THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 329/09

In the matter between

SAAYMAN: AMMI TERENCE **Appellant**

and

ROAD ACCIDENT FUND **Respondent**

Neutral citation:	***Saayman v Road Accident Fund*** **(329/09) [2010] ZASCA 123 (30 September 2010)**
Coram:	**Heher, Bosielo and Leach JJA and Majiedt and Seriti AJJA**
Heard:	**6 May 2010**
Corrected:	
Delivered:	**30 September 2010**
Summary:	**Road Accident Fund – Third party claim – Quantum of damages – Future loss of income – Determining the probable rate at which the appellant's future income would have increased but for the accident – Pre- and post-morbid contingency deductions.**

ORDER

On appeal from: South Gauteng High Court (Johannesburg), (Maluleke J sitting as court of first instance):

1. The appeal succeeds with costs including the costs consequent upon the employment of two counsel.

2. The award of R4 295 290 as damages due to the appellant in paragraph 18.2 of the order by the court below is set aside and replaced with an amount of R13 572 649.

3. The costs of the actuary, Mr Kramer, are to be paid by the respondent.

JUDGMENT

BOSIELO JA (Heher and Leach JJA and Majiedt and Seriti AJJA concurring)

[1] This is an appeal, with leave of the court below (Maluleke J), against an award made in favour of the appellant in an amount of R4 295 290 in respect of future loss of income or earning capacity suffered as a result of injuries sustained in a motor collision.

[2] This is the appellant's story which I could glean from the various witnesses who testified in this matter. The appellant was born on 26 May 1977. After matriculating he proceeded to obtain a degree in Bachelor of Commerce Institutional Management and an Honours degree in Financial Management. After some brief

community service working as an accountant for his church, he was employed by Standard Bank in September 2002 as a Market Risk Analyst.

[3] According to all the evidence the appellant impressed as an exceptionally talented person. He was a cut above the rest. He exuded confidence, was assertive and innovative. He was a likeable person who made his presence felt by everybody. He enjoyed his work and was willing to take initiative to learn new things. His intellect and intelligence were above average. Primarily because of his talent and performance, in less than three months the appellant was promoted to the position of Market Risk Manager at Standard Bank earning a salary of R339 166 per annum. The appellant continued to excel to an extent that he was earmarked for a special Career Development Programme to develop and groom him.

[4] All the seniors who worked with the appellant at Standard Bank are unanimous that, because of his exceptional attributes and abilities, the appellant appeared destined for a post in the top echelon in the banking industry. Almost all the witnesses who worked with the appellant at the bank were agreed that with time the appellant would rise to the position of Head of Market Risk. It is only Mr Oktay a senior Market Risk Manager who had minor misgivings, based largely on the appellant's personality. Importantly all the witnesses agreed that at least by 1 January 2014, the appellant would have assumed the position of Head of Market Risk. This was the dominant view until the accident on 13 June 2005 which had far-reaching and tragic consequences for the appellant.

[5] Following upon the accident, the appellant was admitted at Linksfield Clinic. He had suffered some serious head injuries and resultant brain injuries. As a result he was placed in an intensive care unit. The expert witnesses (Dr Edeling a Neurosurgeon and Ms Adan a Counselling Psychologist) are agreed that the appellant suffered a diffuse axonal brain injury. After he was discharged from hospital, the appellant returned to his original job at Standard Bank. It is not in dispute that although he experienced some serious problems in adjusting, the appellant coped with his work. With the help and support of his colleagues and some

empathy from his seniors the appellant successfully went through a rehabilitative period at work, up to the level where he was able to perform optimally in the same position which he held before the accident

[6] What is sad but crystal clear is that because of the accident the appellant is not the same person. He is no longer as ebullient and effusive as before. Before the accident, Mr Blenkinsop, Head of Risk and Compliance Rand Merchant Bank (RMB) had shown keen interest in employing the appellant as their new Risk Manager. Pursuant hereto, the appellant was invited for an interview where he made a good impression. Mr Blenkinsop is of the view that the appellant is now less confident, withdrawn and reticent. Due to the appellant's present condition, he is no longer certain that RMB would still be interested in the appellant. The appellant is suffering from mood outbursts. His memory and concentration have been adversely affected. Unlike before the accident, he now requires supervision in his work. This is corroborated by Ms Adan who testified that the appellant has complex problems. He is experiencing cognitive overload and finds multi-tasking very difficult. He is also unable to receive and assimilate new knowledge. All these are the results of the brain damage which the appellant suffered in the collision.

