fund can decide whether to contest causation or to concede it. In adopting a position on whether to contest causation, the Fund is not limited to the views expressed by the medical practitioner, but may have or acquire other information to inform its decision. In the ordinary course causation is an issue that is ultimately decided by the courts. A dispute between the Fund and a claimant in relation to causation has to be referred to a court for adjudication. When that issue is decided by a court, it does not follow that medical practitioners are necessarily the only experts upon whom reliance may be placed. Courts are not bound by the view of any expert. They make the ultimate decision on issues on which experts provide an opinion.'

[32] This Court went further to say:

'If, after the initial assessment by the medical practitioner, the Fund exercises the option of a rejection of the report, a dispute arises in relation to the correctness of the assessment of the seriousness of the injury by the medical practitioner and where, as far as the Fund is concerned, causation is not in issue, that dispute is left to be dealt with by the Tribunal, which will have the last say on the matter, subject of course to whether that decision is susceptible to judicial review.'[13]

[33] As mentioned earlier, the contestation before the Tribunal is limited to the assessment of the seriousness of the injury by the medical practitioner, and the tribunal's decision is final only in that regard. In *Gouws,* this Court concluded that:

'. . . the power given to the Tribunal in terms of the legislation is narrowly circumscribed. It is not of a broad, discretionary nature, which would allow for further powers to be implied. The Tribunal cannot have the final say in relation to causation. That power is not provided for.'[14]

[34] It further held that if the tribunal were allowed to exercise such powers, it would be oppressive to claimants, effectively denying them access to the courts on an issue that has traditionally been reserved for judicial adjudication.[15] Therefore, what the high court failed to recognise is that s 17A referred to a medical practitioner assessing a patient, not the Tribunal. The roles of the Tribunal and the initial medical practitioner who assessed Mr Daniels are distinct. The Tribunal's mandate is confined to determining the seriousness of the injury, relying on various reports to inform its limited

[13] Ibid para 34.
[14] Ibid para 36.
[15] Ibid para 37.

jurisdiction. However, in this instance, the Tribunal placed undue emphasis on Dr Kieck's report, which improperly conflated the assessment of injury seriousness with causation. Dr Kieck repeatedly attributed Mr Daniels' brain injury to substance abuse or schizophrenia, leading to the conclusion that the injuries were not serious. This approach constitutes an overreach by medical professionals into matters properly within the purview of the courts. By conflating the issue, the Tribunal exceeded its powers and reached an erroneous conclusion which was *ultra vires* and thus cannot be sustained.

[35] On the issue of costs, this appeal is unopposed, as was the high court hearing, though none of the respondents filed a notice to abide. It is important to note that the appellant was compelled to challenge the Tribunal's decision to avoid being non-suited in his claim for non-patrimonial loss. There was a court order outlining the Tribunal's constitution and powers, which was not followed and influenced the outcome of the case. The high court indicated that the costs of the review application would be determined later. This was probably due to its view that the nexus issue was crucial for the Tribunal's determination. Given the lack of opposition, the successful party is entitled to the costs of both the review and the appeal. However, I see no grounds for a cost order against the fourth to seventh respondents, who acted under the auspices of the HPCSA.

[36] In the result, the following order is made:

1 The appeal succeeds with costs.

2 The order of the high court is set aside and substituted with the following:

‘(a) The decision of the Tribunal that Mr Daniels’ injuries were not serious and do not qualify in terms of the narrative test is reviewed and set aside.

(b) The matter is referred back to the Tribunal which must comprise three psychiatrists and/or three psychiatrists and a clinical neuropsychologist for a decision on the seriousness of the injury.

(c) The issue of the nexus between the Applicant’s injuries and the accident is to be determined in the action proceedings already instituted under case number 4183/12.

(d) The first, second and third respondents are to pay the applicant’s costs jointly and severally, the one paying the other to be absolved.’

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M B S MASIPA

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	M A Crowe SC
Instructed by:	Jonathan Cohen & Associates, Cape Town
	Matsepes Inc, Bloemfontein
For the respondent:	
Instructed by:	