

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 20132/21

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|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED: YES/NO |

03 November 2025

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In the matter between:

SANGA LANGSON

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

JUDGMENT

Nthambeleni, AJ

Introduction

- [1] This is an application by the applicant/Plaintiff in the main action, for leave to appeal against the judgment and order of this Court handed down on 12 August 2025, in which general damages in the sum of R650 000.00 were awarded arising from injuries sustained in a motor vehicle accident on 27 December 2018.

- [2] During the leave to appeal there was appearance from the State Attorney's Johannesburg office. The appearance is of no consequence in determination of the appeal as there were no experts appointed by the Respondent/Defendant and their appearance is merely noted for record purposes.

Background

- [3] The Applicant/Plaintiff in the main action, Mr Sanga, was the driver of a motorbike involved in a collision. According to the orthopaedic report of Dr Read, the injuries sustained included:
- a. a right commuted midshaft femur fracture, managed surgically with intramedullary nailing;
 - b. a head injury with a small scalp laceration;
 - c. a facial fracture involving the left maxillary alveolar ridge; and
 - d. a hospitalisation period of approximately eight days at Helen Joseph Hospital
- [4] Dr Read confirmed that the Applicant/Plaintiff experienced ongoing pain and discomfort in the right femur, restricted mobility, and residual cosmetic and functional sequelae. The Orthopaedic hardware remains in situ. He further opined that the Plaintiff suffered a moderate to severe orthopaedic injury with permanent physical impairment, together with psychological distress resulting from the accident and its aftermath.

Grounds of the application for leave to appeal

- [5] The first ground was the challenge on the award of general damages in the amount of 650,000,00 and the second ground was not awarding generals in the amount of R 1 500,000,00 as sought by the Plaintiff.
- [6] The second ground for leave was cited as not giving sufficient consideration to the evidence of Dr. Kelly (Neurosurgeon) that the Applicant/Plaintiff sustained a mild traumatic brain injury.
- [7] The third ground in finding that the Applicant/Plaintiff, having sustained, inter alia, a fracture of the right femur, a fracture of maxilla bone, severe permanent

disfiguring scarring and a mild traumatic brain injury, is not entitled to award in respect of general damages in excess of R 650,000.00.

- [8] The fourth ground raised is not finding that the Applicant/Plaintiff, having sustained inter alia, a fracture of the right femur, a fracture of the left maxilla bone, severe disfiguring scarring, and a mild traumatic brain injury, is entitled to an award for general damages in the amount of R 1,500 000,00.
- [9] The fifth ground raised is in not finding that the authority of *Masemola v Road Accident Fund*¹ was authority for the award of R 1 500,000,00 in general damages and lastly, not sufficiently considering the combined effect of all the plaintiff's injuries as referred on grounds found in the determination of the amount of the award of the plaintiff's general damages.
- [10] Counsel for the applicants further argued that that the awarded amount of R650 000.00 for general damages is too low and not supported by comparable awards. He further argues that the Court misdirected itself in assessing the seriousness of the injuries and their long-term impact.

Test in application for leave to appeal

- [11] Rule 49 of the Uniform Rules of Court dictates the form and process of an application for leave to appeal and the substantive law pertaining thereto is to be found in the provisions of section 17 of the Superior Court Act². The Superior Court Act raised the threshold for the granting of leave to appeal, so that leave may now only be granted if there is a reasonable prospect that the appeal will succeed. The mere possibility of another court holding a different view is no longer part of the test.
- [12] The proper requirement now is that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal. The interpretation of the Rules and the Law has changed and in various cases that have been cited in this judgement, the prevailing view is that the threshold for granting of leave to

¹ 43613/2021) [2025] ZAGPPHC 68 (21 January 2025) ("*Masemola*").

² 10 of 2013.

appeal was raised in the Superior Court Act. Therefore, the former assessment that leave to appeal should be granted if “ there is a reasonable prospect that another court might come to a different conclusion” has fallen by the way side.

[13] The test to be applied in an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts which provides that:

“(1) Leave to appeal may only be given 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 conflicting judgments on the matter under consideration...”.

[14] In the applicant/plaintiff’s notice for leave to appeal it is recorded that there is reasonable prospects that another court “may” come to a different conclusion”. Unfortunately for the applicant/respondent that is not the test as set out in terms of the provisions of section 17 (1) (a) of the Superior Courts Act. The test is whether the appeal “would” have reasonable prospects of success as set out below

“The test for reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants...need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist”;³

[15] The Supreme Court of Appeal set out the application for a test to grant leave to appeal in *Cook v Morrisson and Another*⁴ as follows:

“[8] The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way

³ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 (31 March 2021 at para [10].

⁴ 2019 (5) SA 51 (SCA).

of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list (*Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (A) at 564H – 565E; *Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi* 2017 (2) SACR 384 (SCA) ([2017] ZASCA 85) para 21)."

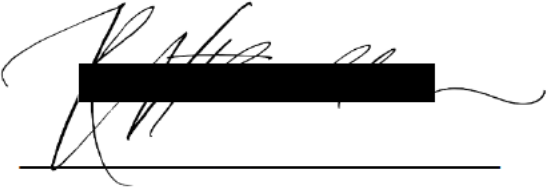
Conclusion

- [16] In the main judgement of the court a quo, this court identified all the injuries that were suffered by the Applicant/Plaintiff in meticulous details. It is therefore, important to state that there was no misdirection in relation to the injuries as suffered by the Applicant/Plaintiff and their *sequalae* as narrated by various experts of the Plaintiff.
- [17] The big elephant in the room is the award of general damages in the amount as sought by the Applicant/Plaintiff in the suggested figure of R 1 500, 000,00 allegedly based on the decision of *Masemola*⁵ cited on the leave to appeal.
- [18] It is trite law, that each and every case must be adjudicated on its own merits and in this matter the referred authority is distinguishable. This Court dedicated a full paragraph on general damages and set out in greater details the reasons and case law as to why an appropriate award for general damages should be the amount of 650 000,00 as awarded.
- [19] The Applicant/Plaintiff failed to pass the test for leave to appeal as set out in the uniform rule 49 as well as all cited binding legal authorities referred to in this judgement. The conclusion is therefore that the award for general damages in the main action was appropriate.
- [20] Therefore, the appellant has failed to pass the rubicon for leave to appeal the award for general damages in this matter.
- [21] I accordingly grant the following order:

⁵ *Masemola* fn 1 above.

20.1 The application for leave to appeal is dismissed;

20.2 No order as to costs.

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**RR NTHAMBELENI
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

HEARD: 23 September 2025

DELIVERED: 03 November 2025

APPEARANCES

For the Plaintiff: Mr Sean Mulligan

Instructed by: Levin Tatanis Inc.

For the Defendant: Mr Ndhlovu

Instructed by : State Attorney's Office, Johannesburg

