



**IN HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**Case No.: 31590/23**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1)REPORTABLE: NO
- (2)OF INTEREST TO OTHER JUDGES: NO
- (3)REVISED: NO

**30/11/2023**  
DATE SIGNATURE \_\_\_\_\_

**GAST KEVIN obo GAST NEVILLE**

Plaintiff

And

**ROAD ACCIDENT FUND**

Defendant

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**JUDGMENT**

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**MOLELEKI, AJ:**

*Introduction*

[1] The plaintiff instituted action against the defendant for damages in his personal, as well as representative capacity as *curator bonis* to his brother, Neville Gast (hereinafter referred to as the patient).

[2] On 4 February 2012, the motor vehicle driven by the patient collided with that driven by an insured driver as contemplated in section 17(1) of the Road Accident Fund Act.<sup>1</sup> The patient sustained a severe traumatic brain injury with a

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<sup>1</sup> 56 of 1996 (the Act).

Glasgow Coma Scale (GCS) of 7/15 and underwent craniotomy. He was hospitalised for a period of four months. On 13 June 2012, he was declared incapable of managing his own affairs by Tuchten J. Thereafter, the patient was taken to a care facility with 24-hour nursing services. Recovery is not expected, and the patient continues to dwell at the care facility.

[3] When the matter served before me, other disputes had been resolved or postponed *sine die*. The remaining issue is an interim payment of the plaintiff's out of pocket past medical expenses in the amount of R 167 709.88 (one hundred and sixty seven thousand seven hundred and nine rand and eighty eight cents), relating to the patient's accommodation in the care facility for the period between January 2016 and October 2022. The plaintiff's remaining past medical and accommodation expenses, which also include past medical expenses is to be postponed *sine die* respect of expenses paid by a medical aid scheme on the plaintiff's behalf.

[4] What needs to be determined is whether the plaintiff has successfully proved that he is entitled to the amount claimed.

#### *The Evidence*

[5] The plaintiff led the evidence of one witness. Dr Kevin Gast testified that he was appointed the *curator bonis* of the patient who is a paraplegic following the collision. He is the one who pays for the patient's rent for his accommodation at the care facility and has signed a contract with the facility. The plaintiff put a deposit down and the first payment in January 2012 was the amount of R 10 800 which amount has been escalating by 10% annually. The rental amount is currently R 18 200. Payments are made in advance and on or before the 10<sup>th</sup> of every month. According to Dr Gast, the patient would not have been allowed to remain at the facility if payments were not made.

[6] The defendant did not lead any evidence. However, it contended that there is no proof that the invoices which were presented by the plaintiff were honoured nor do they reflect the details of the recipient of the payment, including the date of receipt of payment. It submitted therefore that the plaintiff was not entitled to the amount claimed.

- [7] The plaintiff, Dr Gast gave evidence regarding the expenses that he himself had incurred. He confirmed that those expenses were incurred as a result of the injuries sustained by the patient in the collision, which rendered him paraplegic. These expenses related mainly to the patient's accommodation, care and necessary medical care. Dr Gast had knowledge that the costs and expenses reflected in the invoices and the report that was generated by the care facility, had in fact been incurred.
- [8] Dr Gast is the one who made arrangements for the patient to be admitted to the facility and he entered into a written contract in respect thereof. Dr Gast made it clear that this facility would not allow for the patient to continue staying there unless payments were made when due.
- [9] It was not in dispute that the patient has been accommodated in a care facility since his release from hospital and that to date, he is still resident thereat. Although Dr Gast could not produce evidence of payment in the form of receipts or bank statements, the plaintiff discovered invoices from the care facility indicating that they had been paid for the period at issue. Dr Gast furnished reasons for not furnishing bank statements. The defendant informed the plaintiff approximately a week prior to the trial that it required bank statements. Dr Gast was in Texas, United States of America when the said request was made. His evidence had to be obtained by electronic means as a result. He stated that, he had since switched banking institutions but that did not mean the bank statements were unavailable. However, he would have required sufficient time to secure them.
- [10] The plaintiff's case as pleaded in paragraphs 14 of the particulars of claim is that, in consequence of the accident, the injuries the patient sustained and the *sequelae* thereto, the patient has suffered damages, which claim, amongst others, included past hospital and medical expenses.
- [11] In its plea, the defendant contended that it has no knowledge of the allegations and accordingly does not admit same and puts the plaintiff to the proof thereof. It is incumbent on the defendant to allege the material facts upon which it relies, but it did not.

[12] In the pre-trial meeting held on 23 August 2023 the matter was certified trial ready by the presiding judge. The plaintiff was proceeding to trial with the understanding that the documents contained in the document bundle will be what they purport to be, and that formal proof of the documents is not required. The defendant further undertook to notify the plaintiff before the trial date if it requires a specific document to be proven. Even though the pre-trial minute does not stipulate a time period within which the defendant was to inform the plaintiff if it needed a specific document to be proven, to give the plaintiff one week is unreasonable.

