



## 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:** 8 October 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***

*Coughlan N O v Health Professions Council of South Africa & others (397/2023) [2024] ZASCA 135 (8 October 2024)*

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Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appeal against an order of the Western Cape Division of the High Court, Cape Town (the high court).

The appellant, acting as the curator for Mr. Daniels, lodged a claim for general damages related to injuries allegedly sustained in a motor vehicle accident on 19 November 2009. Mr Daniels was assessed by both his own psychiatrist and a psychiatrist appointed by the Road Accident Fund (RAF). Both psychiatrists confirmed that Mr Daniels injuries were serious, exceeding a 30% whole person impairment and that he suffered from severe long-term mental or behavioural disturbance. The RAF called for a further assessment by a neurosurgeon. The neurosurgeon disagreed with the psychiatrists and found, instead, that Mr Daniels had suffered a minor head injury. The neurosurgeon concluded that the severe psychotic episodes experienced by Mr Daniels after the accident were not related to the collision but were due to substance abuse. This conclusion was supported by Mr Daniels medical history.

The appellant disputed the neurosurgeon's assessment, arguing that it was based on a neurosurgeon's report as opposed to that of a psychiatrist, and filed a dispute with the Health Professions Council of South Africa (the HPCSA). In addition, the appellant obtained a medico-legal report from a clinical psychologist, who concluded that Mr Daniels' pre-accident drug use did not trigger psychotic symptoms. However, that it was the accident that marked the sudden onset of a psychotic disorder. A report was also obtained from an industrial psychologist who concluded that Mr Daniels suffered primary cognitive injuries that restricted his cognitive functioning.

The dispute went through multiple tribunals and review applications. The first Tribunal consisted of three orthopaedic surgeons and a neurosurgeon, who confirmed the first neurosurgeon's findings. Unhappy with this, the appellant lodged a review application in the high court. The high court found that the Tribunal was inadequately constituted. A second Tribunal consisting of two orthopaedic surgeons and a neurologist was appointed. Their findings did not differ from that of the first Tribunal. Another review application was lodged with the high court, unopposed. The appellant argued that the second Tribunal lacked medical expertise and failed to consider the report of the psychologists. The high court made a consent order that the matter must be heard by a new Tribunal consisting of three psychiatrists and/or three psychiatrists and a clinical neuropsychologist. The order interdicted the Tribunal from making a finding on the causal nexus of Mr Daniels' injury and the accident. Contrary to the high court order, the third Tribunal comprised of two psychiatrists, a neuropsychologist and a psychologist who found that Mr Daniels' injuries were non-serious according to the narrative test. The third Tribunal found that the

first psychiatrists reports were superficial and ignored the history of substance abuse. The Tribunal concluded that Mr Daniels' behaviour was attributed to withdrawal symptoms from substance abuse and that the accident had not caused any serious head injury. A third review application was lodged with the high court.

The appellant argued that the third Tribunal fell into the trap of addressing the issue of causality and/or nexus, which it was not empowered to do, as interdicted by the high court. The appellant argued further that the Tribunal was called to determine whether the effects of the injury were serious concerning the whole person impairment assessment or the narrative test, not to decide on the cause of the injury. By doing so, the Tribunal acted *ultra vires* its powers. The high court dismissed the appellant's application, finding that the tribunal did not exceed its authority by addressing the issue of causality between Mr. Daniels' psychosis and the accident. The high court also found that the Tribunal's decision was based on the available evidence and that there were no valid grounds for review. The high court, however, did not decide whether in addressing the issue of causality, the Tribunal exceeded its authority.

The principal issue before the SCA is whether the Tribunal exceeded its authority by addressing the causality between Mr Daniels' psychosis and the accident.

The SCA found that Tribunal's role was narrowly circumscribed to assessing the seriousness of injuries. It was not tasked with determining the cause of the injury. The SCA emphasised that causality is a question for the courts, and that the Tribunal's findings should be confined to medical assessments regarding the seriousness of the injury. The SCA found that the composition of the Tribunal, as per the consent order, was informed by necessity and that there was no rational basis for deviation from this. The SCA held further that the Tribunal erroneously relied on the neurosurgeon's report, which focused heavily on causality, an issue beyond the Tribunal's authority, as opposed the two psychiatrists' reports, one of which was an expert for the RAF. The SCA held further that high court's failure to decide whether in addressing the issue of causality, the Tribunal exceeded its authority constituted a misdirection, which effectively barred the appellant from pursuing a claim for general damages. The finding by the Tribunal had closed the door on the appellant's claim. As a result, the SCA held that the tribunal conflated the issue it was supposed to determine with causation, thereby exceeding its powers and arriving at an incorrect conclusion. Consequently, it acted *ultra vires*, and its decision cannot stand. The SCA upheld the appeal with costs.

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