



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)**

Case number: 19978/2015

GARETH DU TOIT

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Date of judgment: 5 March 2025

JUDGMENT DELIVERED ELECTRONICALLY

PANGARKER J

Introduction

1. The trial of this damages action was settled a few days prior to the trial date and the only outstanding issue between the parties was the commencement date of the running of interest on the Plaintiff's quantum. The legal representatives provided written submissions on the disputed issue and the matter stood down for consideration of such submissions and the relevant applicable authority on the issue.

2. The Plaintiff was a passenger on a motorcycle which collided with a motor vehicle on 17 March 2014 at Bothasig and because of the collision, he sustained a fracture to his right wrist. Consequently, in October 2015, he issued Summons against the Defendant claiming damages under various heads. A few days prior to the allocated trial date, the Plaintiff's legal representatives requested the Registrar to notify me that the Defendant had made an offer, and a day later, we were advised that the parties had settled the quantum.

3. Thereafter, the correspondence to the Registrar was to the effect that the parties were having trouble reaching an agreement on the Draft Order. All the clauses of the Draft Order were agreed upon except the interest clause. In a nutshell, the counsel for Plaintiff succinctly summarised the disputed issue as follows:

"The Road Accident Fund is of the view that interest should run from 180 days and the plaintiff contends that interest should run from 14 days".¹

I am thus called on to decide only this issue as the remaining disputed issues were settled.

The parties' submissions

¹ Email, Adv Coughlin to Registrar, 8 October 2024

4. According to the Plaintiff, in Road Accident Fund (RAF) matters, it is trite that interest runs from 14 days after judgment, in terms of section 17(3)(a) of the Road Accident Fund Act 56 of 1996 (the Act), which states the following:

“17(3)(a) No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court’s relevant order.”

5. In this regard, the Plaintiff relies upon various judgments in this Division in which this principle was applied, *inter alia*, **Smit v Road Accident Fund**², **Swanepoel v Road Accident Fund**³ and **Gunther v Road Accident Fund**⁴. The Plaintiff furthermore draws a parallel between this matter and the findings by Baartman J in **Kujawa NO obo MN v Road Accident Fund**⁵ wherein the action as settled but a dispute arose regarding the commencement date from which interest should run. Baartman J was called upon to decide the issue and ultimately found that the question of the commencement date for the running of interest was governed by the prescripts of section 17(3)(a) of the Act, meaning that interest should run from 14 days after date of the order in respect of capital and 14 days from the date of the parties reaching agreement in respect of costs or taxation.

6. Relying on further authorities, which I also discuss below, the Plaintiff holds the view that in the absence of an agreement related to the date upon which interest commences to run, interest is governed by section 2 of the Prescribed Rate of Interest Act 55 of 1975 (PRIA) read with section 17(3)(a) of the RAF Act.

² [2024] ZAWCHC 276

³ Case no 15557/2014, Nuku, J 14 October 2024

⁴ [2024] Zachc 153

⁵ [2023] ZAWCHC 153

7. The Defendant holds a contrary view based on the following rationale: firstly, that section 17(3)(a) of the Act does not apply, and secondly/alternatively, the relevant date for the accrual of interest is the date on which the parties agreed that payment is due. The Defendant's view is that considering the settlement of the Plaintiff's action, it follows that the *lis* between the parties has been extinguished by agreement and that section 17(3)(a) thus does not apply. In this regard, the Defendant relies upon ***Motaung; Cele; Phokela v Road Accident Fund***⁶. Therefore, it is advanced, that because the original dispute is/was extinguished, the parties' agreement on the amount of the debt and the period within which payment is to be made, prevails. According to the Defendant, the latter period is 180 days, and interest should only start running thereafter.

8. The Defendant's further submissions are that the Plaintiff accepted a deferred payment date being 180 days from date of settlement or Court order and hence, it is not liable to make payment of the capital until the 180-day period has lapsed. Therefore, it is argued, the Defendant cannot be in *mora* until the period has expired, and in the absence of an express term/clause in the parties' agreement, the Plaintiff may not claim interest prior to that date.

