

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

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED

CASE NO.: 2405/2019

In the matter between:

NTAOPANE CAROLINE SEIPATI

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

CORAM: **JORDAAN, AJ**

JUDGMENT BY: **JORDAAN, AJ**

HEARD ON: **28 NOVEMBER 2023**

DELIVERED ON: **29 NOVEMBER 2023**

- [1] At 07h00 on the 12th of July 2017 the Plaintiff, an adult female, was the passenger in a white Toyota Taxi bearing registration letters and numbers RSL [...] (hereinafter referred to as “the insured vehicle”) when the driver, Thokozane Mchunu (hereinafter referred to as “the insured driver”), lost control of the insured vehicle when the rear tyre burst, causing the insured vehicle to overturn.

- [2] As a result of the collision, the Plaintiff sustained the following injuries:
- 2.1 Facial degloving injury requiring surgery;
 - 2.2 Right lower leg degloving injury, requiring two skin grafts;
 - 2.3 Left small finger injury;
 - 2.4 Rib injury;
 - 2.5 Head injury.
- [3] The Plaintiff consequently instituted action in terms of the provisions of the Road Accident Fund Act 56 of 1996, as amended, to recover damages initially computed at R3 800 000,00 comprising of:
- | | |
|--|---------------|
| 3.1 Past Hospital and Medical Expenses | R150 000,00 |
| 3.2 Estimated Future Medical Expenses | R450 000,00 |
| 3.3 Estimated Past and Future Loss of Earnings | R2 000 000,00 |
| 3.4 General Damages | R1 200 000,00 |
- [4] At the commencement of the trial, Counsel for the Plaintiff moved an amendment of the amount claimed in respect of past hospital and medical expenses from R150 000,00 to R191 062,96, which was not opposed and the amount was accordingly amended.
- [5] The issue of liability became settled between the parties by means of an offer of settlement and acceptance dated 12 June 2018, in terms of which RAF conceded the merits 100% in favour of the Plaintiff.¹
- [6] The past hospital and medical expenses were partially settled, while the loss of earnings were settled in terms of an offer and acceptance of settlement dated the 18th of March 2022 and handed in at trial as Exhibit "A". The issues of future medical expenses and general damages were settled shortly before the trial on the basis set out in the order herein.
- [7] The issue for determination by this court is whether RAF can refuse to pay outstanding balance of the past hospital and medical expenses due to no original voucher.
- [8] At the hearing of the trial, the parties agreed that the expert reports of the Plaintiff are accepted by the Defendant. No expert reports were handed into evidence on behalf of the Defendant. The Plaintiff additionally handed into evidence the affidavit of Tanusha Tia Hoosen², an employee of Discovery Medical Aid Scheme in which she set out the expenses incurred by her employer as past medical and hospital expenses for the treatment of injuries sustained by the Plaintiff in the motor vehicle collision which occurred on the 12th of July 2017, this affidavit was not disputed. It was not disputed that the Plaintiff was a member of Discovery Medical Aid-

¹ Trial Bundle 1 page 37 to 39

² Trial Bundle 5 page 224 to 226

Scheme. The expenses incurred are also not in dispute.

[9] During the trial no submissions were made by the Defendant placing anything in dispute in respect of the outstanding past hospital and medical expenses.

[10] Section 17(1) of the Road Accident Fund Act³ reads as follows:

“(1) The Fund or an agent shall –

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee...”

[11] Having regard to section 17(1) of the Road Accident Fund Act, the Defendant is obliged to compensate any person where injury has been sustained or death occurred as a result of the negligent driving of a motor vehicle. The Defendant in this case seeks to escape liability on the basis that the voucher is not original, but does not dispute that the injuries sustained in the motor vehicle collision was assessed, medically treated and paid for at the occurrence of the collision and thereafter.

