

Supreme Court of Appeal Reaffirms the “Once-and-for-All” Rule in Medical Negligence Claims Against the State

TN obo BN v MEC for Health, Eastern Cape, and Others 2026 (3) SA 507 (SCA)

INTRODUCTION

The case concerns Ms. TN, who sued on behalf of her severely disabled son, BN, due to medical negligence during his birth at a public hospital in the Eastern Cape in 2011. As a result of the hospital's negligence, BN sustained spastic quadriplegic cerebral palsy. TN sought damages related to BN's future hospital and caregiving costs, among other expenses.

THE HIGH COURT'S ORDER

The High Court ordered the Eastern Cape MEC for Health to provide BN with a lifetime of medical services and supplies, either in public healthcare facilities or through private sector reimbursements. This would be in lieu of lump-sum damages, developing the common law's “once-and-for-all” rule of lump-sum settlements. The MEC conceded liability but appealed the High Court's ruling.

The “once-and-for-all” rule requires all damages, present and future, to be claimed in a single action as a lump sum to ensure finality in litigation. The High Court abolished this rule in cases involving public healthcare facilities, granting instead two remedies: the “public healthcare” remedy wherein the state will provide services in public facilities, and the “undertaking-to-pay” remedy which includes either reimbursing private sector expenses or directly procuring private services if unavailable publicly.

THE SUPREME COURT OF APPEAL'S FINDING

The Supreme Court of Appeal (SCA) rejected this change, concluding it was a radical restructuring of the common law, which should be addressed by the legislature instead of the judiciary.

By **Darika Santhia** (Senior Associate),
and **Sarah Machanik** (Candidate Attorney)

28 September 2026

The High Court failed to assess the rule's underlying rationale, which ensures litigation closure, prevents repeated disputes, and avoids piecemeal claims. These are all critical for judicial efficiency. Additionally, the High Court disregarded the broader implications of its ruling, such as potential fragmentation of national laws and uncertainties in enforcing its order due to systemic gaps in public healthcare capabilities. It improperly relied on the MEC's witnesses, whose evidence suggested financial and systemic challenges that undermine the practicality of the remedies.

The SCA ruled that the structural reform introduced by the High Court disregarded principles of separation of powers. Radical changes with widespread social, economic, and financial policy implications should be made by the legislature after comprehensive consultations and national framework considerations have been taken into account.

Testimony from multiple experts demonstrated systemic performance deficiencies in Eastern Cape public healthcare facilities, including funding shortages, chronic mismanagement, and unreliable service delivery. These deficiencies suggested the public healthcare and undertaking-to-pay remedies would be untenable and leave BN vulnerable to gaps in care. The SCA found no assurance of sustainable, lifelong provision to BN under the High Court's order.

The remedies created inequality by differentiating claimants based on whether the harm arose in public or private hospitals, violating the principle of fairness. Additionally, BN's best interests were found harmed, as the remedies exposed him to risks stemming from inadequate state services and deprived the family of autonomy that lump-sum payments would afford.

The SCA overturned the High Court's remedies and reinstated lump-sum damages for future hospital, medical, and related costs. A trust was ordered to manage the compensation effectively for BN's benefit, and the MEC was held liable for the costs of suit and related expenses.

The SCA concluded that developing the common law to abolish the “once-and-for-all” rule was inappropriate and beyond judicial authority. The appeal succeeded, restoring lump-sum damages and affirming legislative authority for broader law reform in such matters .

CONCLUSION

The Supreme Court of Appeal's decision reaffirms the continued application of the common law “once-and-for-all” rule in claims for future medical expenses arising from medical negligence. The judgment underscores the importance of ensuring that vulnerable claimants are not exposed to uncertainty regarding the future provision of essential medical care. Until comprehensive legislative reform is introduced, courts will continue to award lump-sum damages as the primary mechanism for compensating future medical and related expenses, thereby providing injured claimants with certainty, finality and the financial autonomy necessary to secure appropriate lifelong care.



Darika Santhia
(Senior Associate)



Sarah Machanik
(Candidate Attorney)