



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

NOT REPORTABLE

Case no: **293/2022**

In the matter between:

MONICA NICOLEEN VAN NIEKERK

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: JP DAFFUE J

Heard: 29 APRIL 2025

Reasons: 06 MAY 2025

Reasons were handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 13H00 on 06 MAY 2025.

Summary: Claim for past hospital and medical costs, the plaintiff's other claims relating to injuries suffered in a motor vehicle collision having been settled earlier. On the date of the hearing the RAF sought a postponement from the bar to amend its plea in order to dispute liability as the plaintiff's costs had been paid by her medical aid fund. The application was dismissed. The court granted leave in terms of rule 38(2) for evidence to be given on affidavit whereupon the plaintiff's claim was granted.

REASONS

Daffue J

Introduction

[1] On 29 April 2025, I granted the following orders:

- '1. The defendant's application for postponement is dismissed, reasons to follow in due course.
2. The plaintiff's application in terms of rule 38(2) dated 10 April 2025 filed with the court on 23 April 2025 is granted.
3. The defendant shall pay R83 787.76, the 15% apportionment having been deducted, to the plaintiff for her past hospital and medical expenses within 14 (fourteen) days from this order.
4. The defendant shall pay the plaintiff's taxed or agreed costs since 3 December 2024 to date hereof on the High Court scale as between party and party, the counsel's fees to be taxed on scale B.'

[2] Postponements are not there for the taking. This is yet another case where the Road Accident Fund (RAF), the defendant in this action, failed to live up to the standards expected of litigants and statutory bodies in particular. More about this later.

The parties

[3] The plaintiff in the third-party claim is Ms Monica Nicoleen van Niekerk, a major female residing in Bloemfontein.

[4] As mentioned, the RAF is the defendant in the action.

The collision and the history of the litigation

[5] On 30 August 2019 the plaintiff was involved in a motor vehicle collision. She sustained the following injuries:

- a. an injury to the first tarso-metatarsal joint on the left foot with joint space narrowing;
- b. fractures of the second, third and fourth metatarsal bones of the left foot;
- c. a lumbar spine injury with disc space narrowing at the L4/5 and L5/S1 levels.

[6] The plaintiff, through her attorneys, lodged a claim with the RAF on 29 June 2021. She complied with all her statutory obligations.

[7] On 25 January 2022 the plaintiff's combined summons was issued whereafter it was served on the RAF. Several months later a special plea was filed, relying on non-compliance with s 24 read with s 17 of the Road Accident Fund Act 56 of 1996 and alleging that the plaintiff's claim had prescribed. The RAF also pleaded over on the merits. Soon thereafter it became aware of the wrong allegation pertaining to prescription and served an amended plea, withdrawing the special plea based on prescription.

[8] The first rule 37 conference was held on 16 October 2023. After the matter was certified trial-ready in respect of the merits, it was set down and eventually settled. On 30 July 2024 the court made an order by agreement to the effect that the RAF was liable for 85% of the plaintiff's proven or agreed damages.

[9] Hereafter a further rule 37 conference was held and on 19 August 2024 the matter was certified trial-ready in respect of the quantum of the claim. On 3 December 2024 the parties settled the plaintiff's claim for general damages and loss of earnings. They agreed to postpone the claim for past hospital and medical expenses to the pre-trial roll of 3 February 2025 on which date the matter was declared trial-ready whereupon it was set down for hearing on 29 April 2025.

[10] After this matter was allocated to me for adjudication of the remainder of the plaintiff's claim, I requested my secretary to send an email to the parties on 24 April 2025 to establish:

- a. which of the items in the medical accounts were still in dispute with reference to the date of each account and the items reflected therein;
- b. whether the plaintiff's application in terms of rule 38(2) would be opposed.

Ms Gouws on behalf of the RAF responded to the email, confirming that she was awaiting instructions.

