



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE HIGH COURT, KIMBERLEY)**

Case No: 2018/2013

Heard on: 25/01/2018

Delivered on: 14/06/2018

In the matter between

CHRISTIAAN NICOLAI LAUBSCHER

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

PAKATI J

- [1] The plaintiff, Mr Christiaan Nicolai Laubscher, instituted action against the defendant, the Road Accident Fund, for payment of R6 724 074-29 as a result of an accident that occurred on a public road at Jacobus Street, Kimberley on 10 January 2009. On 16 November 2017 Mr Chris Botha, for the plaintiff, and Mr P Eia, on behalf of the defendant, consented that the defendant had to pay proven damages less 20% apportionment. In the meantime a draft order marked "CNL" was made an order of court and was forwarded to Dr Koch to make calculations in relation to the plaintiff's past and future loss of earning capacity.
- [2] On 25 January 2018 after the actuary had filed its calculation the parties filed heads of argument. Mr Eia brought an interlocutory application and argued that the court order dated 16 November 2017 should be amended, rescinded or varied in terms of Rule 42 of the Uniform Rules of Court due to errors and omissions contained therein. Mr Botha opposed the application and argued that the order of 16 November 2017 is final.
- [3] In this judgment I will deal only with the interlocutory application. The order of 16 November 2017 is exclusive of Clause 13 and 14 dealing with the plaintiff's past and future loss of earning capacity which still has to be dealt with after the actuarial calculation. Rule 42 provides:

“42 Variation and Rescission of Orders

- (1) *The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:*
 - (a) *An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*
 - (b) *An order or judgment in which there is an ambiguity, or patent error or omission, but only to the extent of such ambiguity, error or omission;*
 - (c) *An order or judgment granted as the result of a mistake common to the parties.*
- (2) *Any party desiring any relief under this rule shall make application therefore upon notice to all parties whose interests may be affected by any variation sought.*
- (3) *The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.”*

[4] The general principle is that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. The reason is that it becomes *functus officio*: its jurisdiction in the case having been fully and finally exercised and its authority over the subject-matter has ceased.¹ In my view, this is not the appropriate forum in which Rule 42 finds application. The application therefore stands to be dismissed.

[5] Mr Eia submits further that if the Court is unwilling to correct its order in terms of Rule 42 the Court has to grant him leave to appeal. Mr Botha objects to this submission and argues that no application for leave to appeal is properly before this Court, I agree.

COSTS

[6] The outstanding issue is the costs of 25 January 2018. Mr Botha submits that the defendant should be ordered to pay the costs of 25 January 2018. Mr Eia, on the other hand requests an order that the plaintiff’s legal representatives should bear the costs, the one paying the other to be absolved, due to their conduct in dealing with this matter, alternatively that each party be ordered to pay its own costs on party and party scale.

[7] It is trite that costs should follow the result. It is therefore my view that the same principle applies in this case. Instead of arguing fully the actuarial calculation as far as past and future loss of income, the parties concentrated on the interlocutory application.

In the circumstances I make the following order:

The application in terms of Rule 42 is dismissed with costs.

¹ The Superior Court Practice at B1-309; See also *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 176, 178, 186-187 and 192; *S v Wells* 1990 (1) SA 816 (A) at 820A-D

BM PAKATI
JUDGE-NORTHERN CAPE DIVISION, KIMBERLEY

For the Plaintiffs: Mr H Van Niekerk
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For the Defendants: Ms C Thomas
Instructed by: ROBERT CHARLES ATTORNEYS