



THE 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: 2 June 2016

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

Neutral citation: *Botha v Road Accident Fund* (436/2015) [2016] ZASCA 97 (2 June 2016)

The appellant in this case was severely injured in a motorbike accident. He sued the respondent, the Road Accident Fund, for damages and the matter proceeded to trial. At the hearing, it was agreed that the RAF was liable in full for whatever damages the appellant had suffered. The parties negotiated a settlement that the appellant's general damages were R1 million while his past hospital and medical expenses were R236 922.70. The only outstanding item of his damages was a claim in respect of future loss of earnings. This claim was separated from the other heads of damage and the hearing on that issue postponed for later decision, with an order being issued by consent that the RAF pay the appellant R1 236 922.70 in respect of the agreed heads of damage. This amount was paid to the appellant shortly thereafter.

The appellant's attorneys then ascertained that through a mistake on their part they had failed to include additional past hospital and medical expenses in the appellant's claim, and that the actual loss suffered by the appellant in respect of those costs was in fact R784 278.78. The appellants then applied under Uniform rule 42 for an order rescinding or varying the court order that had been granted, alleging that there had been a mistake common to the parties which rendered their settlement agreement void. This application was dismissed and the appellant appealed to the Supreme Court of Appeal.

The Supreme Court of Appeal today dismissed the appellant's appeal. It found that there had not been a 'common mistake' but merely a mistake on the part of the appellant's attorney, and that there was nothing to suggest that the RAF realised that there had been a real possibility of a mistake in the amount of the expenses the appellant's attorney had requested should be paid. This was a misrepresentation by the appellant that misled the respondent and had resulted in the conclusion of the settlement agreement which had been made an order of court. In the light of various authorities, the appellant could not rely on his own mistake to avoid the contract. The court also held that there had not been an underlying common but mistaken assumption in regard to the actual past hospital and medical expenses, and that the argument in that regard had been no more than an attempt to clothe the unilateral mistake made by the appellant in another garb. The appeal was therefore dismissed.

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