



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

Reportable / Not reportable

Case no: 164/2021

In the matter between

MOEKETSANE PATRICK MARASI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Moeketsane Patrick Marasi v Road Accident Fund*

Coram: Ramdeyal AJ

Heard: 28 August 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be **30 August 2024** at 10h30.

ORDER

1. Judgment is granted in favour of the plaintiff for the payment of R76 997.14 within 180 days hereof.
2. Draft order "X" is made an order of court.

JUDGMENT

Ramdeyal AJ

[1] The plaintiff in this case is Moeketsane Patrick Marasi, a 41 year-old male. He instituted an action against the defendant, the Road Accident Fund (RAF), after he sustained injuries during a motor-vehicle collision which occurred on 30 March 2019.

[2] The RAF conceded the issue of negligence in respect of the occurrence of the motor-vehicle collision on the basis that the insured driver was negligent in causing the collision. The parties resolved the plaintiff's claim for future loss of income and a settlement agreement has been proposed in that regard. General damages have been formally rejected by the defendant. The only issue left for determination is in respect of past hospital and medical expenses.

[3] The plaintiff initially claimed payment of the amount of R77 858.24 in respect of past medical and hospital expenses as per para 9 of the particulars of claim. After evidence of the plaintiff was led, counsel applied for an amendment which was not opposed by the defendant and which had no prejudice as such to the defendant for a reduction of the amount of claim to the amount of R76 997.14, as an amount of R861.10 was written off as a bad debt by Dr JJ De Wett. (See pages 30 and 31 of the Amended Index: Notices and other pleadings).

[4] The plaintiff testified and did not call any witnesses. The defendant did not lead any evidence nor challenge the evidence of the plaintiff. The plaintiff is a police officer employed by the South African Police Services who confirmed that he was involved in a motor-vehicle collision on 30 March 2019 and sustained a fracture to his left leg and an injury on his mouth. He was taken to Medi-Clinic Hospital in Welkom. The leg injury required surgery and the injury to the lip was sutured. After his discharge from Medi-Clinic Hospital in Welkom, further X-rays and orthopedic treatment resulted in further admission to hospital and, consequently, even further treatment. He confirmed the statement of accounts of Medi-Clinic Hospital and Dr De Wett as per pp 13-14 and 30-31 of the Amended Index: Notice and other pleadings, respectively. These expenses were paid by his registered medical aid, GEMS.

[5] The plaintiff's claim for past medical and hospital expenses have not actually been disputed by the defendant. The defendant's plea in respect of this claim is that the defendant has no knowledge of the content and therefore does not admit same and puts the plaintiff to the proof thereof. (See para 7 of defendant's plea.) The defendant need only prove his claim on a balance of probabilities, and the fact that the plaintiff's evidence was not disputed entitles this court to assume that the defendant agrees with same.

[6] Section 17(1) of the Road Accident Fund Act 56 of 1996 (RAF Act) provides for compensation to third parties, including the plaintiff, for any damages or losses incurred due to the negligent or unlawful actions of the driver of the motor-vehicle. The fact that GEMS has already paid for past medical and hospital expenses does not preclude RAF from its liability. Benefits which a claimant receives under an insurance policy where he or she pays a premium are to be left out of an account. It is a collateral issue based on the principle of *res inter alios acta*.¹ It has been said that when a medical aid pays the plaintiff compensation, it is of 'no concern' of the defendant.²

[7] It is quite clear that the benefit that accrues to an insured from a medical aid contract between the plaintiff and the medical aid does not absolve the defendant from its liability to the plaintiff in terms of the RAF Act.³ The Court previously confirmed that, in respect of the medical aids payment of expenses, RAF was not entitled to raise the medical

¹ *Zysset and Others v Santam Limited* 1996 (1) SA 278 (C) at 278C-D.

² *Gunther v Road Accident Fund* [2024] ZAWCHC 84 para 30.

³ *Discovery Health (Pty) (Ltd) v Road Accident Fund and Another* [2022] ZAGPPHC 768. See also *Mooideen v The Road Accident Fund* (an unreported case from the Western Cape Division, case number 17737/2015, delivered on 11 December 2020)

aid scheme indemnification as a defence:

'These principles have been part of our law for years and bears the weight of precedent. Our courts have recognized that medical aid scheme benefits are a form of indemnity insurance and should accordingly be disregarded for the purposes of an award for damages, in accordance with the principle of *res inter alios acta*.'⁴

[8] Therefore, it can be accepted by the applicable case law referred to that the fact that GEMS has already paid for past medical expenses does not preclude the liability of the RAF. Therefore, the plaintiff's claim must succeed.

[9] In the result the following order is made:

1. Judgment is granted in favour of the plaintiff for the payment of R76 997.14 within 180 days hereof.
2. Draft order 'X' is made an order of court.

A handwritten signature in black ink, appearing to be 'RAMDEYAL, AJ', is written over a solid black rectangular redaction box. The signature is cursive and somewhat stylized.

RAMDEYAL, AJ

⁴ Banda v Road Accident Fund [2024] ZAGPJHC 483 para 15.

Appearances

For the Plaintiff:

Advocate J H Van der Merwe

Instructed by:

Honey Inc. Attorneys

For the Defendant:

Ms M Booysen

Instructed by:

State Attorney c/o Road Accident Fund