



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Leon ST Leger Bouttell v Road Accident Fund (324/2017) [2018] ZASCA 90 (31 May 2018)

From: The Registrar, Supreme Court of Appeal

Date: 31 May 2018

Status: Immediate

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

Today, the Supreme Court of Appeal (SCA) in a unanimous judgment dismissed an appeal brought by Mr Leon St Leger Bouttell (the appellant), against a judgment of the Gauteng Division of the High Court, Pretoria (the high court).

The issue at the centre of the appeal concerned the question of whether voluntary contributions to a retirement annuity fund can be taken into account when calculating the loss of future earning as provided for in section 17(4) of the Road Accident Fund Act.

The appeal stemmed from the following factual background. The appellant was involved in a motor vehicle collision and sustained bodily injuries as a result thereof. He then instituted a claim against the Road Accident Fund (the respondent) for compensation. The appellant and the respondent settled all heads of damages for which the respondent was liable, save for, that of loss of future earnings. Prior to the motor vehicle collision, the appellant had elected to voluntarily make contributions to a retirement annuity from his gross income. These contributions were not compulsory and did not arise from an employment contract, such as pension fund contributions. The appellant sought to claim the loss of these contributions as part of his loss of earnings. The respondent denied its liability to include such contributions in calculating his loss of earnings. They raised the argument that contributions to a retirement annuity were not analogous to contribution made in respect of a pension fund, which contributions are included in calculating loss of future earning.

This aspect of the appellant's claim was then litigated in the high court. The high court found in favour of the of the respondent, affirming the respondent's contention that unlike in the case of contributions

to an employer pension fund, voluntary contributions to a retirement annuity do not fall within the scope of loss of future income.

On appeal to this court, the appellant argued that the exclusion of voluntary contributions to a retirement annuity fund from the calculation of loss of future earnings amounted to discrimination, since contributions to an employer pension fund were included in such calculations of loss of future earning.

It is this court's finding that contribution to an employer pension fund are distinguishable from contributions to a retirement annuity. The court held that the former were not voluntary and were sanctioned by a contract of employment, as such formed part of one's employment benefits while contributions to a retirement annuity fund amounted to an investment. Owing to this material difference between a pension fund and a retirement annuity, the court rejected the argument of discrimination.

As a result, the appeal was accordingly dismissed with costs and the order of the high court was upheld.

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