9. The Defendant's additional string to its bow is that in the context of making a settlement agreement an order of Court, the Court is not awarding compensation within the meaning of section 17(3)(a), therefore, the 14-day period does not apply. I understand this conclusion to mean that according to the Defendant, *"the only agreement between the parties capable of being recorded by the Honourable Court, is that compromised by the Defendant's offer and the Plaintiff's subsequent acceptance thereof"*.⁷

10. The Defendant is of the view that on the Plaintiff's interpretation of section 17(3)(a), the consequences for the Defendant would lead to grave implications for it and undermine the purpose of settlement, and it would furthermore not be in the interests of the

⁶ [2023] ZAGPPHC 206, para [12] – [13]

⁷ Defendant's written submission, para 16

administration of justice. The Defendant thus submits that section 17(3) finds no application.

Discussion and findings

11. The Draft Order encapsulates all the terms agreed upon, such as capital, the undertaking in terms of section 17(4), past hospital and medical expenses, costs, expert witnesses, counsel's fees, account details and payment provisions. The "*Payment Provisions*" section thereof states the following:

- "9. The defendant shall pay the capital amount referred to above within 180 calendar days, however, the defendant will be liable for interest on the capital amount at the applicable interest rate as from 14 calendar days of the date hereof to the date of final payment.*
- 10. The plaintiff will not be allowed to proceed with a warrant of execution prior to the expiry of the aforesaid 180 days period.*
- 11. Payment of the taxed or agreed costs reflected above shall be effected within 180 calendar days of taxation / settlement, and shall likewise be effected by way of electronic transfer into the plaintiff's attorneys trust banking account, details of which are listed herein below, however, the defendant will be liable for interest on the taxed or agreed party and party costs of the applicable interest rate as from 14 calendar days of the date of taxation / settlement to the date of final payment.*
- 12. The plaintiff will not be allowed to proceed with a warrant of execution prior to the expiry of the aforesaid 180-day period".⁸*

⁸ Paragraphs 10 & 12 of the Draft Order are duplicated/identical

12. Thus, the settlement terms agreed upon before the trial and pursuant to the Defendant's offer to the Plaintiff are encapsulated in a Draft Order. The disputed issue is contained in paragraphs 9 and 11 of the Draft Order. The Defendant is correct in its submission that the only agreement between the parties capable of being recorded is that compromised by the Defendant's offer and the Plaintiff's acceptance thereof. In this regard, the Defendant refers to ***Eke v Parsons***⁹, where the Constitutional Court stated the following:

"[30] This is equally true of court orders following on settlement agreements, of course with a slant that is specific to orders of this nature:

"The Court order in this case records an agreement of settlement and the basic principles of the interpretation of contracts need therefore be applied to ascertain the meaning of the agreement..."

The intention of the parties is ascertained from the language used read in its contextual setting and in the light of admissible evidence. There are three classes of admissible evidence. Evidence of background facts is always admissible. These facts, matters probably present in the mind of the parties when they contracted, are part of the context and explain the 'genesis of the transaction' or its 'factual matrix'. Its aim is to put the Court 'in the armchair of the author(s)' of the document. Evidence of 'surrounding circumstances' is admissible only if a contextual interpretation fails to clear up an ambiguity or uncertainty. Evidence of what passed between the parties during the negotiations that preceded the conclusion of the agreement is admissible only in the case where evidence of the surrounding circumstances does not provide 'sufficient certainty'.

[31] The effect of a settlement order is to change the status of the rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the lis become res judicata (literally, "a matter judged"). It changes the terms of a settlement agreement to an enforceable court order. The type of

⁹ 2016(3) SA 37(CC) at [30] – [31]

enforcement may be execution or contempt proceedings. Or it may take any other form permitted by the nature of the order. That form may possibly be some litigation the nature of which will be one step removed from seeking committal for contempt; an example being a mandamus.”

(Footnotes omitted)

13. The Defendant, relying on ***Eke v Parsons*** and ***Dunn v Road Accident Fund***¹⁰, argues that by virtue of the parties’ agreement, the *lis* between the parties was extinguished and thus section 17(3)(a) does not find application. It is apparent from paragraph [31] of ***Eke v Parsons***, that an order granted pursuant to settlement of a dispute between the parties is dispositive of such dispute and the order becomes enforceable against both parties.

