

SOUTH AFRICA / JUDGMENT

J L v Rand Mutual Assurance (113062/19) [2019] ZAGPJHC 392 (15 October 2019)

[2019] ZAGPJHC 392

COURT

South Gauteng High Court, Johannesburg

BEFORE

Van der Linde, P Phahlane

CASE / FILE NUMBER

113062/19

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

GLD

CASE NO:113062/19

RMA

CASE: NO: J/1260099/1/066A/09/EMP

Not

reportable

Not

of interest to other judges

Revised

15.10.2019

In

the matter between: L,
 J Appellant
 And
 Rand
 Mutual
 Assurance Respondent

JUDGMENT

Van der Linde, J:

Introduction

and the, Appellant's case

- [1] This is an appeal which is brought in terms of section 91(5)(a)(i) and (ill) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA" or "the Act", as appropriate). Those paragraphs respectively allow an appeal against a decision of the statutory tribunal there envisaged regarding "the Interpretation of this Act or any other law"; and "the question whether the amount of any compensation awarded is so excessive or so inadequate that the award thereof could not reasonably have been made."
- [2] The Act is concerned with the awarding of compensation to workmen who suffer an injury in the course of their employment. Its general scheme to establish degrees of disablement with reference to the nature of the injury sustained, and to fix amounts of compensation with reference to those degrees. So for example the loss of a particular body part will generally result in a fixed amount of compensation; and the loss of two body parts will generally result in a greater amount of compensation. The maximum compensation payable under the Act is a life annuity of 75% of the workman's wages at the time the injury was suffered. This would apply when the workman is regarded as being 100% permanently disabled.
- [3] The Act provides for the determination of the degree of disablement and for an objection to that determination. The objection is heard by a tribunal established in terms of the Act, and an appeal lies against the determination of the tribunal to the High Court, as if the tribunal were a Magistrates' Court. The appeal is limited, as I have indicated, and the effect of this limitation is that there is no appeal against a finding of fact by the tribunal.
- [4] In this case the appellant argues that the tribunal erred in not finding that he was permanently disabled for having suffered from PTSD, the argument being that in arriving at that finding, the tribunal reasoned that the appellant was required to have undergone

medical treatment for a period of not less than 24 months before he could be determined as permanently disabled. Allied to this argument, the appellant submits that the tribunal erred when it held that the PTSD had not stabilised, this despite the medical evidence by Dr Ramjee and Dr Van der Merwe, two experts that were called for the appellant.

- [5] The appellant stresses that the respondent, although initially disputed by it, accepted only on 24 March 2017 that he suffers from occupational PTSD arising from the work accident, a date which is substantially after the date of the accident 01116 April
2009. The appellant points out that in 2016 this court in case number C3004/2016 held that there was insufficient medical evidence to show that the appellant then suffered from PTSD; but that court left the door open for the appellant to do so at a later stage. That has now occurred because the respondent has now finally accepted that the appellants suffers from accident-related PTSD.
- [6] Additionally, in 2017 the appellant suffered from a heart attack which he contends was diagnosed as being a function of the persistent presence of PTSD. The appellant commenced receiving treatment. It was upon receipt of this new evidence that the respondent accepted liability for PTSD arising from the work accident but declined to provide additional compensation. It denied too that the appellant's heart condition was related to the PTSD.
- [7] In terms of the definition of "permanent disablement" in section 1 of COIDA, an employee is permanently disabled when he is permanently unable to perform any work as a result of an accident or occupational disease. The appellant argues that PTSD is an occupational disease in terms of section 65(1)(b) of COIDA because although not specifically listed In the first column of schedule 3, It has been recognised as a disease which can arise out of the course and scope of employment; see *Odayar v CC 2006 (6) SA 202 (N)* at [17].
- [8] There a full court, Incidentally accepting that there Is no appeal on facts and relying on *Mouton v The State* (unreported judgment of Traverso DJP, dated 30 August 2002, case No A38/2002, CPD}, held that the tribunal had misinterpreted the law by ignoring the provisions of the Act when purporting to apply the circular relative to PTSD.
- [9] The appellant points out that the commencement date of a disease In terms of COIDA is regarded in terms of section 65(5) as the date on which the medical practitioner diagnoses the disease. The appellant argues that in this case the first diagnosis of PTSD was done already on 20 September 2009 by Dr DJ van der Berg.
- [10] So far as concerns the determination of compensation, the appellant relies on section 49(2) which in turn refers to schedule 2 which contains specific percentages for permanent disablement. This schedule, referred to colloquially as a "meat chart": lists various percentages with reference to identified permanent disablement. However where an injury does not fall squarely within