[7] Although the appellant is now working for Liberty Life where he is doing the same work which he did at Standard Bank, all the experts are agreed that the accident has affected him so seriously that he will never be able to progress beyond his current position. What is worse is that because of the difficulty of coping with a heavy workload and the stress which comes with it, the appellant is likely to be overtaken by his peers. All the witnesses are agreed that the appellant has reached his ceiling. What compounds the appellant’s problems further is that as Dr Marais, Head of Market Risk stated the banking environment where the appellant works is highly pressurised, competitive and ruthless. Everybody has to compete for his or her position. It is a world where sympathy has no place. Sadly this does not augur well for the appellant.

[8] In consequence of his injuries the appellant instituted a claim against the

respondent for his damages. Suffice to state that all other claims, save for the one for future loss of income or earning capacity, have been settled by agreement. The appellant claimed an amount of R54 310 264 for his future loss of income or earning capacity. The learned judge in the court below awarded the appellant R4 295 290. The appellant contends that this amount is far too low and points to a number of irregularities and misdirections which, he contends led to the incorrect award. I will deal with the alleged irregularities hereunder.

[9] Firstly, the learned judge is accused of having given incorrect instructions to the actuaries concerning the basis on which the parties had agreed for the calculation of the damages due. It is common cause that the actuaries called by both parties had agreed that the appellant would probably have been appointed Head of Market Risk on 1 January 2014 at an annual income of R2,25m calculated at the 2007 rate. However, in his instructions to the actuaries the learned judge erroneously instructed them that the R2,25m should be calculated at the 2009 rate. It became common cause during argument before us that the learned judge did in fact err in his instructions to the actuaries.

[10] In calculating the total amount due to the appellant from 1 January 2014 until his retirement age at 60 in 2037, as agreed, the learned judge found that it could not be said with certainty that the appellant would have been appointed Head of Market Risk. The learned judge found that there were the usual hazards of life which could have adversely affected the appellant's chances of promotion and awarded a contingency of 50 percent. Although the learned judge was entitled to consider and make room for the usual hazards of life, this finding is not supported by the evidence. The cumulative evidence of the witnesses is that, but for the accident, the appellant would have been promoted to Head of Market Risk. In recognition of this, the appellant had already been earmarked for a special Career Development Programme. I agree with counsel for the respondent that, notwithstanding the general hazards and uncertainties of life, there was a 75 percent prospect that the appellant would have been promoted to that position, thus justifying a contingency deduction of 25 percent. To my mind this is in accordance with the evidence. It

follows that the learned judge erred.

[11] Concerning the appellant's life and career after the accident, it is clear that the appellant was no longer the same. The effect of the evidence of inter alios, Dr Edeling, Dr Marais and Mr Schoombie, the industrial psychologist is to the effect that because of his injuries and their sequelae, the appellant is likely to find himself in a situation where his peers have overtaken him and he will not progress beyond his present position. Evidently this means that, contrary to the finding of the learned judge, the appellant's employment prospects after the accident are rather more precarious and less secured than before the accident. On the conspectus of the evidence, there can be no doubt that the appellant is more likely to lose his employment after the accident than before it. The learned judge erred in finding that the prospects of the appellant losing his employment post accident are less, thus awarding a 10 percent contingency. To my mind a higher contingency allowance post accident is warranted. In the circumstances, I would award a post-accident contingency at 30 percent as against the 10 percent awarded by the trial judge. Maluleke J had fixed the pre-collision contingency at 20percent. The appellant also contended for a 20 percent pre-collision contingency. Having considered the evidence, I can find no fault with Maluleke J's finding.

