

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Road Accident Fund v Abdool Carrim

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Road Accident Fund against a ruling of the Pretoria High that s 19(d) of the Road Accident Fund Act 56 of 1996 is applicable only to agreements made by third parties and not to those made by suppliers of medical services to third parties who have suffered loss or damage arising from motor vehicle accidents.

The consequence of the dismissal of the appeal is that the Fund must now settle some 49 000 claims involving a total claim of R284 million.

There are 1240 respondents in this matter. The first to the 1238th respondents are suppliers of medical services to third parties. They entered into written agreements with the last two respondents, who are companies in the Alexander Forbes stable (Alexander Forbes Compensation Technologies (Pty) Ltd and Alexander Forbes Accident Compensation Technologies (Pty) Ltd) in terms of which they paid the companies for their services. These services include an assessment of the merits of the third party's claim and also of the supplier's prospects of recovery from the Fund.

The Fund was aware of these agreements and had accepted claims from the companies for a period of four years before taking the view that the agreements fell foul of s 19(d). Its submission was that because s 19(d) renders a claim by a third party unenforceable against the Fund where the third has entered into an agreement with someone who is not entitled to practice as an attorney, the agreements which the respondents (as suppliers) had entered into with the companies, which do not practice as attorneys were similarly unenforceable. This is because, so it said, s 17(5) of the Act, which deals with claims of suppliers makes the provisions of s 19, in so far as they are applicable to third parties equally applicable to suppliers.

The SCA rejected this submission. It held that the Fund's interpretation was at odds with the Act's purpose, which was to provide the widest protection to third parties. The effect of the Fund's interpretation, so the SCA held, would be that a third party claim may be valid but not the supplier's. The consequence would be that the third party may, through no fault on his or her part, face a claim from the supplier that would otherwise have been settled by the Fund. This, the SCA held could not have been what the intention of the legislation was.

It accordingly dismissed the Fund's appeal with costs.