14. Whilst the Defendant places much reliance on ***Dunn*** for its view that section 17(3)(a) does not apply, it is notable that the circumstances in ***Dunn*** are distinguishable from those which arise in this matter in that the Plaintiff’s claim was settled on 17 August 2016 and the parties agreed that the RAF would make payment on 17 December 2016, yet it paid late, on 16 January 2017. The plaintiff then applied to the Court for a declaratory order that the RAF was obliged to pay interest from 31 August 2016, being 14 days after date of the Order, to 16 January 2017. Whilst the RAF made payment of interest *a tempore morae* from date of payment of the capital amount, the Plaintiff in ***Dunn*** was of the view that she was entitled to interest from the judgment date.¹¹

15. In Mbatha J’s consideration of the various submissions made in ***Dunn***, as fully discussed and considered from paragraph [15] of that judgment, the following important factors, which I summarise, are highlighted:

¹⁰ 2019(1)(SA) 237 (KZD)

¹¹ *Dunn* supra, para [1]

- 15.1 The dispute regarding interest only arose because of the RAF's non-payment on the deferred date referred to in the agreement.
- 15.2 The issue in the application before the Court related to further interest, which the Applicant contended ought to have run from 14 days after the date of judgment.
- 15.3 Payment of the capital amount was not to be made within the 14 days but was deferred to December 2016.
- 15.4 The agreement itself, which was previously made an Order of Court, was silent on interest.¹²
- 15.5 The Court recognised that the Applicant accepted the deferment of payment of the capital, had not raised the issue of interest from date of judgment and the agreement/order was silent on the Applicant's entitlement to interest in terms of section 17(3)(a).
- 15.6 The Court found that the only sensible and business-like interpretation to be afforded to the Order was to give effect to what the parties had agreed on, and nowhere had they agreed or intended that interest should run from 14 days after judgment.
- 15.7 The Court in *Dunn* dismissed the application, holding as follows at paragraph [25] of the judgment:

¹² Dunn *supra*, para [13]

"[25] In conclusion it is my view that the parties intended to be bound by the terms of the agreement. By so doing the applicant waived the right, if any, to claim interest merely to give effect to what the parties had agreed upon. Nowhere, does it appear that the parties intended that interest should run from fourteen (14) days after judgment. This is the only business-like and common sense interpretation that I can accord to this contentious issue. I accept that once the payment is deferred interest can arise once the default arises, where the parties have agreed on a date of payment. When one defaults on payment, mora interest will arise."

(my emphasis)

16. While there are certainly similarities to **Dunn** in this matter, the difference is significant in that in *in casu*, the Plaintiff engaged the Defendant on the issue of interest at the outset. Unlike in **Dunn**, the Defendant in this matter has not made payment yet, but the parties agreed that payment shall indeed be deferred.

17. The Defendant relies on **Dunn** to argue that the payment of interest is excluded from the *lis* between the parties, yet the argument ignores the fact that the issue of interest did not arise after the parties' agreement or at a later date. In this respect, I agree with Baartman J in **Kujawa NO** that the payment of interest is part of the original *lis* between the parties, but it is an aspect which has not settled. Thus, unlike in **Dunn**, the interest issue or dispute is not a new issue which arose after the granting of the Court order.

18. I indicate above that the Defendant's view is that section 17(3)(a) does not apply, alternatively, that the operative date for the running of interest is the deferred payment date, meaning that interest runs from the conclusion of the 180-day period. Aside from relying on **Dunn** to support its view, the Defendant also refers to **Motaung and Others**¹³

¹³ Supra

and **Road Accident Fund v Legal Practice Council and Others**¹⁴. In my view, the **Legal Practice Council** judgment does not assist the Defendant in this matter, for the following reasons: the Full Bench of the Pretoria High Court intervened in matters where the RAF was facing several writs of execution and attachments granted against it pursuant to orders and settlement agreements which it had not honoured. In the exercise of its inherent powers and constitutional authority, the Court in **Legal Practice Council** suspended all writs and attachments against the RAF for 180 days from date of the Court order or settlement.¹⁵

19. Furthermore, the circumstances in **Legal Practice Council** were different to this matter, based on an exceptional situation and ultimately, relief was granted in the form of what was meant to be a temporary order. The matter did not involve the payment of interest nor the applicability of section 17(3)(a) of the Act. Thus, the 180-day period afforded to the RAF to make payment to plaintiffs, which became a practice in many matters, may be seen as a reprieve or grace period granted to it to make payment. Having regard to the above, the **Legal Practice Council** judgment is thus not authority to argue or hold that because the parties in these matters agree on a deferred payment date, therefore the payment of interest is also deferred.