[12] There was a huge debate surrounding the contentious aspects of the applicable interest and inflation rate. The appellant argued for inflation at 12,5 percent. Primarily this was based on an alleged admission made by the respondent's counsel during his address. The respondent sought to have the admission withdrawn on the basis that it was made in error. The appellant opposed this on the basis that the respondent was not permitted to withdraw the admission unilaterally and without a proper and formal application. The learned judge granted the application. I agree with the respondent's counsel that this was not intended to be a formal admission. To my mind, this was not an unequivocal admission but a mere concession made by counsel in the course of his address. Such a concession may be withdrawn at any time, particularly where such a withdrawal will not cause the other party any prejudice. In this case the concession was withdrawn during the trial whilst the

appellant had ample time to call whatever witnesses he wished to call to prove this point. As a result the appellant cannot claim to have been prejudiced in the conduct of his trial. Having due regard to the context under which this concession was made, I am of the view that there was no need for a formal withdrawal. See *Kevin and Lasia Property Investment CC & another v Roos NO & others* 2004 (4) SA 103 (SCA) para 12.

[13] Viewed against the totality of the evidence, I agree with the learned judge that the 12,5 percent sought by the appellant is unrealistic and unsustainable as it would have brought about an unrealistic increase in the salary for the post. The learned judge determined the interest at 2,5 percent. I can find no fault with this determination more so that it was based on common actuarial practice in similar cases.

[14] In conclusion I am satisfied that the learned judge erred in his calculation of the damages due to the appellant for his future loss of income. The learned judge committed a number of irregularities and misdirections which led to an award which reflects a striking disparity to the amount which I would have awarded. This entitles this court to interfere with the award by the court below. See *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) para 8.

[15] It should be clear that there is a need for a proper and accurate recalculation of the damages to be awarded to the appellant. The parties agreed that, once we have decided on the proper basis for the recalculation of the appellant's damages, the matter be referred to an independent actuary for a correct recalculation.

[16] Based on the above analysis, the amount due to the appellant for his loss of future income or future loss of earning capacity should be calculated with effect from 1 January 2014 until his retirement age of 60 in 2037 at R2,25m at the 2007 rate with a 30 percent contingency. Interest shall be calculated at 2,5 percent and inflation at 6 percent per annum.

[17] Acting on the mutual agreement of the parties, Mr Ivan Kramer, an actuary, was appointed to assist the court in recalculating the quantum of the appellant's loss of earning capacity. Mr Kramer has duly executed his mandate with admirable promptness and furnished the court with his report. Having done his actuarial analysis, Mr Kramer summarised the appellant's loss of income, ie the difference between the value of income 'but for the accident' and 'having regard to the accident' as follows:

	But for the accident	having regard to the Accident	net loss
Gross accrued value of income	2,267,910	2,267,910	
Less contingency	340,187	1,020,560	
Net accrued value of income	1,927,723	1,247,350	680,373
Gross prospective value of income	32,529,470	17,177,393	
Less contingency	10,189,628	7,729,827	
Net prospective value of income	22,339,842	9,447,566	12,892,276
Total value of income	24,267,565	10,694,916	13,572,649

(values in rands).

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

1. The appeal succeeds with costs including the costs consequent upon the employment of two counsel.

2. The award of R4 295 290 as damages due to the appellant in paragraph 18.2 of the order by the court below is set aside and replaced with an amount of R13 572 649.

3. The costs of the actuary, Mr Kramer, are to be paid by the respondent.

L O Bosielo
Judge of Appeal

HEHER JA (Leach JA and Majiedt AJA concurring)

[19] I agree with the judgment prepared by my brother Bosielo. Although we do not differ in the result, I deem it desirable to provide additional reasons for coming to my conclusions.

[20] This is an appeal with leave of the court below (Maluleke J) against the quantum of an award made in favour of the appellant in an amount of R4 295 290 as loss of earning capacity suffered as a result of injuries sustained in a motor collision on 13 June 2005.[1]

[21] On that day the appellant had been employed by the Standard Bank as a market risk analyst for almost three years. A head injury with brain damage ensured that further progress in his profession would be permanently stayed. He commenced action against the respondent (the Fund) claiming compensation for his loss. The Fund conceded the negligence of the insured driver and most elements of the claim for damages. The trial proceeded only on disputes around the appellant's future loss of earnings. Most of the evidence for the appellant[2] was not the subject of serious factual dispute. That the appellant was, before the accident, a young man exceptionally talented in the field of risk management who had secured the confidence of his seniors and that he possessed great potential for advancement in

1 All other heads of damages had been agreed before the trial concluded.
2 He himself did not testify.

banking generally, was very clear. The award, however, fell far short of his expectations. He was advised that the trial judge had misdirected himself. Hence this appeal.