schedule 2, or where dealing with an occupational disease in terms of schedule 3, the Director General acquires a discretion under section 49(2)(b) which is to be exercised in a manner consistent with the schedule 2 guidelines.

- [11] The appellant argues that some guidance may be found in the items that are listed as "any other injury causing permanent total disablement", which puts an employee at 100% disability. The appellant points out that once the percentage of disablement is fixed, one proceeds to schedule 4 of COIDA to determine the percentage compensation payable. The appellant says that the process in terms of schedule 4 is mechanical. Item 4 there provides that if there is permanent disablement of 100% then the employee is entitled to a monthly pension of 75% of his monthly earnings at the time of the accident subject to maximum and minimum compensation there identified.
- [12] In developing this argument the appellant submits that the tribunal failed properly to consider the evidence before it and incorrectly considered itself bound by circular 172 relating to PTSD. The first question which arises is whether this is a matter of law or whether it is an appeal against a factual finding dressed up as a matter of law. The appellant points out that the tribunal ruled that in terms of clause 4.2 of circular instruction 172, permanent disability shall only be determined after 24 months of optimal treatment; and it ruled that this provision was peremptory. The appellant submits that this is incorrect because circular 172 is not a binding regulation but is a mere guideline issued by the Director-General under section 49(2)(b).
- [13] The appellant argues that the application of this guideline must depend on the facts of the case. If a person is for example a paraplegic, then it would be nonsensical to wait for two years treatment before it is determined that the person is permanently

disabled, because the two years treatment will make no difference at all. The appellant relied on the respondent's own assessor (Dr Van der Merwe, called by the appellant as a witness in the hearing) who said that the appellant has PTSD and it was not getting better. She said that the appellant should be awarded permanent disablement because to drag it out for another year just to be technical is just not reasonable.

- [14] This evidence was rejected by the tribunal on the basis that it did not align with circular 172. The appellant relies on Odayar and also Healy v Workmen (CA145/07)[2008]ZAECHC 167 for the proposition that guidelines and circulars cannot overrule the Act itself and its schedules. He submits that in his case one is dealing with a PTSD claim arising from a disease which arose in 2009; and he submits that this has ultimately become common cause.

- [15] In oral argument before us, Mr Laws for the appellant stressed that as regards the appellant's heart condition, the tribunal plainly erred in relying on an academic article, which had not been put to the appellant and his witnesses during the hearing, for its conclusion that the appellant had not succeeded in discharging the onus of showing that he was suffering from the particular condition, known as Takotsubo Cardiomyopathy ("TCM") or - colloquially - "broken heart syndrome".
- [16] It was submitted that the evidence of Dr Kok clearly established that the appellant was suffering from TCM, and that this was a result of the PTSD. It was made clear that this finding was essential for the appellant because, if successful, it would entitle the appellant to recover compensation for the medical treatment to be received for his heart condition.
- [17] It was submitted that this court was free to conclude that the appellant was suffering from TCM, and thus to correct the finding of the tribunal a quo, because the fact that the tribunal relied on the academic article without first putting it to the appellant, constituted an incorrect

Interpretation of the Law of Evidence. That being so, on the argument, this court had jurisdiction under section 91(5)(a)(i) of

the Act.

