

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

Reportable/Not Reportable

Case no.: 1859/2023

In the matter between:

NONTLAHLA THANDEKA MANTSE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: Opperman J

Heard: 30 July 2024, 26 November 2024, 11-12 February 2025, 14 February 2025

Delivered: 27 March 2025. This judgment was handed down in court and electronically by circulation to the parties' legal representatives by email and release to SAFLII. The date and time for hand-down is deemed to be on 27 March 2025 at 15h00.

Summary: Claim – merits – motor vehicle accident – s 17 undertaking

ORDER

1. The defendant shall be liable for payment of 100% of the plaintiff's proven or agreed damages.
2. The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for 100% of the costs of future accommodation of the plaintiff in a hospital and/or nursing home or the treatment of or rendering of a service to him or the supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision which occurred on 23 May 2022, after such costs have been incurred and upon proof thereof.
3. The amount in para 2 above shall be payable within 180 (one hundred and eighty) days of date of this order into the account of the plaintiff's attorneys with the following particulars:

Account Holder:	S. B. Seshibe Attorneys
Bank name:	Nedbank
Branch code:	Central
Account:	Number 1[...]
Type of Account:	Trust Account
Ref Nr.:	Mr Seshibe/RAF204/2022
4. In the event that the amount in para 2 above is not paid within 180 (one hundred and eighty) days of date of this order, the defendant shall pay interest on the said amount at the prevailing legal interest rate and calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with s 17(3)(a) of the Road Accident Fund Act 56 of 1996, from

the 15th (fifteenth) day after this order having been granted, until date of final payment.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs.
6. Fees and disbursements in this action (hereafter 'costs') will include, in the discretion of the Taxing Master, the following:
 - 6.1 Any and all costs incurred in obtaining payment of the costs and/or amounts mentioned herein;
 - 6.2 counsels'/legal representatives' costs in the course of litigation of this matter, including preparation and reservation;
 - 6.3 fees levied by counsel will be calculated at scale B and include preparation, full day reservation and appearance for the matter set down for trial;
 - 6.4 plaintiff and legal representatives' travelling, and accommodation costs actually incurred, if applicable;
 - 6.5 the fees attached to the procurement of medico-legal reports, including the taxed or agreed costs of the plaintiff attending to the medico-legal examinations of the following experts:
 - 6.5.1 Dr. Mosadi (Neurosurgeon)
 - 6.5.2 Dr. Bongobi (Orthopaedic Surgeon);
 - 6.5.3 Ms. L Grootboom (Neuro/Clinical Psychologist);
 - 6.5.4 Mrs. Rene Walker (Occupational Therapist);
 - 6.5.5 Optimum Talent Solutions (Industrial Psychologists); and
 - 6.5.6 Munro Forensic Actuaries (Consulting Forensic Actuaries).
7. In the event that plaintiffs' costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant's attorney of record; and the plaintiff

shall allow the defendant 30 (thirty) days to make payment of the taxed costs, failing which interest will accrue on the taxed costs at the prevailing legal interest rate of 10.50% per annum from 14 (fourteen) days of allocator.

JUDGMENT

Opperman J

[1] On 30 July 2024, separation of the issues of merits and the s 17(4)(a)-undertaking in terms of the Road Accident Fund Act 56 of 1996, was ordered in terms of rule 33(4) of the Uniform Rules of Court.

[2] Due to a lack of instructions, Ms. Booysen also withdrew as attorney of record for the defendant. The matter continued and the court allowed expert evidence to be handed in by way of affidavit in terms of rule 38(2). The following expert affidavits and reports were handed in and admitted into evidence:

Dr. Monde Bongobi, the specialist orthopaedic surgeon;
Ms. Lindelwa Grootboom, the clinical psychologist; and
Mrs. René Walker, the occupational therapist.

[3] The plaintiff, Nontlahla Thandeka Mantse, tendered oral evidence. Hereafter the plaintiff's case was closed. During argument it was decided by counsel for the plaintiff to apply for re-opening of the case and for this reason the case was postponed to 26 November 2024.

[4] On 26 November 2024, leave was granted to the plaintiff to adduce further evidence. The matter proceeded on 11 February 2025. Mr. Steenkamp

was now instructed by the plaintiff after the former counsel withdrew from record. The second witness on behalf of the plaintiff was Mr. Joayo Caswel Mantse. He is the plaintiff's husband and was the insured driver at the time of the accident.

[5] The plaintiff testified in summary that:

- a. The accident occurred on 23 May 2022. It was a Sunday and they were travelling from Brandfort to Welkom. She was seated in the front left side.
- b. She heard a sound as though a tyre was bursting. This was at night at approximately 22h00 or 23h00. Hereafter the car swerved out of the road and rolled four to five times.
- c. The plaintiff was hospitalized for about three weeks. She was initially admitted to the intensive care unit.
- d. The plaintiff was not able to identify the exact cause of the accident. They did not collide with another vehicle. All she heard was the sound. Her husband was sober.
- e. She did not take note of the speed at which they were travelling. Their three children were also inside the vehicle at the back. They screamed when they heard the sound.
- f. The road on which they were travelling was under construction at the time. They were driving in a single lane.
- g. She testified that as she and the children were screaming, her husband looked as though he was losing control of the vehicle and he was looking around to establish what has transpired. According to the plaintiff her husband should have reduced speed when this was taking place.
- h. When the plaintiff was asked if there was anything the driver could have done to avoid the accident, she answered that according to her, the driver should have reduced speed timeously.