[22] Before identifying the precise issues which were argued before us, it will assist if I refer to those findings of the judge a quo which are not in dispute. These include the following:

The pre-accident position.

[23] 1. The plaintiff would have continued in employment as a market risk manager until 31 December 2013.

2. The salary applicable to that post was R767 200 per annum at the date of the trial in 2007.

3. The salary would have grown with normal inflationary increases while the appellant occupied the post.

4. From 1 January 2014 the appellant would have been promoted to the post of Head of Market Risk in the banking and financial services sector with a salary package made up of salary and bonus (in approximately equal proportions) amounting to R2.25 million in 2007 monetary terms.

5. He would have held that post until retirement at the age of 60 years on 16 May 2037 subject to the hazards of life and such special risks as derived from the nature of his employment.

The post-accident position.

[24] 1. The appellant, who had continued to occupy the post of market risk manager, albeit with a change of employer, between the accident and the date of judgment, would remain in that post or its equivalent for the remainder of his working life.

2. The salary that he would earn would be his 2007 remuneration of R767 200 per annum escalated annually in accordance with normal inflationary increases.

3. The appellant would retire at age 60, subject to the hazards of life and the adverse effects of the collision on his work performance in the interim.

[25] In summary, the appeal was directed at the following findings made by Maluleke J:

1. The learned judge considered that, although the probabilities favoured the appointment of the appellant to the post of Head of Market Risk in January 2014, that outcome fell well short of certainty. The imponderables were, in his view such as to justify a contingency reduction of 50 per cent, which he duly applied.

2. The salary of the post of Head of Market Risk carried with it the probability of increases. The learned judge found that such increases were on average likely to be above the inflation rate prevailing from time to time. Assuming an average inflation rate of six per cent annually over the whole period he held that the average real increase in salary would be an additional 2.5% per annum. (For reasons which will be explained the appellant contended for annual increases of 12.5%, including inflation.)

3. The pre-accident contingency attaching to employment as a Head of Market Risk until 2037 was fixed by Maluleke J at 20%. He held, by contrast, that 'his present employment is secured and is therefore a matter for less speculation' and imposed a contingency of 10% against his ability to retain his employment to the age of retirement post-accident. In the appeal the appellant contended that the degree of risk of losing his job after the accident was the greater. He submitted that contingencies of 30% (post-accident) and 20% (pre-accident) should have been applied.

4. Although the parties were agreed at the trial that the salary of Head of Market Risk should be calculated on the basis of its 2007 value of R2.25 million, the trial judge *per incuriam* instructed the actuaries to use that salary as at 2009, leading to a final calculation that was disadvantageous to the appellant. This misdirection was not contested by the respondent and the order which this Court makes will rectify the error.

The contingency for appointment as Head of Market Risk

[26] The appellant attacked the judge's finding on two grounds. First, he alleged that the future promotion was admitted as a fact and was therefore not subject to the

imposition of any contingency. Second, he contended that the evidence bore out the certainty of the appointment.

[27] As the appellant's argument both in relation to the first alleged misdirection and that relating to the future increases in salary for the post of Head of Market Risk depend to a substantial extent on informal admissions[3] said to have been made by the Fund's counsel during the trial, it is convenient at this stage to make certain observations which affect those submissions.

[28] In the context of civil proceedings an admission is a statement against interest which has the effect of binding the party on whose behalf it is made. If that effect is absent the statement cannot amount to an admission and the well-established rules relating to the withdrawal of admissions cannot apply to it. In fact a withdrawal is, strictly, unnecessary and prejudice to the other party is not an issue. An admission, in its formal sense, also requires at least an intention, explicit or inferred, and unequivocal, to remove a fact that depends on proof from the field of contention.

[29] Concessions are made by counsel in the course of a trial for a variety of reasons without a contemplation that he is thereby committing his client and without any intention to limit the issues. The statement in question may, for example, be used as an assumption on which to found an argument or be made in a bona fide spirit of fairness intending to convey to the court counsel's candid view of the way the court should proceed. In the absence of formality the context must necessarily be decisive of whether an admission has been made.[4] As will be seen, I am of the view that it provides the answer in this case too. Although there was some suggestion that

3 Informal, inasmuch as they were not recorded by the court as admissions: s 5 of the Civil Proceedings (Evidence) Act 25 of 1965.

