

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: **1092/2021**

In the matter between:

SONDIYAZI KHANYISA NOSANA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT BY: **MOLITSOANE, J**

HEARD ON: **6 JUNE 2023**

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII on 08 SEPTEMBER 2023. The date and time for hand-down is deemed to be 08 SEPTEMBER 2023 at 14h30.

- [1] The Plaintiff instituted a claim for damages arising out of injuries sustained from the negligent driving of a motor vehicle. The defendant conceded liability on the basis that it shall pay 100% of the plaintiff's proven or agreed damages. The issues of future medical expenses, future loss of earnings as well as general damages were settled on the basis as set out in the order below.
- [2] The past hospital and medical expenses remain unresolved. It needs to be recorded that the plaintiff originally claimed an amount of R471 511-93. The defendant paid an amount of R409 714-17 leaving a balance of R61 797-76. It is this balance which is the subject of this dispute.
- [3] During the hearing of this matter, the parties agreed that the expert reports of the plaintiff attached to their respective affidavits be handed in as evidence in terms of Rule 38(2). Counsel for the Defendant also admitted on behalf of the Defendant the correctness of the contents of the reports aforesaid. No expert reports were handed into evidence on behalf of the Defendant. The Defendant also handed into evidence the affidavit of Tanusha Tia Hoosen, an employee of Discovery Medical Aid Scheme in which she set out the expenses incurred by her employer as past medical and hospital expenses. It is undisputed that the Plaintiff was a member of Discovery Medical Aid- Scheme. The expenses incurred are also not in dispute.
- [4] The crisp issue for determination in this case is whether the plaintiff is entitled to claim the expenses incurred by the medical aid on behalf of the Plaintiff.
- [5] The opposition to the payment of the balance of the past medical aid was based on the Internal Communique from the Acting Chief Claims Officer of the defendant addressed to all regional managers of the defendant. The said communique instructed the regional managers as follows:

“All Regional Managers must ensure that their teams implement the attached process to assess claims for past medical expenses. All RAF offices are required to assess claims for past medical expenses and reject the medical expenses claimed if the Medical Aid has already paid for the medical expenses. The regions must use the prepared template rejection letter (see attached) to communicate the rejection. The reason to be provided for the repudiation will be that the claimant has sustained no loss or incurred any expenses relating to the past medical expenses claimed. Therefore, there is no duty on the RAF to reimburse the claimant. Also attached is a list of Medical Schemes. Required outcome: immediate implementation of the process and 100% compliance to the process.”

[6] As a starting point, it appears that the defendant originally had no problem in paying for past hospital and medical expenses incurred by Plaintiff which arose as a result of the injuries sustained and ultimately settled by the Medical Aid Scheme. The only reason that the defendant now refuses to make a payment of the balance is as a result of the communication as set out above. During the hearing of this matter, no submissions were made that the original payment for past medical expenses were made in error or were not due, or even still that were not paid for by the medical aid scheme. Counsel for the Defendant did not make any submissions as to why the past medical expenses paid, differed from the ones left for later adjudication. It is also not the case for the Defendant that the past medical expenses were not incurred.

[7] Section 17(1) of the Road Accident Act, 56 of 1996 obliges the RAF, subject to certain exclusions and limitations, to compensate any person where injury has been sustained or death occurred as a result of the negligent driving of a motor vehicle. It is important to note that the Defendant in this case seeks to escape liability on the basis that the past medical expenses were paid for, by the medical aid scheme.

[8] It is to be noted that the damages the plaintiff claims must be assessed at the time the injury was sustained. It is in my view irrelevant if the medical aid undertook to pay for his medical expenses or even indeed paid for them. The issue of whether the Plaintiff had a medical aid or not has nothing to do with the defendant. The defendant, has a statutory duty to make good the damages suffered by the Plaintiff. I align myself with the sentiments expressed in *Discovery Health(Pty) Ltd v RAF and Another*¹ in which the following was said:

“[26] Certain benefits are considered while others are not considered in the calculation of the claimant’s claim for damages against the first respondent. It is trite that social security benefits a claimant receives from the State are deductible from compensation the first respondent is liable for. The reason for this is founded on the principle that delictual damages are meant to restore the claimant to the position he was in prior to the commission of the delict and that he should not unduly benefit by receiving double compensation for his/her loss. (see *Syosset and others v Santa Ltd* above)

[27] As can be noted from the above exclusions and limitations, the RAF Act does not provide for the exclusion of benefits the victim of a motor vehicle accident has received from a private medical scheme for past medical expenses. The principle was expressed by the court in the matter of *D’Ambrosini v Bane* 2006 (5) SA 121 (C) in the following words:

“medical aid scheme benefits which the plaintiff has received, or will receive are not deductible from in determining his claim for past and future hospital and medical expenses.”

