

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 14448/2020

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
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DATE	SIGNATURE

In the matter between:

**NIEMAND**  
PLAINTIFF

**BAREND**

**JACOBUS**

**VAN**

**EEDEN**

and

**ROAD**  
DEFENDANT

**ACCIDENT**

**FUND**

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**JUDGMENT**

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Nkutha-Nkontwana, J:

*Introduction*

[1] On 27 August 2019, the plaintiff was involved in a collision between a motor vehicle in which he was a driver and the one that was driven by an insured

driver as contemplated in section 17(1) the Road Accident Fund Act<sup>1</sup> (“the Act”). As a result of the collision, the plaintiff sustained serious bodily injuries which are set out in the particulars of claim, as amended, as well as in the medico-legal reports filed, which are part of record in this action. I deem it superfluous to detail the injuries as the question of liability was settled prior to the hearing. Outstanding was the issue of quantum as the plaintiff claims damages in respect of loss of earnings and general damages and future medical and hospital expenses.

- [2] The matter was certified ready for trial only in respect of all heads of damages, save for past medical and hospital expenses. Prior to the hearing of the matter, the parties reached an agreement in relation to all the heads of damages. However, the plaintiff contends that past medical and hospital expenses remain in dispute. As a result, the parties made oral submissions in relation to this head of damages.

### *Submissions*

- [3] The plaintiff contends that the past medical and hospital expenses remain as a head of damage to be compensated. The amended particulars of claim reflect a claim in respect of the past medical and hospital expenses in the amount of R 111 293.70. On 13 November 2020, the defendant made a direct interim settlement offer in respect of past medical and hospital expenses in the amount of R 106 972.22, which was immediately accepted by the plaintiff. In these proceedings, the plaintiff seeks an additional amount of R 32 026.00, which he contends is outstanding.
- [4] The defendant on the other hand takes issue with the applicant’s approach and contends that on 03 October 2023, the plaintiff served its attorneys of record with a proposed practice note which was also uploaded on CaseLines on the same day. The practice note indicates that the trial would proceed in respect of past medical and hospital expenses. The plaintiff also uploaded her affidavit on the CaseLines, wherein he avers that an outstanding amount of R 32 026.00 remains outstanding from the amount of R 106 972.22 he has already been

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<sup>1</sup> Act 56 of 1996.

paid. Attached thereto are the vouchers and medical reports in support of his claim.

- [5] The defendant also disputes the plaintiff's claim. Firstly, it impugns this Court's jurisdiction to entertain the issue of past medical and hospital on the strength of the appeal against the judgment in the matter between *Discovery Health (Pty) Ltd v The Road Accident Fund & Another*<sup>2</sup> that was still pending determination by the apex court when this matter was heard. I do not have to be arrested by this issue as the Constitutional Court has since refused the defendant leave to appeal. As things stand, there is no impediment on this Court to entertain a claim for past medical and hospital expenses that had already been paid by a medical aid.
- [6] Secondly, the defendant contends that this head of damages has been settled and the plaintiff compensated accordingly. Thirdly, the defendant contends that, to the extent that the matter was specifically certified for trial on the issues of loss of earnings, general damages and future medical and hospital expenses, it is inconceivable that the past medical and hospital expenses were still in dispute.
- [7] The plaintiff, in retort, contends that the amount of R 106,972.22 that was offered by the defendant and accepted on 13 November 2020 was an interim settlement payment. As such, he is entitled to claim the outstanding amount. While the defendant concedes that the settlement was interim, it is adamant that it was so offered given the fact that the other heads of damages had not been settled. Nonetheless, there was no doubt that the offer was made in full and final settlement in respect of past medical and hospital expenses. Moreover, the plaintiff failed to amend his particulars of claim to include the amount he is now claiming.

### *Evaluation*

- [8] The plaintiff failed to proffer any explanation for failure to amend his particulars of claim to include the amount of R 32 026.00 in respect of past medical and hospital expenses. As mentioned above, the amended particulars of claim

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<sup>2</sup> [2023] ZAGPPHC 523 (26 June 2023) ("*Discovery Health*").

reflect the amount of R 111 293.70. The defendant audited the set of vouchers it had received in line with the amended particulars of claim and taxed off the hospital account for Netcare Hospital which allegedly exceeded the allowed tariff by an amount R 4 321.48. Yet, the amount currently claimed by the plaintiff pertains to a period before the defendant had tendered the settlement offer in respect of this head of damages.

[9] The defendant correctly contends that the Act could not have envisaged a continuous flow of accounts to be submitted by a plaintiff erratically for payment. The plaintiff ought to have ensured that a complete set of documents was submitted in order to enable the defendant to assess such claim within 120 days of lodgement. Absent a plausible reason for the remiss in the submission of the current accounts, the plaintiff's claim in respect of past medical and hospital expenses has been partially settled by R 106 972.22. I say so because the defendant arbitrarily audited the plaintiff's claim on the strength of an internal directive on tariffs which it applied retrospectively and deducted the amount R 4 321.48.

[10] In *Discovery Health*<sup>3</sup> Mbongwe J aptly held that the Road Accident Fund was not entitled to seek to free itself of the obligation to pay full compensation to victims of motor vehicle accidents. The August 2022 directive was found to be outside of the authority given by the enabling statute; inconsistent with the express provisions of section 17 of the Act; and thus unlawful.

[11] It follows that there is no reason why the defendant should not be ordered to pay the amount R 4 321.48, at least, as contended by the plaintiff.

### *Conclusion*

[12] In all the circumstances, the plaintiff's claim for an amount of R 32 026.00 in respect of past medical and hospital expenses stands to be dismissed. While the defendant should pay the plaintiff an outstanding amount R 4 321.48 in respect of past medical and hospital expenses which was unlawfully deducted

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<sup>3</sup> *Discovery Health (Pty) Ltd v The Road Accident Fund & Another* [2022] ZAGPPHC 768 (26 October 2022) at para 29.

from the quantum reflected in the amended particulars of claim and supported by vouchers that were duly submitted.

*Order*

1. The plaintiff's claim for an amount of R 32 026.00 in respect of past medical and hospital expenses is dismissed.
2. The defendant shall pay the plaintiff an outstanding amount R 4 321.48 in respect of past medical and hospital expenses which was unlawfully deducted.
3. There is no order as to costs.

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**P NKUTHA-NKONTWANA J  
JUDGE OF THE HIGH COURT  
JOHANNESBURG**

Appearances:

For the Plaintiff: Adv L Smith

Instructed by: A Wolmarans Inc

For the Respondent: Ms S Ameersingh

Instructed by: State Attorney

Date of hearing: 10 October 2023

Date of judgment: 02 January 2024

