



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 18 April 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mashinini v The Member of the Executive Council for Health and Social Development Gauteng Provincial Government (335/2021) [2023] ZASCA 53 (18 April 2023)

Today the SCA upheld with costs, including costs of two counsel, an appeal against the decision of the Gauteng Division of the High Court of South Africa, Pretoria (the high court).

On 16 May 2014 the appellant, underwent a surgical procedure at Tambo Memorial Hospital, Boksburg for the removal of the gallbladder (laparoscopic cholecystectomy). During the procedure the appellant sustained a major bile duct and hepatic artery injury. That required emergency management, attempted endoscopic management and a bile duct reconstruction which was performed at Greys Hospital, Pietermaritzburg. As a result of the injury resulting from the failed operation, the appellant had to undergo various surgical procedures aimed at correcting the damage. On 18 January 2017 the appellant instituted an action for damages based on medical negligence in the high court against the respondent, the MEC for Health and Social Development, Gauteng (MEC) and the doctor who performed the failed operation. The appellant claimed for past hospital and medical expenses, future medical expenses, future loss of earnings and general damages.

The MEC did not dispute the appellant's claims, but contended that the court should develop the common law and order that she (the MEC) should be directed to provide such services at Chris Hani Baragwanath Hospital instead of compensating the appellant in monetary terms for future medical and surgical services. The high court accepted the MEC's contention and directed the MEC to ensure that future medical and hospital treatment is rendered to the appellant by the Charlotte Maxeke Johannesburg Academic Hospital as and when required at the same or better level of service than in the healthcare sector. The appellant appealed against this aspect of the order of the high court. She contended that the MEC had failed to discharge evidentiary burden to show that her claim for future medical and hospital expenses which was formulated on the basis of what she would pay at the private healthcare sector, was unreasonable and that such treatment could be rendered at the public hospital at no cost or for less than that claimed by her.

In upholding the appeal, the SCA held that the MEC presented no evidence to counter that of Professor Bozos, which was not contradicted, that State hospitals in general because of the manner in which they operate, are not capable of rendering medical services to patients such as the appellant with complicated clinical conditions which require a direct and immediate access to the specialist surgeons. Nor did she provide any evidence of the cost to the appellant of such a service, if it had been available.

The SCA found that the evidence which was led on appellant's behalf established that she would need medical treatment in future and that the cost of providing such treatment would be in the amount of R879 314, for which she must be compensated in money as the identified medical services would have to be rendered by a private healthcare. As a result, the SCA set aside the decision of the high court and

ordered the MEC to include in the amount awarded to her for damages, the sum of R879 314 for future medical and hospital expenses.

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