



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 01 November 2018
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

RAF v C K (1024/2017) [2018] ZASCA 151 (01 November 2018)

Today the Supreme Court of Appeal (SCA) handed down a judgment in which it upheld an appeal against the order of the Eastern Cape Division of the High Court, Grahamstown. The appeal concerned an award made in respect of past and future loss of earnings in favour of Mr C K, the respondent. The appellant, the Road Accident Fund, while conceding the injuries, contested the quantum of the respondent's claim for future loss of income, contending that the respondent had not, in effect, suffered any loss of income.

The Fund argued that the respondent failed to establish his earnings in R-Tec Motorsport. For this reason there was no ground upon which a court could find that Mr K's past income or future patrimony had been reduced or if it had been reduced, the extent of such reduction. Mr K submitted that prior to the collision he had aspired to be a diesel mechanic, an ambition he would have fulfilled but for the accident.

The High Court found in favour of Mr K. It reasoned that the failure of Mr K to produce evidence relating to his income from R-Tec Motorsport had no bearing on the determination of his future loss of income. Dissatisfied with the decision of the trial court, the Fund appealed to the Full Bench of the Eastern Cape Division of the High Court (the court a quo). One of the contentions in the court a quo was whether the contingencies were correctly determined by

the trial court. The court a quo dismissed the Fund's appeal with costs. The Fund appealed to the SCA. It persisted with the submission that Mr K had not proved that he suffered actual loss of income in the past or that he would suffer such loss in the future.

The majority judgment concluded that there were several factors in this matter which impact on the contingency deduction: (a) the respondent's age at the time of the collision and lack of evidence as to the nature and extent of the work he has done in the past; (b) pre-morbid earnings had been inflated; and (c) residual earning capacity was not considered. Taking into account the above factors, the court applied a contingency deduction of 35 per cent which reduced the future loss earnings from R4 354 766 to an amount of R2 830 597 and added past loss of earnings of R207 540. Consequently, the fund was ordered to pay Mr K an amount of R3 038 137 in respect of past and future loss of earnings.