- [18] The appellant argued, as regards the PTSD, that the tribunal had erred in slavishly following the prescripts of the circular
- in particular its requirement for 24 months treatment before permanent disability could be assessed - in concluding that the appellant had not shown that he was suffering from PTSD as a permanent condition.
- [19] It was argued that the evidence of Dr Van der Merwe should have been accepted, namely that the appellant was suffering from PTSD, that his condition had become stabilised, and was permanent. This was also the evidence of the appellant's expert witness Dr Ramjee, on whom the appellant also relied. This meant - so went the argument that the tribunal should have but did not assess the appropriate compensation due to the appellant.
- [20] Concerning the amount of compensation payable, it was submitted that the court had jurisdiction under section 91(5)(a)(iii) to assess the compensation payable, because the tribunal had failed to make any award of compensation at all; and no award is "so Inadequate that the award thereof could not reasonably have been made", for the purposes of that paragraph. The appellant relied on the evidence of Dr Ramjee for the submission that the tribunal should have assessed the degree of permanent disability as a result of the PTSD at 70% which, together with the 31% already assessed in respect of the ankle Injury, would mean that the appellant was entitled to be regarded as 100% permanently disabled. On this score, the appellant eschewed the evidence of his own witness, Dr Van der Merwe, who would have assessed the degree of permanent disability at a substantially lower percentage.

The respondent's case

- [21] The respondent, for its part, Identifies three issues on appeal. The first is whether the process set out in the circular is consistent with the Act; the second is the appropriate rate at which to compensate permanent disability due to PTSD; and the third is whether there Is a causative link between the appellant's heart condition and PTSD.
- [22] As to the first issue, the respondent accepts that It is liable to compensate the appellant in respect of the PTSD. It accepts too that appellant suffered the PTSD as a result of the accident back in 2009. However, it contends that the appellant's position had not become stabilised "in a manner contemplated by the circular as he had not undergone 24 months of optimal treatment."
- [23] The respondent argues that the circular is consistent with the Act, since the Act does not require "immediate assessment of permanent disability", and further, the Act "does not contemplate a scenario where an injured workman could undergo treatment to minimise the extent of that permanent disability." The respondent argues that the Act contemplates compensation for both temporary disablement and permanent disablement. Permanent disablement is defined in section 1 of the Act as, "in relation to an employee and subject to section 49 means the permanent Inability of such employee to perform any work as a result of an accident or occupational disease for which compensation is payable".
- [24] The respondent points out that compensation for permanent disablement Is regulated by section 49 of COIDA. That section deems as permanently disabled, to the degree set out in the second column of schedule 2, an employee who has sustained an Injury as set out in schedule 2. Schedule 2 lists Identified injuries, all of which are of a physical nature. As pointed out by the respondent's counsel, that schedule then allocates a degree of permanent disablement, by percentage, as a result of these injuries.
- [25] But schedule 2 also provides for "any other injury causing permanent total disablement." "This is then deemed to be assessed at 100% permanent disablement. Counsel submits that the degree of permanent disablement ultimately allocated for the non-listed injuries must not jar with the guidelines in schedule 2 of the act.
- [26] But the respondent submits that it is a valid conclusion to be drawn that the Act does not require an Immediate assessment of permanent disability. The respondent also accepts that the circular is no more than an internal memorandum or a guideline. The respondent concludes on this part of the argument that the respondent's position was simply that It would treat the appellant's condition as temporary until he had been optimally treated (24 months) for PTSD. This would enable the appellant by law to receive a pension for temporary disablement until his position would have become stabilised. In the meantime, he would undergo psychotherapy which would reduce the disablement from which he was suffering. The respondent accepts that the fact that the appellant has suffered from the PTSD since 2009 does not lead to the conclusion that the PTSD Is permanent, and it submits

that further treatment “could have reduced” the degree of his disablement.

