



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

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

DATE:

18/11/2025

SIGNATURE

[Redacted Signature]

Case no. A107/2024

In the matter between:

BHEKEPHI NGUBANE

Appellant

and

DEPARTMENT OF EMPLOYMENT AND LABOUR

1st Respondent

COMPENSATION COMMISSIONER

2nd Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, AJ

- [1] This is an appeal against a decision of the Second Respondent delivered on 13 March 2024 in terms of the provisions of Section 91(5) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.
- [2] The grounds of appeal as formulated in the Appellant's Notice of Appeal are succinctly summarised as follows:
 - [2.1] The Compensation Award is so inadequate that it could not reasonably have been made within the provisions of Section 91(5)(a)(i) of the Act;
 - [2.2] The Compensation Commissioner mechanically applied instruction 157 to fix the Appellant's permanent disability at 3% in circumstances where such instruction is only a guide and does not override the Act and further that instruction 157 bears no rational connection to the true injuries by the Appellant;
 - [2.3] The Compensation Commissioner should have given effect to the uncontradicted findings of Dr Mohamed and the Occupational Therapist that the Appellant had suffered permanent disability which rendered her incapable of continued employment.
- [3] From a perusal of the findings of the Compensation Commissioner, read together with the Notice of Appeal it is clear this court, sitting as a court of appeal, is called upon to consider whether the all the evidence available to the Compensation Commissioner were considered *alternatively* properly considered and if such evidence supports the finding of the Compensation Commissioner.

- [4] On 23 October 2025 the Registrar of this court was informed in writing that the record of proceedings from the Tribunal is not available and further that the parties attempted to reconstruct the record and concluded that same cannot be reconstructed. An affidavit from the Legal Administration Officer of the Compensation Fund was provided wherein it is explained that the device that was used to record the proceedings is lost and not available.
- [5] The unavailability of a proper record offence the Appellant's right to a fair trial.¹
- [6] In the circumstances, it is appropriate to order that the matter be remitted back to the Tribunal to be determined *de novo* by a new panel.
- [7] The parties have agreed that a draft order, which was handed up at the hearing of the appeal, be made an order. This order provides for the remittance of the matter as set out above an an agreed order on the wasted costs.
- [8] In the premises, the draft order that was handed up and marked " X" was made an order of court.


A MILLAR J.

I agree


P A VAN NIEKERK AJ


¹ See: *State v Schoombee & Another* 2017 (2) SACR1 (CC); *Muravha v Minister of Police* (179/2022) [2024] ZASCA 11 (30 January 2024)