[13] It is beyond doubt that the plaintiff incurred the expenses of R 167 709.88. Adequate proof for the reason the money was spent, was provided. There was necessity to incur these expenses and the defendant did not lead any evidence to the contrary. Similarly, it was not an issue that the fees were fair and reasonable.

[14] I will not address the validity of the contingency agreement as it has not been argued that it was invalid.

[15] I therefore conclude that on the facts before me, the defendant is liable for the past medical expenses hereto incurred.

#### *Costs*

[16] In accordance with the general principle that costs follow the event, I award the costs in favour of the plaintiff.

#### *Order*

[17] Accordingly, I make the following order:

[1] The merits were resolved on the basis that the defendant shall pay 15% of the plaintiff's proven or agreed damages.

[2] The defendant shall pay to the plaintiff the sum of R 167 709.88 (one hundred and sixty seven thousand seven hundred and nine rand and eighty eight 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:

- 2.1 Out-of-pocket past hospital and medical expenses for the period 1 January 2016 to October 2022, being the amount R 167 709.88.
  - 2.2 Past and future loss of earnings/earning capacity as previously settled.
  - 2.3 General damages as previously settled.
- [3] In the event of the aforesaid amount not being paid on 180 days from the date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15<sup>th</sup> calendar day after the date of this order to date of payment in line with prevailing legislation.
- [4] The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for payment of 15% 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 4 February 2012, to compensate the patient in respect of the said costs after the costs have been incurred and upon proof thereof.
- [5] The defendant shall pay the plaintiff's taxed or agreed party and party costs on High Court scale in respect of both the merits and quantum, up to and including 12 October 2023, and notwithstanding, and over and above the costs referred to in paragraph 5.2.1 below, subject thereto:
- 5.1 in the event that the costs are not agreed:
    - 5.1.1 the plaintiff shall serve a Notice of Taxation on the defendant's attorney of record;
    - 5.1.2 the plaintiff shall allow the defendant 180 (one hundred and eighty) days from date of allocator to make payment of the taxed costs;

- 5.1.3 should payment not be effected on 180 (one hundred and eighty) days from date of allocator, the plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed or agreed costs from 15 (fifteen) days from date of allocator to date of final payment.
- 5.2 Such costs shall include, as allowed by the Taxing Master:
- 5.2.1 the costs incurred in obtaining payment of the amounts mentioned in paragraphs 2 and 5 above;
- 5.2.2 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 10 October 2023, 11 October 2023 and 12 October 2023, and the preparation and reasonable attendance fee of counsel for attending:
- 5.2.2.1 pre-trial conferences held on 11 February 2020, 17 May 2022 and 23 August 2023;
- 5.2.2.2 the interlocutory application heard on 10 September 2021;
- 5.2.2.3 the case management meeting held on 4 October 2022.
- 5.2.3 The costs of all medico-legal, radiological, MRI, sonar, pathologist, actuarial and addendum reports and/or forms obtained, as well as such reports and/or forms furnished to the defendant and/or its attorneys, as well as all reports and/or forms in their possession and all reports and/or forms contained in the plaintiff's bundles, including, but not limited to the following:
- 5.2.3.1 Dr Martin, Orthopaedic Surgeon;
- 5.2.3.2 Sandton Radiology, Radiologists;
- 5.2.3.3 Dr P Steyn, Urologist;
- 5.2.3.4 Dr Mutyaba, Neurosurgeon;
- 5.2.3.5 Dr Ormond-Brown, Neuropsychologist;
- 5.2.3.6 N Doorsamy, Occupational Therapist;
- 5.2.3.7 BGP Maritz, Industrial Psychologist; and
- 5.2.3.8 G Jacobson, Actuary

- 5.2.4 The reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the above experts.
- 5.2.5 The reasonable costs incurred by and on behalf of the plaintiff in attending the medico-legal examination of both parties' experts;
- 5.2.6 The costs of and consequent to the parties' experts holding joint meetings and compiling minutes of joint meetings, if any;
- 5.2.7 The costs of and consequent to the plaintiff's trial bundles and witness bundles, including the costs of 3 (three) copies thereof;
- 5.2.8 The plaintiff is declared a necessary witness and therefore the plaintiff's reasonable travelling expenses to attend the trial, as allowed by the Taxing Master; and
- 5.2.9 The costs of and consequent to the holding of a pre-trial conference.

[6] The amounts referred to in paragraphs 2 and 5 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
NAME OF BANK & BRANCH:	ABSA BANK, NORTHCLIFF
ACCOUNT NUMBER:	406 680 3929
BRANCH CODE:	632 005
TYPE OF ACCOUNT:	CHEQUE (TRUST)
REFERENCE:	MS KORDAS/MAT2696

[7] The remaining portion of past-medical and hospital expenses is postponed *sine die*.

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**MOLELEKI AJ**  
**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

Counsel for the Plaintiff: Adv A.M Van der Merwe

Instructed by: A Wolmarans Inc.

Counsel for the Defendant: Mr L Mtshemla

Instructed by: State Attorney

Date of hearing: 12 October 2023

Date of judgment: 30 November 2023