- [27] As to the second issue, that is the degree of disablement resulting from the PTSD, the respondent submits that the tribunal did not make a finding on this score. It submits that the tribunal did not assess the degree of impairment and so It could not have assessed the compensation payable. If any order is to be made in regard to permanent disablement, then this court ought to refer the matter back to the respondent for its decision regarding the extent of the permanent disablement.
- [28] As to the broken heart syndrome, the respondent points out that it is common cause that the appellant suffers from a heart condition. However, the respondent challenges the diagnosis of TCM, saying that It rested solely on the evidence of Dr Kok. It submits that the problems with her evidence were legion and that In particular, as a specialist physician, she was not appropriately qualified to diagnose TCM.
- [29] At the hearing Mr Sibanda for the respondent argued that the reference by the tribunal to the academic article was only en passant; the tribunal concluded that the diagnosis of Dr Kok was only tentative and it was also not satisfied with the expertise of Dr Kok. It viewed critically the fact that she had not referred these diagnoses to the two cardiologists whose angiograms did not confirm TCM.
- [30] As to the PTSD, Mr Sibanda submitted that in this particular case the tribunal was justified In Insisting that the circular's 24 months treatment first occur before a final assessment as to the permanency of the disability was made, precisely because PTSO Is not a tangible and easily empirically determinable condition; and also because the appellant had not undergone any period of continuous medical treatment for this condition during the period between 2009 and 2017.
- [31] Further, Mr Sibanda submitted that by virtue of section 73 (2) of COIOA, the respondent was entitled to explore means that could legitimately lead to a commercially more palatable solution to the appellant's condition. If the treatment could potentially ameliorate the appellant's PTSD, then the respondent had the right to explore the effects of such treatment before assessing finally whether the appellant's condition was permanent.
- [32] Mr Sibanda also stressed that he was not conceding that this court had the jurisdiction to overturn the tribunal on the TCM finding, because it was a factual finding in respect of which there was no appeal. He submitted that, even If the court had jurisdiction to entertain the appeal concerning the PTSD, then all it could to was – assuming it concluded that the condition was permanent – to refer the matter back to the respondent to assess the extent of the compensation payable to the appellant.

[33] There was no appeal available In this regard, because section 91(5){a}(III) did not avail; It would be a stretch of language and logic, so he in effect submitted, to hold that because the tribunal made no assessment at all, and no award at all, of compensation In respect of the PTSD, therefore the award (nil) was so unreasonable that a court had jurisdiction under that paragraph to Interfere.

Discussion

[34] As I see It, and I elaborate on this below, this appeal must be decided along the following lines. First, as regards the TCM, it should be examined whether the court has jurisdiction at all to set aside the finding of the tribunal. After all, the jurisdiction Is limited to setting aside an incorrect Interpretation of the Act or any law. To argue that the tribunal erred because It arrived at a factual finding which offended the application of the Law of Evidence seems to me to be Inconsistent with the intention of the legislature. If it were so that jurisdiction was established every time such a tribunal incorrectly applied the requirements of the Law of Evidence, then the notion that the tribunal ought to be the final arbiter of fact can be brushed aside. Indeed, in this case the tribunal did not actually interpret the Law of Evidence. It simply referred to in article which it did not place before the parties.

[35] No interpretation was involved. It simply (potentially} applied the rules of evidence incorrectly, just as it would have done had it incorrectly assessed the probabilities and had it come to a conclusion different to that which a civil court, assessing the probabilities correctly, might have come. As I see it therefore there is no scope for this court to interfere in the finding of the tribunal concerning the TCM.

[36] Regarding the PTSD, the first issue is whether in this case the 24 month period of prior treatment before final assessment should have been Insisted upon. It is so, as we were informed from the Bar, that by the time this appeal was heard, that period had already lapsed and the appellant had already been invited for final assessment of his PTSD condition. But when the tribunal heard the matter, the period had not yet elapsed. We have to decide the matter as It was before the tribunal.

