



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.: 2218/2022

In the matter between:

BERENG, LEBOHANG VINCENT

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Link no.: 5238783

CORAM: VAN ZYL

HEARD ON: 18 JULY 2023

DELIVERED ON: 1 FEBRUARY 2024

- [1] The plaintiff instituted action against the defendant for damages suffered as a result of a motor vehicle accident which occurred on 5 August 2021.
- [2] The merits have been settled. With the exclusion of the past hospital and medical expenses, the *quantum* has also been settled. I have already issued an order in relation to the aforesaid settled issues.
- [3] On the date of the hearing of the application, I was requested by Ms Boonzaaier, who appeared on behalf of the plaintiff, and Ms Bornman, who appeared on behalf of the defendant, to determine the issue of the liability, or not, of the defendant for the plaintiff's agreed or proven past hospital and medical expenses.
- [4] The background to the present dispute is the following:
1. An Internal Directive, dated 12 August 2022, was issued by the Acting Chief Claims Officer of the defendant to all regional managers of the defendant, which directive reads as follows:

"Dear Colleagues

All Regional Managers must ensure that their teams implement the **attached process to assess claims for past medical expenses**. All RAF officers 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 sustain 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 hundred percent compliance to the process.**” (The defendant’s own emphasis)

2. Subsequent to the issuing of the aforesaid Directive, Discovery Health (Pty) Ltd issued an urgent application in High Court, Gauteng Division, Pretoria, in which it sought an order whereby the Directive be reviewed and set aside. On 26 October 2022 judgment was delivered in the said application under the name **Discovery Health (Pty) Ltd v Road Accident Fund & Another** (2022/016179) [2022] ZAGPPHC 768 (26 October 2022), hereinafter referred to as “the main judgment”, in terms whereof the following order was made:

“42.1 The directive issued by the Acting Chief Claims Officer of the first respondent on 12 August 2022 is declared unlawful.

42.2 The directive issued by the Acting Chief Claims Officer of the first respondent on 12 August 2022 is reviewed and set aside.

42.3 The first respondent is interdicted and restraint from implementing the directive aforementioned.”

3. The defendant filed an application for leave to appeal against the main judgment. On 23 January 2023 the Court dismissed the application for leave to appeal.

4. An application for leave to appeal against the main judgment was subsequently filed by the defendant in the Supreme Court of Appeal on 23 February 2023.

5. On 31 March 2023 the Supreme Court of Appeal, under case number 135/2023, dismissed the application for leave to appeal with the following order:

“The application for leave to appeal is dismissed with costs on the grounds that there is no reasonable prospect of success in an appeal and there is no other compelling reason why an appeal should be heard.”

6. On 24 April 2023 the defendant, under case number CCT106/23, filed an application in the Constitutional Court for leave to appeal against the main judgment.

[5] At the time when the present matter served before me, the application for leave to appeal in the Constitutional Court was still pending and hence the present dispute.

[6] However, the Constitutional Court has since dismissed the last-mentioned application for leave to appeal against the main judgment on 18 October 2023 by means of the following order:

“The Constitutional Court has considered the application for leave to appeal and has concluded that it does not engage the jurisdiction of the Court. Consequently, leave to appeal must be refused. The Court has decided to award costs.”

- [7] The main judgment issued in the matter of **Discovery Health (Pty) Ltd v Road Accident Fund & Another**, *supra*, in terms whereof the defendant's directive was reviewed and set aside, is consequently still in force.
- [8] I respectfully agree with the main judgment.
- [9] The defendant is consequently liable to pay the plaintiff's agreed or proven past hospital and medical expenses.
- [10] At the time of the hearing of the present application, I was informed by the legal representatives that the amount of the plaintiff's past hospital and medical expenses have not (yet) been agreed upon between the parties. I was consequently requested to make an order in terms whereof the Court can be approached for the payment of the said expenses, should the parties in the meantime agree on the amount thereof; alternatively, for the determination by the court of the amount of such expenses. In my view a postponement of the matter to the pre-trial roll will accommodate both possibilities.
- [11] Considering that the application for leave to appeal against the main judgment was still pending in the Constitutional Court at the time when the present matter served before me, there was no clarity on the issue. It is therefore understandable that the issue was in dispute between the parties. In the circumstances I consider it fair and reasonable that the costs of the present matter be costs in the action and should therefore be paid by the defendant in accordance with the previous Court Order, dated 18 July 2023.