[28] In *Rayi NO v Road Accident Fund* (9343/2000) [2010] ZAWCHC 30 (22 February 2010) the court stated the principle thus:

“payment by Bonitas of the plaintiff’s past medical expenses does not relieve the defendant of its obligation to compensate the plaintiff for past medical expenses.”

¹ (2022/016179) [2022] ZAGPPHC 768(26 October- 2022).

[29] It is apparent from the above statements of the legal position that the first respondent is not entitled to seek to free itself of the obligation to pay full compensation to victims of motor vehicle accidents. Thus the directive challenged in the present proceed is outside the authority given by the enabling statute. More specifically the directive is inconsistent with the express provisions of section 17 and is, consequently, unlawful.”

[9] It needs to be noted that the liability of the Defendant towards the Plaintiff arises entirely from the liability imposed by section 17(1) of the Road Accident Fund Act and that cause of action is not at all dependent on the contractual relationship between the Plaintiff and the medical aid scheme. The Defendant remains liable to the Plaintiff for the past medical expenses notwithstanding that the medical aid scheme had paid the said expenses. The payment by the medical aid scheme of the expenses of the Plaintiff, is an issue between the Plaintiff and Defendant and has nothing to do with the defendant. The Defendant is thus liable for payment of the past medical expenses. With regard to costs, same follow the cause. I accordingly make the following orders:

ORDER

1. The Defendant shall pay to the Plaintiff the sum of **R2 061 630.53 (TWO MILLION SIXTY-ONE THOUSAND SIX HUNDRED AND THIRTY RAND AND FIFTY-THREE CENTS)** within 180 (*one hundred and eighty*) days hereof, in respect of the Plaintiff's claim against the Defendant for the following heads of damages:
 - 1.1 Past Hospital and Medical Expenses R61 630.53
 - 1.2 Past and Future Loss of Earnings R1 300 000.00
 - 1.3 General Damages R700 000.00
2. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this Order to date of payment.

3. The Defendant shall furnish the Plaintiff with an unlimited Undertaking in terms of Section 17(4)(a) of Act 56 of 1996 for payment of **100%** of the costs of future accommodation of the patient in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the patient resulting from a motor vehicle accident on **2nd April 2019**, to compensate the patient in respect of the said costs after the costs have been incurred and upon proof thereof.

4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale in respect of both the merits and quantum, up to and including **6th June 2023**, and notwithstanding, and over and above the costs referred to in paragraph 5.2.1 below, subject thereto that:
 - 4.1 In the event that the costs are not agreed:
 - 4.1.1 The Plaintiff shall serve a Notice of Taxation on the Defendant's attorney of record;
 - 4.1.2 The Plaintiff shall allow the Defendant 180 (*one hundred and eighty*) days from date of allocatur to make payment of the taxed costs; and
 - 4.1.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed or agreed costs from 181 (*one hundred and eighty-one*) days from date of allocatur to date of final payment.
 - 4.2 Such costs shall include, as allowed by the Taxing Master:
 - 4.2.1 The costs incurred in obtaining payment of the amounts mentioned in paragraphs 2 and 5 above;
 - 4.2.2 The costs of and consequent to the appointment of counsel, including, but not limited to the following: for trial, including, but not limited to counsel's full fee for **6th June 2023**, and the preparation and reasonable attendance fee of counsel for attending;

4.2.3 The reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the below experts;

- 4.2.3.1 Dr D Hoffmann, Plastic, Reconstructive and cosmetic surgeon;
- 4.2.3.2 Dr MB Deacon, Orthopaedic surgeon;
- 4.2.3.3 Drs van Dyk and partners, Radiologists;
- 4.2.3.4 Dr D Bounvou-Poati, Neurosurgeon;
- 4.2.3.5 Ms L Grootboom, Clinical psychologist;
- 4.2.3.6 Dr LS Leshilo, Psychiatrist;
- 4.2.3.7 Ms F Steyn, Occupational Therapist;
- 4.2.3.8 Ms C Steenkamp, Industrial psychologist;
- 4.2.3.9 Mr K Stemmet, Grid Forensics, Forensic auditors;
- 4.2.3.10 Mr R Immerman, GW Jacobson Consulting Actuaries.

5. The amounts referred to in paragraphs 2 and 4 will be paid to the Plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

NAME OF ACCOUNT HOLDER: A WOLMARANS INC

NAME OF BANK & BRANCH: ABSA BANK, NORTHCLIFF

ACCOUNT NUMBER: [...]

BRANCH CODE: 632 005

TYPE OF ACCOUNT: CHEQUE (TRUST)

REFERENCE: Ms G van Rooyen/MAT8667

P E MOLITSOANE, J

On behalf of the Plaintiff: Adv. H.J, Cilliers
Instructed by: A WOLMARAANS INC
BLOEMFONTEIN

On behalf of the Defendant: Ms. K. Mkwanazi
Instructed by : The State Attorney
BLOEMFONTEIN