[37] I am inclined to the view that given the passage of time between 2009 when the injury occurred and when the matter came before the tribunal, strict adherence to the 24 month period was not indicated. It is so that the appellant might not have received consistent

treatment for the PTSD during that period. However the tribunal did have the evidence - which It could not legitimately criticise on this score - that by this time the appellant's PTSD was unlikely to change. As will appear more fully below, the reason the tribunal held against the appellant on this score was not factual; it was because It concluded that the circular was immutably binding on it and on the appellant.

[38] The probabilities support that evidence; the appellant will have had many years to come to terms with the accident and the physical Injury to his leg sustained in it, and yet the PTSD persisted. In those circumstances to insist yet again on a delay in finalising the extent of the appellants permanent disability seems to me to be too rigid and application of a policy document would otherwise serves a good purpose.

[39] My inclination would therefore be to hold that this court has jurisdiction to conclude, on the basis of section 49 of the Act

properly Interpreted, that the appellant was permanently disabled as a result of the PTSD; and that the tribunal Incorrectly interpreted COIDA, specifically section 49, In not so concluding Itself.

[40] This would imply that the question of the assessment of the appropriate compensation will not have been made yet by the respondent. The appellant argued that this court should Itself make that assessment under section 91(5)(a)(iii) of COIDA. But I agree with Mr Sibanda that since neither the respondent nor the tribunal purported to assess the amount of compensation payable to the appellant in respect of the PTSD, this court has no jurisdiction to make that assessment. I would therefor leave aside the question whether in any event sufficient evidence was placed before this court to make such an assessment.

Jurisdiction

[41] Having indicated the pathway of the reasoning of this judgement, I now elaborate. This appeal can only be brought on two bases in the present context: if the tribunal incorrectly Interpreted COIDA (or any other law) (section 91(5)(a)(i)); or if the amount of any compensation awarded is so excessive or so inadequate that the award thereof could not reasonably have been made (section 91(5)(a)(iii)).

[42] What is the Impact of these jurisdictional constraints on this appeal? Here, although not Initially so, it was common cause by the time of the appeal that the appellant was suffering from PTSD caused by the accident. What is not common cause Is whether an award could be made In respect of the PTSD given that the tribunal considered that - as envisaged in the circular- it could not be said that the condition had been stabilised for a period of 24 months.

[43] What must be considered is whether the fact that the tribunal appears Inexorably to have applied the circular, without considering whether the evidence before it already established a permanent disability, qualifies as a matter of interpretation of COIOA "or any other law". The circular seems to have had In mind to ensure that the PTSD condition would not Improve and that Is why it drew the line In the sand at 24 months' treatment.

- [44] But it would also seem that the medical evidence, particularly that of Dr Kok and Dr van der Merwe, was that the appellant's PTSD was here to stay. Any instability that persisted was related not to whether the PTSD was there to stay; the instability was another way of describing the effects that the PTSD had on the appellant: It fluctuated - at times It would be better, and at times It would be worse, given the appellant's self-death attempts.
- [45] What that raises is whether this assessment by the tribunal was a factual finding, or whether It could be said that it was a finding concerning the interpretation of COIDA "or any other law". I do not believe that it can be said that the circular is "any other law". The Director-General issued the circular and published it In the Government Gazette. He/she did not purport to do so under any powers granted to him under COIDA.
- [46] Indeed, as was held in Odayar:

"[16] The Act does not confer upon the Director-General of the Department of Labour the power to Issue regulations. Despite being published In the Government Gazette, the circular is no more than an internal memorandum setting out guidelines on the manner in which compensation claims relating to post-traumatic stress disorder ought to be dealt with."

