



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – MAKHANDA)**

CASE NO.: 1554/2021

Matter heard on: 26 April 2023

Judgement delivered on: 9 May 2023

In the matter between: -

MARIANA ELS

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

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

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Signature

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Date

JUDGMENT

SMITH J:

[1] On 10 November 2022, Rugunanan J ordered the defendant to pay to the plaintiff general damages in the sum of R799 020, arising from injuries suffered by the latter in a motor vehicle collision that occurred on 12 April 2019. The issue of the defendant's liability in respect of past medical expenses was separated and postponed *sine die*.

[2] That issue came before me on 26 April 2023, when the plaintiff sought judgment in the sum of R786 802.04 and ancillary relief. It was common cause that the sum of R782 724.19 had been paid by the plaintiff's medical aid, Discovery Health, and she had personally settled the balance, being the sum of R4 077.85. The plaintiff has also accepted that expenses covered by the medical aid and recovered from the defendant must be repaid to the former.

[3] Ms *Jerram*, who appeared for the defendant, argued that the plaintiff is only entitled to be indemnified in respect of the amount paid by her personally and not for payments made by her medical aid. She submitted that the plaintiff did not suffer any pecuniary loss in respect of medical expenses covered by her medical aid and does consequently not have *locus standi* in respect thereof.

[4] The defendant had also raised this defence in *Morne van Heerden v Road Accident Fund* (Case no. 845/2020, Gqeberha High Court, delivered on 8 September 2022). In that matter, Rugunanan J, in a well-reasoned judgment, held that payments which a medical aid is contractually obliged to make on behalf its insured are *res inter alios acta* and the defendant could consequently not claim any benefit of them. He consequently found that 'payments by the plaintiff's medical aid does not relieve the defendant of its obligation to compensate the plaintiff for such expenses'. (See also: *Bane and Others v D' Ambrosi* 2010 (2) SA 539 (SAC), at para 19)

[5] In terms of the principle of *stare decisis*, I am constrained to follow that decision unless I am persuaded that it is wrong. I can find no fault with Rugunanan J's reasoning and, on the contrary, consider it to be sound and compelling.

[6] I can, in any event, not understand why the defendant has raised this objection to the plaintiff's claim. It has accepted that it would also have been liable to

indemnify the plaintiff's medical aid for expenses covered by it. And by paying that sum to the plaintiff it would, in terms of the principle of subrogation, have discharged that liability. It can accordingly not claim any conceivable prejudice.

[7] I am therefore of the view that the plaintiff is entitled to judgment compelling the defendant to reimburse her for past medical expenses, including those covered by her medical aid.

[8] In the result there is judgment for the plaintiff in the following terms:

1. Payment of the sum of R786 579.04 for past medical expenses.
2. Interest on the aforesaid amount at the legal rate from 11 November 2022 until the date of payment.
3. Costs of suit and interest thereon, at the legal rate, from 14 days after *allocatur* to date of payment.

JE SMITH
JUDGE OF THE HIGH COURT

Appearances:

Attorney for the Plaintiff	:	Mr. McCallum
	:	McCallum Attorneys
		High Street
		MAKHANDA
		(Ref.: Mr. McCallum)
Attorney for the Defendant	:	Ms. Jeram
	:	State Attorneys

C/o Yokwana Attorneys

10 New Street

MAKHANDA

(Ref.: Ms. Jeram)