4 In *Standard Bank of S.A. Ltd v Minister of Bantu Education* 1966 (1) 229(N) Caney J said (at 242H-243G): 'Whatever may be the position concerning counsel's authority to bind his client by admissions formally made and recorded in a civil case, it seems undesirable that counsel's opening of a case should be accorded decisive effect in regard of proof of facts necessary to a party's case or defence. Opening remarks are, in common with counsel's closing argument, usually not recorded. If such matters are to be used in coming to a conclusion in a judgment, they must be set out therein and used, in the ordinary course of events, with considerable circumspection. No use was made of this factor by the court *a quo* and it is quite uncertain what its conclusion in that regard would have been.' I respectfully adopt the entirety of this reasoning. See also *Kevin and Lasia Property Investment CC v Roos NO* 2004 (4) SA 103 at para 12.

the alleged admissions had been made between counsel before being communicated to the court, there was no evidence in that regard and the issue can be limited to statements contained in the heads of argument and repeated in oral argument to the court a quo.

[30] To return to the first so-called misdirection, I can find no evidence of any express statement by counsel for the defendant which raised the probability of the 2014 appointment to the level of certainty. As to an inference to that effect, the contextual indications are to the contrary. The amendment which introduced 2014 as the date for that promotion was moved after the evidence (save for that of the actuaries) had been concluded. It came about because the plaintiff's counsel plainly realized that the strength of their case lay in the probability of such promotion and not in the possibility of advancement to the higher post of Head of Risk Management where their evidence had been indifferent. They therefore chose a date later than the evidence merited in order to strengthen their hand in argument. Counsel for both parties knew that cross-examination against the likelihood of promotion to Head of Market Risk had been directed to particular areas of alleged weakness—educational shortcomings, character defects, unproven managerial abilities, the unpredictability of the quality and number of competitors for promotion and the inherent disadvantages to the appellant in the predicated emphasis on gender and racial diversity. Counsel were aware that such uncertainties as arose from these areas had not been eliminated. In addition they were debating a scenario that was still some six years distant. There was in these circumstances no reason for the Fund or its counsel to abandon reliance on any degree of doubt which they had succeeded in raising. Nor did the plaintiff's counsel have any good reason to believe that they intended to do so.

[31] In this context it is impossible to read into the argument before the court a quo any admission that the appellant would, as a fact, have been appointed. That being so, the question which arises is whether the evidence justified a reduction of 50% in the probability of promotion.[5]

5 In my approach to all the contingencies considered in this judgment I have, of course, borne in mind

[32] Against the contra-indications that I have mentioned, none of which was entirely without weight, the following factors in favour of promotion must be taken into account-

(i) the predictable shortage of suitably skilled persons available for such a position;

(ii) the confidence shown by the appellant's superiors in his ability to advance in the company;

(iii) the appellant's proven competence and self-assurance;

(iv) the availability of similar posts beyond his then employment both within and outside South Africa;

(v) the realistic possibility that he would have been able to compete for the post earlier than 2014.

[33] The learned judge commenced his assessment of this aspect with the comment 'It is undisputed that but for the collision plaintiff had "a better than 50/50 chance" to be promoted. . .' but, despite that foundation, there is no indication that the learned judge attached any or adequate weight to these factors.

[34] In my judgment if the court a quo had properly assessed the probabilities for and against promotion on the stipulated date it must have concluded that the prospect was, although not risk-free, substantially better than even. A 25% contingency would most accurately reflect the balance of the evidence. This in short means that I am of the view that there was a 25% chance that the appellant would not have been so promoted (and would, in consequence, have continued to earn the salary of a manager of market risk) but a 75% chance that he would have been promoted and, from 1 January 2014, earned the salary appropriate to the post of Head of Market Risk.

The correct rate of increase for the post of Head of Market Risk

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that the trial judge was exercising a discretion with which this Court will not interfere unless it was not properly exercised: see eg *Van der Plaats v SA Mutual Fire and General Ins Co Ltd* 1980 (3) SA 105 (A) at 114F-G; *De Jongh v Du Pisanie NO* 2005 (5) SA 457 (SCA) at para 47.

[35] The appellant contended for an annual increase of 12.5% per annum. He relied upon an admission to that effect by defendant's counsel at the trial. There is no doubt that the Fund's counsel submitted in his heads of argument that the rate of escalation to be applied 'exceeds that of inflation and should be assumed to be 12.5% per annum' and 'after being promoted he would have received increases at an average rate of 12.5% per annum'.