[12] The Road Accident Fund Act does not make provision for the exclusion of compensation when no original voucher is available in circumstances where the Defendant does not place anything in dispute and further admit the truthfulness and correctness of the content of the Plaintiff's evidence pertaining to the injuries sustained in the collision, the medical treatment received for those injuries, the costs of the treatment received for the injuries, the account statement of payment by the medical aid for the medical treatment received for the injuries so sustained.

[13] In the circumstances I see no reason to reject the Plaintiff's evidence and accordingly accept the Plaintiff's evidence and find that the Defendant is liable to pay the Plaintiff's outstanding past hospital and medical expenses in the amount of R80 637,72.

³ Act 56 of 1996, as amended

[14] I accordingly make the following order:

ORDER:

1. The Defendant shall pay to the Plaintiff the sum of **R780 637.72** (*seven hundred and eighty thousand six hundred and thirty-seven rand and seventy-two cents*) within 180 (*one hundred and eighty*) days from date hereof, in respect of the Plaintiff's claim against the Defendant for the following heads of damages:

1.1	Past Hospital and Medical Expenses	R80 637.72
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1.2	General Damages	R700 000.00
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2. The amount referred to in paragraph 1.1 in respect of Past Hospital and Medical Expenses is payable by the Defendant in addition to the interim amount of R110 425.24 previously paid by the Defendant in partial settlement of the Plaintiff's claim for Past Hospital and Medical Expenses.
3. In the event of the amount referred to in paragraph 1 not being paid within 180 days from date of this Order, 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 final 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 **100%** of the costs of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff resulting from a motor vehicle accident which occurred on **12th July 2017**, to compensate the Plaintiff 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 the High Court scale up to and including **28th November 2023**, and notwithstanding, and over and above the costs referred to in paragraph 5.2.1 below, subject thereto that:

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 allocatur to make payment of the taxed costs; and
- 5.1.3 Should payment of the taxed costs not be effected within 180 (*one hundred and eighty*) days from date of allocatur, the Plaintiff will be entitled to recover interest from the Defendant at the prevailing interest rate on the taxed or agreed costs calculated from 15 (*fifteen*) days from date of allocatur 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 1 and 5 above;
- 5.2.2 The costs of and consequent to the appointment of counsel, including, but not limited to, the following:
 - 5.2.2.1 Fees for trial, including, but not limited to counsel's full fee for **28th November 2023**, inclusive of preparation fees;
 - 5.2.2.2 Fees in respect of the preparation and attendance by counsel of the Case Management Meetings held on 5th June 2023 and 21st August 2023.
- 5.2.3 The costs of all medico-legal, RAF 4 serious injury assessment, 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 Prof. L.A. Chait, Plastic Surgeon;
 - 5.2.3.2 N. Prinsloo, Clinical Psychologist;
 - 5.2.3.3 Dr. D.K. Mutyaba, Neurosurgeon;

- 5.2.3.4 N. Doorasamy, Occupational Therapist
- 5.2.3.5 W. Van Jaarsveldt, Industrial Psychologist;
- 5.2.3.6 R. Immermann, Actuary (Gerard Jacobson Consulting Actuaries).

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 examinations of the Plaintiff's experts;

5.2.6 The costs of and consequent to the Plaintiff's trial bundles and witness bundles, including the costs of 4 (four) copies thereof;

5.2.7 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

5.2.8 The costs of and consequent to the holding of a pre-trial conference on 25th April 2023.

6. The amounts referred to in paragraphs 1 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 INC
NAME OF BANK & BRANCH:	ABSA BANK, NORTHCLIFF
ACCOUNT NUMBER:	406 [...]
BRANCH CODE:	632 005
TYPE OF ACCOUNT:	CHEQUE (TRUST)
REFERENCE:	MRS VAN ROOYEN/MAT6009

M.T. JORDAAN
Acting Judge of the High Court, Free
State Division, Bloemfontein

Appearance for Plaintiff:
Instructed by:

Adv AS Boonzaaier
A Wolmarans Inc
Bloemfontein

Appearance for Defendant:
Instructed by:

Ms K Mkhwanazi
The State Attorney
Bloemfontein