

SOUTH AFRICA / JUDGMENT

Rheeder v Road Accident Fund (18859.2010) [2013] ZAGPPHC 351 (25 November 2013)

[2013] ZAGPPHC 351

COURT

North Gauteng High Court, Pretoria

BEFORE

TM Makgoka

CASE / FILE NUMBER

18859/2010

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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 18859/2010

Date: 25 November 2013

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

WC RHEEDER.....Applicant

and

ROAD ACCIDENT FUND.....Respondent

JUDGMENT (Leave to appeal)

MAKGOKA, J

- [1] This is an application for leave to appeal, brought by the appellant (plaintiff in the trial) against an order of the judgment of this court handed down on 6 September 2013, in terms of which no award was made in respect of the applicant's claim for loss of earning capacity, as well as the costs order in terms of which the costs of senior counsel was not ordered. The application is not opposed by the respondent (the defendant in the trial).

- [2] The test applicable whether or not to grant leave to appeal, is trite and well settled. It is whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. A corollary consideration is that leave to appeal is not granted for the mere asking. A proper case has to be made out.
- [3] The applicant seeks leave to appeal on an aspect which falls within the sole discretion of the trial court - determination of damages. It is trite that the quantification of damages is pre-eminently a matter within the judicious discretion of a trial court. The appeal court's power to interfere with the exercise of such discretion is circumscribed to instances where the exercise of the discretion is vitiated by material misdirection or by application of a wrong legal principle, or where there is a striking disparity between the amount awarded and that which the appeal court would have awarded, had it been the trial court. Simply put, unless there has been a material misdirection on the part of the trial court, the court of appeal the court of appeal is unlikely to interfere with a discretion, properly exercised.
- [4] In the present application, the applicant alleges no material misdirection in the manner the trial court analysed the claim under the heading 'Loss of earning capacity'. In paragraph of the notice of application for leave to appeal, reference is made to the case of *Santam Versekeringsmaatskappy Bpk v Byleveldt* 1973 (2) SA 146 (A). The principle enunciated in that case was correctly applied in the judgment. See paras [19] to [22] of the judgment of the court. The other major complaint of the applicant is that having remarked that the plaintiff's inconvenience at work, occasional pain and possible sick leave form part of the plaintiff's general damages, such factors were ultimately not taken into account when the plaintiff's general damages were assessed. There is no merit in this contention.
- [5] General damages, by their very nature, are made up of a globular amount, informed by a combination of factors. It is therefore not feasible for an amount to be allocated, say, for pain and suffering or loss of amenities of life. The amount of general damages awarded to the applicant in the present case, was no different. All the relevant considerations were taken into account, and the court of appeal would be slow to interfere with the award made.
- [6] Regarding the costs of two counsel, the trial court exercised a discretion. This is a simple matter which can be regarded as 'run of the mill' case in this division. No difficult question of law was implicated in the matter. The trial court, on those considerations, did not allow the costs of senior counsel. Similarly, I do not see any reasonable prospects of a court of appeal disturbing that finding.
- [7] The approach to applications for leave to appeal was recently re-stated by the Supreme Court of Appeal in *S v Magadla* 2010 (2) SACR 316 (E) - equally apposite to civil cases. The foot-note reads:

The chief requirement for the granting of leave to appeal was the existence of a reasonable prospect of success on appeal. The mere possibility that another court might come to a different conclusion was not sufficient, nor was it enough that the case was arguable, nor that it would offer solace to the applicant to know that the final decision would be given by a higher court'

(my emphasis)

[8] In the circumstances the application for leave to appeal falls to fail. As it was not opposed, no order of costs would be made.

[9] In the result the following order is made:

1. The application for leave to appeal as fully set out in the notice of application for leave to appeal dated 26 September, 2013 is dismissed.

TM MAKGOKA

JUDGE OF THE HIGH COURT

DATE OF HEARING : 21 NOVEMBER 2013

JUDGMENT DELIVERED : 25 NOVEMBER 2013

FOR THE APPLICANT : ADV GC GEACH SC

INSTRUCTED BY : SALOME LE ROUX ATTORNEYS, PRETORIA

FOR THE RESPONDENT : ADV DE WESTEBAAR

INSTRUCTED BY : AP LEDWABA INC, PRETORIA

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