[36] Counsel for the defendant later disavowed this concession. His explanation was that the prevailing rate of inflation in the preceding year had been some 10 per cent; in fixing on 12.5% he had intended only to submit that the post would have carried a real increase of 2.5% per annum. However there are passages in the record which belie this explanation. Once again the context is of assistance. Counsel was not addressing a fact so much as a prophecy: the annual rate of increase over twenty-three years (from 2014). That involved, at best, an informed prediction combining many variables bearing on the economy and market conditions. But there was no such information available. The 'best evidence' related to rates of increase over the ten years preceding the trial. But there was no justification for projecting those (very substantial) rates on the period from 2014. When counsel made the concession the evidence had been led and its deficiencies must have been apparent to both sides. As the actuaries noted and the learned judge accepted, an annual increment of 12.5% every year for 23 years would have resulted in a massive and unrealistic ballooning in the salary for the post, a lack of reality which is magnified when one remembers that the post in question is only one of a much larger structure within the company and nationally from which it cannot be isolated. In the circumstances, counsel's concession amounted to no more than his opinion, neither intended as the admission of his client nor designed to release the court from its duty to make a finding on the question.

[37] Making his finding on this matter the trial judge preferred the evidence of actuarial practice in such cases, in effect the determination of the likely average rate of inflation and the imposition on that rate of a real increase of about 2.5%, even though this represented no more than doing one's best with limited materials. I

cannot find fault with this approach and it provides an answer which may or may not be conservative but appeals as fair and balanced.

The pre-accident prospect of the appellant retaining the post of Head of Market Risk until retirement.

[38] The trial judge allowed a special contingency of 20%. The evidence shows that risk management is a demanding exercise that bears its own hazards for long-term security of tenure, particularly in difficult economic times or in the face of decisions which are thought by management to be prejudicial to the interest of the company. It is not reasonable to find that the trial judge was wrong in the assessment he made on this aspect. This contingency applies to the appellant's assumed occupation of the post of Head of Market Risk from 1 January 2014 until retirement. It does not apply to the period 1 January 2007 until 31 December 2013 ie while the appellant would have been employed as manager of market risk.

The post-accident prospect of the appellant retaining the post of manager of market risk until retirement.

[39] The evidence established marked physical and psychological deterioration in the appellant as early as the date of the trial. The opinions of his supervisors were that he would be unable to rise to the increasing demands of the post. Nor would he long be able to compete with younger persons, even those who did not overtake him on the promotional ladder. As his career stagnated, decrease in motivation would also tell against his desirability for continued employment. In the circumstances the appellant was likely to become a prime candidate for redundancy in later life particular in an adverse economic climate. In this instance the learned judge's view that his position was more secure after the accident does not reflect the evidence. The contingency of 10% at which he arrived is materially less than what I regard as appropriate. I would fix this special contingency at 30%. This means that the contingency will apply to the period 1 January 2007 until 26 May 2037 ie while the appellant occupies the position of manager of market risk. The difference in approach between the pre- and post-accident contingencies arises from the different causes that justify the application of those contingencies.

[40] One further aspect of clarification is required. In the pre-accident scenario I have referred to the common cause fact that the appellant's salary would have grown with normal inflationary increases while he occupied the post of manager of market risk (until 31 December 2013). No consideration seems to have been given by the parties or the court a quo to the likelihood of real increases during that time. This however was the essence of the question raised in relation to the post of Head of Market Risk (from 1 January 2014 until the appellant's retirement) and in respect of which I have made a finding of an average real increase of 2.5% per annum. As earlier emphasised, the more senior post exists as part of a structure (which includes the lesser). Both common sense and logic demand that equivalent real increases be applied to the post of manager of market risk prior to 2014.

[41] For these reasons I agree with the order proposed by my brother Bosielo.

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J A Heher
Judge of Appeal

APPEARANCES:

For appellant:	B Ancer SC (with him D Goodenough)
Instructed by:	Ramsay Webber Attorneys, Johannesburg Webbers, Bloemfontein
For respondent:	T A L L Potgieter
Instructed by:	Dyason Attorneys, Pretoria McIntyre & Van Der Post, Bloemfontein