- [47] In the context of departmental policy, Harms, JA (then) said in Akoni Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd, 2001 (4) SA 501 (SCA) at [7]:

"I prefer to begin by stating the obvious, namely that laws, regulations and rules are legislative instruments, whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise the separation between Legislature and Executive will disappear. Compare Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others [1995] ZACC 8; 1995 (4) SA 877 (CC) (1995 {10} BCLR 1289) in para [62]"

- [48] The circular does not purport to be issued in terms of any provision of the Act. It purports simply to be an attitude which the Department should consider assuming in dealing with PTSD cases. If the Director-General did not have express statutory power to issue this circular, then it was barely a policy document which did not bind anyone but was a mere pointer to the preferred exercise of a discretion. The consequence, as I see it, is that the circular did not constitute subsidiary legislation and therefore, for purposes of the definition of "law" in section 1 of the Interpretation Act 33 of 1957, it did not qualify as "Any law; proclamation, ordinance, Act of Parliament or other enactment having the force of law".
- [49] In its award, the tribunal certainly gave no indication that it regarded the 24 month period as a mere indicator, nor that It did anything other than unquestioningly to apply the prescription of the circular. It did not itself examine, independently, whether the PTSD had more probably than not become stabilised, given that the appellant had been suffering from it for so many years. It will be recalled that the respondent submitted that the mere fact that the appellant had been suffering from PTSD for so long did not mean that his condition had

become permanent, and that his degree of disablement could not have been reduced. I believe the answer to this submission is that there was no credible evidence to support this proposition. Against it is the fact of the passage of so many years, coupled with the medical evidence on the appellant's behalf that his condition was likely remain unchanged.

[50] If the circular Is a mere policy document, as I believe it is, then the tribunal potentially erred because it, In effect, Interpreted

COIDA itself, especially section 49(2)(b), as being subordinate to the 24 month period specified in the circular of what is no more than a policy document, and then this was an error In the interpretation of COIDA, as envisaged In section 91(5){a}(i). This court would then have the power to interfere in that finding.

[51] If this analysis is correct., then the tribunal erred and the correct approach ought to have been for the tribunal to have concluded that on the facts of this case the appellant's condition had become stabilised; and that his condition was permanent PTSD, leaving only the question of the proper assessment of the extent of the permanent disablement.

[52] It is in this context that the respondent's submission, that the tribunal never actually assessed the extent of the disablement, is pertinent. On the respondent's submission, the matter ought to be referred back to the respondent for this reason. The appellant argued that there was little value in referring the matter back to the tribunal. It had the opportunity to make an award which fixed the extent of the appellant's permanent disablement. The appellant has been before the tribunal twice already, and a further protracted delay does not serve the interests of justice.

[53] There may be merit in these submissions. But as I see it, the appellant's argument conflated principles of Administrative Law with Issues of jurisdiction for purposes of COIDA, and - at a conceptual level - of separation of powers. This court is not sitting in review of administrative action; it is sitting in a statutory appeal, and its powers are confined to those that are conferred upon it by the Act.

[54] The respondent has not yet assessed the extent of the permanent disability of which the appellant is suffering. Only once it has done so, and if the appellant objects to that assessment, does an appeal lie to the tribunal; and thence to this court. This preordained pathway has not been followed, regrettable as the implied delay may be.

[55] This conclusion also forecloses the appellant's argument that no award is so inadequate an award that it could not reasonably have been made, and that section 91(5){a}(iii) Is engaged for that reason. If this submission were correct, then an appeal would lie even where the tribunal held that on the facts the workman was not Injured at all. Section 91(5)(a)(iii) rather envisages that the tribunal in fact finds an Injury, and then engages upon the question as to the appropriate compensation In respect of the injury. That has

not occurred here.

