



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 2024

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

MM obo GM v Member of the Executive Council for the Department of Health, North West Province (782/2022) [2024] ZASCA 52 (18 April 2024)

Today the Supreme Court of Appeal (SCA) set aside the order of the Full Court of the North West Division of the High Court (the full court) and remitted a claim for emotional trauma and nervous shock to the trial court for determination. In relation to the appellant's claim for all other heads of damages, including general damages on behalf of the deceased minor child, the SCA struck this claim off the roll with costs.

The appeal arose from a medical negligence claim after GM, who was born on 16 October 2010, was later diagnosed with cerebral palsy. GM's mother, the appellant, alleged that GM's cerebral palsy was caused by the negligence of the respondent's employees at the two hospitals to which she was admitted for obstetric care. She claimed damages for emotional trauma for herself, and future medical expenses, loss of earnings and general damages for pain and suffering on behalf of GM. The issue for determination in the trial court was whether the medical staff at the Moses Kotane Hospital and the Job Shimankana Tabane Hospital were negligent and whether such negligence caused GM to have resultant cerebral palsy.

The trial court found that the hospital staff were negligent in various respects in the treatment and care of the appellant before and during the birth of GM, however, that court dismissed the claim on the basis that there was no causal relationship between the negligence and GM's subsequent brain damage. The trial court concluded that the cerebral palsy was attributable to an *abruptio placentae*, a complication occurring during pregnancy in which the placenta gradually separates from the uterus while the baby is still in the uterus. Leave to appeal was granted to the Full Court on the issue of causality alone. The full court dismissed the appeal with costs. Special leave to appeal was then sought and obtained from the SCA with the appeal being restricted only against the finding that the negligence of the employees of the respondent was not causal to the damage suffered by the child.

On 3 November 2023, 11 days prior to the hearing of the appeal before the SCA, it was brought to the attention of the Registrar, by the respondent's attorneys, that they had received information, on 31 October 2023, that GM had passed away in August 2022. The respondent's attorneys brought this information to the attention of the SCA as they considered that it potentially changed the landscape of the appeal. In response to an enquiry from the Registrar, the appellant's attorney confirmed in writing that GM had passed away but further indicated that GM's death did not extinguish the appellant's entire

claim should the appellant be successful, and that the matter should proceed. At the hearing of the appeal before the SCA, no evidence was tendered to indicate when or how the minor child passed away.

Before the SCA, the primary issue related to the effect of GM's death on the claims asserted by the appellant, in particular, whether the appellant had the necessary *locus standi* to prosecute the appeal given the circumstances. Linked to this was whether the appellant was entitled to a claim for emotional trauma and shock.

With regards to the latter issue, the SCA reasoned that in light of the trial court and the full court not dealing with the claim for emotional shock, it was of the view that it does not have the power to pronounce on the claim for emotional shock as sought by the appellant. In addition, the SCA held that a claim of this nature must be proved by way of evidence which the appellant failed to adduce, alternatively, to meet the standard required to satisfy this claim in the trial court. In the result, the SCA, on this aspect, concluded that it was not for the SCA to prescribe to the trial court as to how the matter should have been dealt with, at a procedural or substantive level. Accordingly, the proper order to be made was that the appellant's claim for emotional shock be remitted to the trial court.

In relation to the primary issue, the SCA held the view that the claim on behalf of GM (ie the claim for damages as the claims for future medical expenses and future loss of earnings fell away with GM's passing) was not transmissible unless *litis contestatio* had been reached. Given that fact, the claim was therefore transmissible to GM's estate and only the executor of GM's estate could prosecute the claim. In the result, the SCA concluded that the appellant did not have the necessary *locus standi* to prosecute the claim.

The SCA made an order setting aside the order of the Full Court and remitting the claim for emotional trauma and nervous shock to the trial court and struck the matter from the roll in relation to the appellant's claim for all other heads of damages, including general damages.

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