20. Turning to **Motaung and Others**, a judgment of the Pretoria High Court, my view is that the reliance on this judgment to advance an argument that section 17(3)(a) of the Act does not apply, is also problematic. In this matter, three default judgment matters appeared before the Court and consequently, orders of Court were granted on the agreed capital amounts in each of the matters, but as in **Dunn**, the parties had not agreed on the issue of interest. It is evident from the facts set out in the judgment that the parties agreed on the RAF's payment within 180 days from date of the Court's order but as a precondition of acceptance of its offer, interest *a tempore morae* was payable from the date on which the 180 days lapsed – in other words, from day 181.

¹⁴ [2021] ZAGPPHC 173

¹⁵ LPC supra, para [35]

21. The situation in the three matters in ***Motaung and Others*** was such that the agreement between the parties was that no interest would accrue on the capital amount until the agreed due (payment) date¹⁶. According to the Court's findings, a new date of *mora* arose *in lieu* of the agreement that no interest would be payable during the 180-day period. The Court disagreed that the date of accrual of interest is settled by or falls within the ambit of section 17(3) of the Act¹⁷ because of the settlement agreement. In support of this view, it held that where a dispute arises in the circumstances which arose in the matters and the parties cannot agree on the date from which interest is to run, the Court is entitled to decide on such date (when interest accrues on the capital) after considering surrounding circumstances and law.

22. The Court in ***Motaung and Others*** ultimately held that the date when interest would accrue is fixed or determined by the payment date of the capital¹⁸ and that the application of section 17(3)(a) in those circumstances “*goes against the mora ex re interest*”¹⁹. Finally, Khumalo J also decided that the parties would specifically have to agree to the application of section 17(3)(a) for it to be enforceable, and absent such agreement, *mora ex re* applies.

23. With respect, my view differs in certain respects from those expressed in ***Dunn*** and ***Motaung and Others***. The issue of the interpretation and application of section 17(3)(a) arose several years ago in this Division in the matter of ***Vermaak v Road Accident Fund***²⁰. In a meticulous and thorough consideration of the provisions of sections 2 and 2A of the Prescribed Rate of Interest Act and section 17(3) of the RAF Act, Crowe AJ found the two legislative provisions to be irreconcilable and after a discussion and thorough assessment and dissection of both provisions, the Acting Judge

¹⁶ My emphasis

¹⁷ *Motaung supra*, par [13]

¹⁸ *Motaung supra*, par [19]

¹⁹ *Motaung supra*, par [20]

²⁰ [2008] ZAWCHC 12

concludes, correctly so, in my view, that the provisions of section 17(3)(a) of the RAF Act bar the payment of interest claimed in terms of section 2A of PRIA²¹.

24. Crowe AJ went further in **Vermaak** by considering which statute should prevail and by employing the principles of statutory interpretation in relation to the irreconcilable statutory provisions in the matter. In paragraphs [26] to [28] of the judgment, the Court found that section 17(3)(a) prevails above the provisions of section 2A the PRIA. Suffice to indicate that I share the same understanding and view as those determined in **Vermaak**.

25. The view held in **Vermaak** found favour more recently with Gassner AJ in **Stoffels and Another v Road Accident Fund**²², another judgment of this Division where, pursuant to orders granted in two matters for capital, costs and ancillary relief, the RAF (as defendant in both matters) paid the amounts late. The Plaintiffs claimed interest at the prevailing rate of interest, calculated from date of demand, alternatively, in terms of section 17(3)(a) of the Act. However, the RAF paid no interest.