- [56] The debate in the evidence and before us about whether the appellant was suffering from "broken heart syndrome" and if he does, whether this condition is a function of the accident, is pertinent in the present context. The tribunal found that the appellant had not discharged the onus of showing either. In doing so, it referred to an academic article which was not put to the appellant's witness when she testified.
- [57] As indicated, the appellant's argument was that this failure offends the Law of Evidence, and so was justiciable by this court under section 91(S)(a)(i) of COIDA. No specific rule of the Law of Evidence was relied upon, but it may be accepted for present purposes that as a general proposition it is fundamental to our adjectival law that a party be given the evidence intended to be relied upon against it.
- [58] But does that consideration apply here? In my view not, for the following reasons. First, one is not concerned here with the question whether some rule of the Law of Evidence was breached; one is concerned with a far narrower question, which is whether the conduct of the tribunal in referring to an extraneous academic article in support of its conclusion - assuming it to be offensive
- involves a question of interpretation of COIOA or any other law. As I have indicated, in my view it does not.
- [59] Second, if any breach of any rule of the Law of Evidence were appealable, it would emasculate completely the notion that no factual appeal *per se* lies, because a mere incorrect assessment of probabilities would qualify. Third, the tribunal did not, in fact, find against the appellant on the basis of some piece of evidence that was not put to the appellant's expert. It referred, in its reasoning, to what was contained in an academic article. Being a specialist tribunal, it was entitled to take its own knowledge into account. It follows that I believe that no appeal to this court lies against the tribunals' findings in regard to the broken heart syndrome.
- [60] That leaves the question of costs of the experts that testified before the tribunal. The argument here was that the fact that they acted *pro bono* did not disqualify them from being awarded their fees. On the facts of this case, that appears to be correct, given the terms of the appellant's employment of its lawyers. These appear from paragraph 2 of the Special Power of Attorney and Mandate, but this arrangement may be limited to the appeal only.
- [61] However, the appellant relied also on an unreported judgment of Steenkamp, J (whose untimely death is mourned) in the Labour Court (Cape Town) in *Zeman v Quickelberge and Another*, case no C45/2010. At paragraph 71 to 103, after a thorough analysis, the learned judge concluded that there was no objection in our law to a favourable costs order being made to a litigant who is represented on a *pro bono* basis; and that, to the contrary, the authority is in favour of the proposition. With respect to the learned judge, I would support his analysis.

[62] As to costs, I believe the appellant was substantially successful. I take into account the length of time before the respondent conceded the causative PTSD, and the conclusions reached concerning the permanency of that condition. I do not believe that a special costs order is justified.

[63] In the result I would suggest an order as follows:

- (a) The appeal is upheld to the extent set out below.
- (b) The finding and orders of the tribunal are set aside, and there are substituted for them the following.
- (c) It is declared that the appellant is permanently disabled by the condition of Post Traumatic Stress Disorder, and that this condition is a consequence of the injury he sustained in the accident he suffered in April 2009.
- (d) The question as to the extent of the appellant's permanent disablement is referred back for assessment in terms of the Act.
- (e) It is declared that this court has no jurisdiction to entertain an appeal against the findings and order of the tribunal relating to the appellant's asserted TCM condition, also known as "broken heart syndrome", and those findings in paragraph 44 of the tribunal's judgment remain unaffected by this order.
- (f) It is declared that the appellant's experts are entitled to recover their experts' qualifying fees for the hearing, and the hearing fees.
- (g) The respondent is directed to pay the appellant's legal costs before the tribunal, as well as his costs of appeal.

Date hearing: 15 October 2019

Date Judgment: 25 October 2019

WHG van der Linde

Judge, High Court

Johannesburg

I agree

P Phahlane

Acting Judge, High Court

For the appellant:

Adv Michael Laws

Instructed by:

Richard Spoor Incorporated

Appellant's Attorneys

7 Morroccan. Building

Bagdad Centre

White River

C/o Richard Spoor Inc.

S Sherbone Street

Parktown

Tel:

(011) 482 6081

Fax: 086 558 5624

Email: Alex@rslnc.co.za

Ref: Mr A Spoor

For the respondent:

Adv Mabasa Sibanda

Tshisevhe Gwina Ratshimbilani Inc.

Respondent's Attorneys

6th Floor, Vdara Building

41 Rivonia Road, Sandhurst

Sandton

Tel:

(011) 243 5027

Email: pmuda@tgrattorneys.co.za

Ref: Matod1I Ratshombilani/Precious Mudau/MAT 2776

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2019/392.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/j-l-v-rand-unknown-topic-agpjhc-2019>

Prepared on 10 October 2026 · Esheria