

SITHOLE AARON SIPHO v ROAD ACCIDENT FUND

LEGAL SUMMARY

Weideman AJ:

This is a road accident fund matter where most of the issues were agreed to by the parties. The few that remained an issue were liability of the defendant in respect of past hospital and medical expenses, and the quantum of awarded to the plaintiff in respect of his claim for non-pecuniary damages. The defendant requested a postponement of this matter, pending the outcome of the matter that is currently before the Constitutional Court. This request was denied by the court. Also, the defendant requested reasons of the quantum of non-pecuniary damages.

Regarding the request for postponement, the court held that a bare allegation of prejudice was not sufficient, the defendant must satisfy the court that there was prejudice or at least a reasonable probability thereof. The court held that the defendant, for a very long time, knew about the invoices that were submitted regarding the past hospital and medical expenses. The invoices were also confirmed to be reasonable in an affidavit by Dr Schmidt, and this affidavit was admitted as evidence and stood unchallenged. Therefore, the defendant had lost the opportunity to contest those invoices when it failed to do so at a reasonable time.

Furthermore, the court held that based on the principle of retrospectivity it did not matter what the constitutional court would decide on the application before it, as it would not affect the claim and rights of the applicant in the matter that was already before court. A postponement of the plaintiff's relief based on the pending decision of the constitutional court would prejudice the plaintiff and holds no benefit for the defendant.

Furthermore, held that what was relevant was assessment completed by the neurosurgeon, Dr G Marus, who, having examined the plaintiff and having prepared a comprehensive medico-legal report, also applied his mind to the question of Whole Person Impairment and found the plaintiff to have a WPI of 47%. This finding was

not contested and the Defendant, accordingly, accepted that the Plaintiff was entitled to non-pecuniary damages. Ultimately the assessment of non-pecuniary damages is reduced to the opinion of the presiding judge.