26. The Plaintiffs applied for a directive that the RAF pays interest as per section 17(3)(a), but this was resisted. Gassner AJ, like Crowe AJ, discussed and analysed the legislative prescripts applicable to the running of interest in RAF matters, with reference to sections 2 and 2A of the PRIA and section 17(3)(a) of the RAF Act. At paragraph [23] of the **Stoffels and Another** judgment, Gassner AJ states the following:

“[23] Finally, the applicants’ counsel, Mr Eia, submitted that an interest award in terms of s 2A of PRIA cannot conceivably arise on a RAF action, in that s 17(3)(a) of the RAF Act provides that no interest calculated on the amount of any compensation which the court awards shall be payable unless 14 days have elapsed from the date of the court order. In Vermaak v Road Accident Fund

²¹ Vermaak, supra, par [25]

²² [2024] ZAWCHC 182

[2008] ZAWCHC 12 this court held that s 17(3)(a) of the RAF Act trumps s 2A of PRIA in relation to pre-judgment interest and consequently bars a RAF plaintiff from claiming such interest. In DFO paras 63 and 66 of the SCA assumed that this view was correct without deciding the point.”²³

27. The views held in **Stoffels and Another** were preceded by similar views expressed and findings made by Baartman J in **Kujawa NO**²⁴, although that judgment did not address the provisions of the PRIA. Baartman J was faced with identical facts as in this matter, and a situation where the parties had also agreed on a 180-day deferred payment. The Plaintiff similarly disputed or proposed that interest runs from 14 days after date of the order. Some of the arguments canvassed in this matter were also raised in **Kujawa NO** and dismissed, with Baartman J concluding in paragraph [7] of the judgment that the legal position is that in the absence of an agreement to the contrary, interest is regulated by section 17(3)(a) of the Act, and the Court cannot make an agreement for the parties.

28. Similarly, in **Jacobs NO v Road Accident Fund**²⁵, the Johannesburg High Court recently also followed the *dicta* in **Kujawa** and held that *mora* interest arises *ex lege*. Having regard to these authorities, I similarly agree and hold the view that in this matter, because there was no agreement to exclude the RAF’s liability for *mora* interest or no agreement as to a specific date when interest commences to run, the Court cannot make an agreement for the parties and/or exercise a discretion regarding the commencement of interest. The discretion of a Court to make an order in respect of the payment of interests arises in terms of section 2A of the PRIA and refers to pre-judgment interest. Having regard to the above authorities discussed, I align myself with the understanding in decisions such as **Stoffels and Another**, **Vermaak**, **Kujawa** and **Jacobs NO**, and hold

²³ The reference is to Drake Flemmer and Orsmond Inc and Ano v Gajjar NO [2017] ZASCA 169 par [63]

²⁴ [2023] ZAWCHC 153

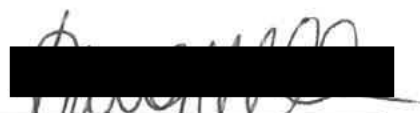
²⁵ [2024] ZAGPJHC 21

that the provisions of section 17(3)(a) apply in relation to the payment of interest in this matter.

29. Furthermore, once the RAF's liability for payment of interest arises, a Court is not entitled to disallow *mora* interest as the Plaintiff, as creditor, is entitled to such interest²⁶. Furthermore, it is apparent from the wording of section 17(3)(a) that the important date is the date of the Court's order, or as the section indicates, "*the court's relevant order*", and not as the Defendant contends, the date of lapsing of the deferred payment period. In this instance, in the absence of an agreement that no interest will be payable in the deferred period of 180 days, section 17(3)(a) of the RAF Act applies and interest is payable from 14 calendar days after the date of the granting of the Order to date of final payment. Lastly, the Defendant's argument that the Court is not awarding compensation but is simply making a settlement an order of Court is unconvincing and does not affect my findings in this matter. Accordingly, the Plaintiff's submissions on the issue of interest are accepted.