[6] The second witness, Joayo Caswel Mantse, testified that:

- a. The accident happened on 23 May 2022 on the R30 road between Brandfort and Theunissen. He was the driver of the vehicle. The accident happened at approximately 23h30.
- b. He is very familiar with the road in question as his mother lives in Brandfort. His wife (the plaintiff) was working at a tavern in Brandfort until ten o'clock. They were heading home to Welkom.
- c. The accident happened about 15 to 20 kilometres outside of Brandfort. The first five kilometres outside Brandfort was a 'normal' road. Hereafter it became a single lane. The road was under construction and there were cones in the middle. The road did not have a shoulder. There was approximately one meter of road on both sides of the vehicle.
- d. While they were driving, he heard a bang at the rear back left. It could have been a tyre; it could have been a cone. He is not sure. After that, his children started to scream. His five-year-old clutched him on the shoulder. This diverted his attention and he looked back very briefly. When he looked to the front again, their vehicle was already rearing off the road.
- e. At the time of the accident, he was driving at a speed of 120 km/h. This was also the speed he was driving on the 'normal' part of the road. He did not slow down when travelling on the single lane.

[7] The above concluded the case for the plaintiff. Counsel for the plaintiff suggested that it was not necessary for oral argument and that the case may be decided on the written heads of argument to be filed on 14 February 2025. It was so ordered by court.

[8] This is a claim by a passenger and as was confirmed in *Ndlovu v Road Accident Fund*:¹

‘16. In the case of *Prins v Road Accident Fund*, Mojaelo DJP (then) stated as follows; It is common cause that a passenger needs only to prove the proverbial 1% negligence on the part of an insured driver in order to get 100% of damages that he is entitled to recover from the fund.’

[9] The driver was negligent in that he did not reduce speed on the single lane where construction was in progress. His instinctive reaction to turn around when his child grabbed him by the shoulder when the sound occurred clearly caused the accident. He had to, as could have reasonably been so expected at that stage, reduce speed in the circumstances that prevailed.

[10] Dr. Monde Bongobi, the orthopaedic surgeon, assessed the plaintiff on 11 August 2023. The plaintiff sustained a T5 vertebrate compression fracture that was treated with posterior decompression and fusion of T1-T7. The plaintiff continues to suffer from chronic back pain and stiffness.

[11] The evidence of this expert proves that the plaintiff's future medical expenses will entail: Visits to the general practitioner for pain management, conservative treatment in the form of analgesics, ‘NSAID’s’ and muscle relaxants, a ‘TLSO’ brace to support her thoracic spine, and she is likely to develop junctional arthritis above and below the area of the fusion which may require extension of the fusion. The cosmetic improvement of scarring was deferred to a plastic surgeon.

[12] Ms. Lindelwa Grootboom, the clinical psychologist, assessed the plaintiff on 21 August 2023. According to her findings the plaintiff suffers from mild

¹ *Ndlovu v Road Accident Fund* (10087/21) [2024] ZAGPPHC 397 (14 April 2024); *Prins v Road Accident Fund* (21261/08) [2013] ZAGPJHC 106 (28 March 2013).

neurocognitive outcomes post-accident. It involved compromised simple auditory attention and concentration, auditory working memory, slow learning rate, narrative memory, verbal fluency and some aspects of executive functioning. The plaintiff presents with severe symptoms of depression, post-traumatic stress symptoms, severe pain disability and difficulty adjusting to her altered circumstances. She experiences frontal headaches, dizziness, nose bleeds, blurry vision with declined vision, and also severe back and left shoulder pain. It is the recommendation of the expert that the plaintiff would benefit from psychotherapeutic intervention for her post-traumatic stress disorder and major depressive disorder.

[13] The occupational therapist assessed the plaintiff on 21 August 2023. During the physical assessment, pain was reported by the plaintiff in the upper lumbar, lower thoracic region. Rotation to the left was limited with pain reported to the left side. Lateral flexion to the right was limited with pain reported in the left upper lumbar, lower thoracic region. Function in the left shoulder was limited with pain reported over the left upper back and scapular region. It is recommended by the occupational therapist that plaintiff would benefit from a tailor-made biokinetics/physiotherapy program to address pain management and cause selective muscle strengthening. Occupational therapy is recommended. The intervention, at a non-pharmacological pain management level by a certified practitioner, is advised.

