



LAW SOCIETY
OF SOUTH AFRICA

ADVISORY

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**CONSTITUTIONAL COURT JUDGMENT RELATING TO THE
ROAD ACCIDENT FUND MATTER**

Dear Colleagues

As you may have heard, judgment was handed down yesterday by the Constitutional Court in the matter of the *Law Society of South Africa and Others v Minister of Transport and Another*. The Law Society of South Africa's (LSSA) appeal to the Constitutional Court was limited to three issues namely:-

- a) *Section 21 which abolishes a motor vehicle accident victim's common law right to claim compensation from a wrongdoer for losses which are not compensable under the RAF Act;*
- b) *Section 17 (4) (c) which limits the amount of compensation that the Road Accident Fund (Fund) is obliged to pay for claims for loss of income or a dependant's loss of support arising from the bodily injury or death of a victim of a motor accident; and*
- c) *Regulation 5(1) in which the Minister of Transport (Minister) has, pursuant to Section 17 (4B)(a) of the Act, prescribed tariffs for health services which are to be provided to accident victims by public health establishments.*

The Constitutional Court dismissed grounds (a) and (b) but upheld the constitutional challenge to Regulation 5(1). The finding applies retrospectively and with immediate effect. This means that claimants are entitled to be compensated in full for all medical, hospital and related expenses in any matters not yet settled.

Although it is, naturally, disappointing that the abolition of the common law rights to sue the negligent driver or owner for damages not covered in terms of the Amendment Act was not struck down, the restoration of full compensation for medical and hospital costs to accident victims is a victory for accident victims, particularly for impoverished victims and those without medical aid.

It should be noted, however, that this is an interim measure pending the prescription by the Minister of a new tariff for health care services in terms of section 17(4B)(a) of the Road Accident Fund Act.

The Order was made by the Constitutional Court as follows:-

Order

The following order is made:

- a) *The application for leave to appeal is granted;*
- b) *The appeal is dismissed save to the extent set out below;*
- c) *The appeal against the order of the High Court dismissing the applicants' constitutional challenge to Regulation 5(1) issued by the Minister for Transport on 21 July 2008 in terms of section 17 (4B)(a) of the Road Accident Fund Act 56 of 1996, is upheld;*
- d) *It is declared that Regulation 5(1) is inconsistent with the Constitution and invalid;*
- e) *Until the Minister of Transport prescribes a new tariff for health services in terms of section 17 (4B)(a) of the Road Accident Fund Act, a third party who has sustained bodily injury and whom the Road Accident Fund is obliged to compensate as contemplated in sections 17 (4) (a), 17 (5) and (6) of the Road Accident Fund Act, is entitled to compensation or health services as if he or she had been injured before the Road Accident Fund Amendment Act, 19 of 2005 came into operation;*
- f) *The Minister of Transport is ordered to pay one third of the costs of the first to the eleventh applicants, which shall include costs of two counsel.*

The finding of the Constitutional Court was unanimous. The full judgment is attached.

Practitioners are also referred to the recent judgment of Tuchten AJ sitting in the North Gauteng High Court, Pretoria, in the matter of *FTJ Nhambe v RAF (Case No: 70721/2009)*, on the provisions of the Amendment Act, 2005 attached hereto.

Apart from the fact that full medical and hospital expenses are claimable (until such time as a new tariff is promulgated), the finding does not affect the current prosecution of claims under the Road Accident Fund Amendment Act, 2005 and the regulations published in terms thereof in *Government Gazette* 31249 of 21 July 2008.

The full judgment of the Constitutional Court (as well as the *Nhambe* judgment) can be downloaded below.

We would like to take this opportunity to thank the members of the LSSA Road Accident Fund Committee – Jacqui Sohn and Ronald Bobroff in particular – our legal team, and all the practitioners who offered their support in this matter.

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