Order

30. In the result, I grant an order as per "X".



M PANGARKER
JUDGE OF THE HIGH COURT

²⁶ Top v Top Reizen CC [2006] ZALC 43 at par [24]

Appearances:

For Plaintiff: Adv W S Coughlan

Instructed by: DSC Attorneys
Mr J Potgieter
10th Floor, Touchstone House
7 Bree Street
CAPE TOWN

For Defendant: Ms C Thomas
State Attorney
CAPE TOWN



"X"

5/3/2025

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

BEFORE THE HONOURABLE JUDGE PANGARKER
HELD AT CAPE TOWN: 5 MARCH 2025

Case No.: 19978/2015

In the matter between:

GARETH DU TOIT

Plaintiff

And

ROAD ACCIDENT FUND
(Ref: 503/12160407/10/2 - Link no: 3695997)

Defendant

ORDER

Having read the documents filed of record and having considered the parties written submissions on the payment of interest,

IT IS ORDERED THAT:

THE CAPITAL

1. The defendant shall, by agreement, pay to the plaintiff's attorneys the sum of **R 3 551 920.00** (THREE MILLION FIVE HUNDRED AND FIFTY ONE THOUSAND NINE HUNDRED AND TWENTY RANDS ONLY)

("the capital"), by way of an electronic transfer to the trust account, details whereof are set out hereunder.

THE UNDERTAKING

2. The defendant shall, by agreement, provide an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (*"the undertaking"*) to compensate the plaintiff for 100% (one hundred percent) of the costs relating to the future accommodation of the plaintiff in a hospital, treatment of, the rendering of a service, or supplying of goods to the plaintiff, after the costs have been incurred and on proof thereof and arising from the collision which occurred on **17 MARCH 2014**.

PAST HOSPITAL AND MEDICAL EXPENSES BY STATE SERVICE PROVIDERS

3. The defendant agrees to indemnify the plaintiff against any claims by suppliers in respect hereof.

COSTS

4. The defendant shall pay the plaintiff's taxed or agreed costs on the High Court scale as between party and party, and also including for the sake of clarity, but not limited to, the costs as set out hereunder.

GENERAL COSTS

5. The defendant shall pay any costs attendant upon the obtaining of payment of the amount referred to in paragraph 1.

EXPERT WITNESSES

6. Regarding the expert witnesses herein below (*"the experts"*), the defendant shall pay the taxed or agreed fees and the costs attached to the procurement of medico-legal reports and other reports listed hereinafter, as well as any other related costs, including x-rays, MRI scans and CT-scans.

7. The experts are:

- 7.1. Dr. P.A Olivier, orthopaedic surgeon;
- 7.2. Ms. N. Hugo, occupational therapist;
- 7.3. Ms. E. Auret-Besselaar, industrial psychologist;
- 7.4. Munro Forensic Actuaries.

COUNSEL'S FEES

8. The defendant shall pay the taxed or agreed fees of the plaintiff's counsel (Scale C) in respect of preparation and trial also including the drafting of submissions.

PAYMENT PROVISIONS

9. The defendant shall pay the capital amount referred to above within 180 calendar days, however, the defendant will be liable for interest on the capital amount at the applicable interest rate as from 14 calendar days of the date hereof to the date of final payment.
10. The plaintiff will not be allowed to proceed with a warrant of execution prior to the expiry of the aforesaid 180 day period.
11. Payment of the taxed or agreed costs reflected above shall be effected within 180 calendar days of taxation / settlement, and shall likewise be effected by way of electronic transfer into the plaintiff's attorneys trust banking account, details of which are listed herein below, however, the defendant will be liable for interest on the taxed or agreed party and party costs at the applicable interest rate as from 14 calendar days of the date of taxation / settlement to the date of final payment.

ACCOUNT DETAILS

12. The plaintiff's attorneys' trust banking account details are as follows:

Bank:	FNB BUSINESS
Account Holder:	De Vries Shields Chiat Inc.
Branch:	Portside
Account Number:	6272 1000 050
Branch Code:	

CONTINGENCY FEE AGREEMENT

13. It is recorded that the plaintiff has entered into a Contingency Fee Agreement which complies with the relevant act.

BY ORDER OF THE COURT

COURT REGISTRAR

DSC ATTORNEYS – Box 174
10th Floor, Touchstone House
7 Bree Street
CAPE TOWN
Tel: 0861 465 879
Email: jpotgieter@dsclaw.co.za