[14] In the matter of *Modise obo Minor v Road Accident Fund*² Davis J criticized the prejudice and consequences of suspended medical treatment:

‘3.1 As will appear hereinafter, expert evidence lead by the Plaintiff confirmed that, had the minor received the benefit of medical treatment and ancillary therapeutic intervention in the years since the accident to date of trial, his compromised situation post the accident would

² *Modise obo Minor v Road Accident Fund* (10329/2019) [2019] ZAGPPHC 399; 2020 (1) SA 221 (GP) (12 August 2019).

have been ameliorated and some of his loss of amenities would have been limited or, at the very least, his quality of life would have been improved.

3.3 I have often, both in judgments and in judicial case management meetings conducted in court, expressed the view that, the sooner merits are conceded in circumstances where they should properly be conceded, such as in the present case and the sooner an undertaking to cover medical and related costs is furnished in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in instances where it is clear that the injured person would be in need of future medical care and attention, the sooner such a person, be it a Plaintiff or, as in this case, a minor, can receive such treatment or afford to do so. This will not only benefit the injured person and fulfil some of the objects of the Act, but it will also enable a plaintiff to begin to satisfy the general onus of mitigating one's Damages. In that way, not only will plaintiffs and injured persons experience beneficial relief in respect of their compromised or diminished amenities of life, but they might be assisted on the road to recovery, be it by way of surgical or scar-removing procedures, or psychiatric or remedial educational therapy, to name but a few examples.

3.5 What the RAF also apparently and persistently fails to appreciate, is that every medical or ancillary intervention rendered pursuant to the furnishing of an undertaking might have a downward impact on the eventual quantum to be awarded. Scarring can be removed, orthopaedic remedial surgery can take place, a minor might be assisted in reaching his pre-accident learning potential and the like. An injured person might be rehabilitated or re-trained so as to enable him to compete better in the labour market. This all might result in a reduction of the eventual award for damages including, in appropriate circumstances, even general damages. It is a matter of public record that the RAF is insolvent and has been for many years. The failure to take such a simple step as the furnishing of an undertaking in terms of section 17(4)(a) of the Act amounts to a dereliction of duty. In this instance, as I have already mentioned, that dereliction prejudiced a minor child, a representative of one of the most vulnerable segments of our society.' (Accentuation added.)

[15] The plaintiff and the administration of justice will gain by the intervention of this court to order an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996. The plaintiff also proved a 100% liability of the defendant.

Order

[16] In the result, the following order is made:

1. The defendant shall be liable for payment of 100% of the plaintiff's proven or agreed damages.
2. The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for 100% of the costs of future accommodation of the plaintiff in a hospital and/or nursing home or the treatment of or rendering of a service to him or the supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision which occurred on 23 May 2022, after such costs have been incurred and upon proof thereof.
3. The amount in para 2 above shall be payable within 180 (one hundred and eighty) days of date of this order into the account of the plaintiff's attorneys with the following particulars:

Account Holder:	S. B. Seshibe Attorneys
Bank name:	Nedbank
Branch code:	Central
Account:	Number 1[.]
Type of Account:	Trust Account
Ref Nr.:	Mr Seshibe/RAF204/2022

4. In the event that the amount in para 2 above is not paid within 180 (one hundred and eighty) days of date of this order, the defendant shall pay interest on the said amount at the prevailing legal interest rate and calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with s 17(3)(a) of the Road Accident Fund Act 56 of 1996, from

the 15th (fifteenth) day after this order having been granted, until date of final payment.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs.
6. Fees and disbursements in this action (hereafter 'costs') will include, in the discretion of the Taxing Master, the following:
 - 6.1 Any and all costs incurred in obtaining payment of the costs and/or amounts mentioned herein;
 - 6.2 counsels'/legal representatives' costs in the course of litigation of this matter, including preparation and reservation;
 - 6.3 fees levied by counsel will be calculated at scale B and include preparation, full day reservation and appearance for the matter set down for trial;
 - 6.4 plaintiff and legal representatives' travelling, and accommodation costs actually incurred, if applicable;
 - 6.5 the fees attached to the procurement of medico-legal reports, including the taxed or agreed costs of the plaintiff attending to the medico-legal examinations of the following experts:
 - 6.5.1 Dr. Mosadi (Neurosurgeon)
 - 6.5.2 Dr. Bongobi (Orthopaedic Surgeon);
 - 6.5.3 Ms. L Grootboom (Neuro/Clinical Psychologist);
 - 6.5.4 Mrs. Rene Walker (Occupational Therapist);
 - 6.5.5 Optimum Talent Solutions (Industrial Psychologists); and
 - 6.5.6 Munro Forensic Actuaries (Consulting Forensic Actuaries).
7. In the event that plaintiffs' costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant's attorney of record; and the plaintiff shall allow the defendant 30 (thirty) days to make payment of the taxed

costs, failing which interest will accrue on the taxed costs at the prevailing legal interest rate of 10.50% per annum from 14 (fourteen) days of allocator.

Opperman J

Appearances

For applicant: MDJ STEENKAMP
Bloemfontein
SB Seshibe Attorneys
Bloemfontein

For respondent: The State Attorney: Free State
Bloemfontein