[11] On the date of the hearing, ie 29 April 2025, I was informed in chambers that the RAF intended to apply for a postponement in order to amend its plea. The plaintiff's counsel made it clear that the application would be opposed.

The application for postponement

[12] When the matter was called in open court, Ms Gouws from the bar moved for the postponement of the case. No formal application for postponement was served and filed and obviously also no affidavit to explain the reasons for postponement. I was merely told that the RAF intended to apply for an amendment of the plea in line with a notice to amend in a different case, a copy of which was handed to me. It is apparent from this document that the RAF now intends to rely on the fact that the plaintiff was a member of a medical aid fund and that her past hospital and medical expenses have been paid by the medical aid fund. Therefore, the plaintiff suffered no damages. In line with the proposed amendment in the matter referred to by Ms Gouws, the RAF also intends to plead that the past hospital and medical expenses constituted Prescribed Minimum Benefits (PMB's) and/or treatment for Emergency Medical Conditions (EMC's) which the plaintiff's medical aid fund was statutory obliged to pay.

[13] I referred to the history of the litigation above. Notwithstanding the fact that the plaintiff's claim was lodged with the RAF nearly four years ago after sustaining her injuries nearly six years ago, the RAF has now decided at the eleventh hour to ask for a postponement to amend. Ms Gouws submitted that there could not be any prejudice for the plaintiff as her hospital and medical costs had already been paid by her medical aid fund. Ms Gouws was not in possession of a so-called 'Bill Review' and could not make any submissions as to what items could or would be objected to on the basis that these constitute PMB's or EMC's.

[14] I deem it appropriate to refer to the following trite and relevant principles applicable to applications for postponement. These applications shall be made timeously and it is expected of the applicant for postponement to explain their predicament fully and satisfactorily. The Constitutional Court held as follows in *Lekolwane and Another v Minister of Justice (Lekolwane)*:¹

'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A

¹ [2006] ZACC 19; 2007 (3) BCLR 280 (CC) para 17.

postponement will not be granted, unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest. All these factors, to the extent appropriate, together with the prospects of success on the merits of the matter, will be weighed by the court to determine whether it is in the interests of justice to grant the application.'

[15] In *Shilubana and Others v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as amici curiae)*² the Constitutional Court referred to *Lekolwane* with approval in the following words:

'In *Lekolwane and Another v Minister of Justice and Constitutional Development* this Court added the following factors to be considered in granting a postponement: (1) the broader public interest; and (2) the prospects of success on the merits. The following factors could non-exhaustively be added to the above: the reason for the lateness of the application if not timeously made; the conduct of counsel; the costs involved in the postponement; the potential prejudice to other interested parties; the consequences of not granting a postponement; and the scope of the issues that ultimately must be decided. In balancing these factors it is of vital importance to keep in mind that -

"(w)hat is in the interests of justice will . . . be determined not only by what is in the interests of the parties themselves, but also by what, in the opinion of the Court, is in the public interest. The interests of justice may require that a litigant be granted more time, but account will also be taken of the need to have matters before this Court finalised without undue delay.'" (footnotes omitted)

[16] In *National Police Service Union and Others v Minister of Safety and Security and Others*^[4] the Constitutional Court stated:

'Ordinarily ... if an application for a postponement is to be made on the day of the hearing of a case, the legal representatives ... *must* appear and be ready to assist the Court both in regard to the application for the postponement itself and, if the application is refused, the consequences that would follow.'

² 2007 (5) SA 620 para 11.

^[4] 2000 (4) SA 1110 (CC) at 111D; dictum referred to with approval in *Shilubana and Others v Nwamitwa loc cit* para 15.

[17] This is a typical case that all too often surfaces in our courts. I do not have to say more, than to refer with respect to the observations of the Supreme Court of Appeal in *Magistrate Pangarker v Botha and Another*.³

[18] I am aware of the controversy about claims for past medical and hospital expenses having been paid by plaintiffs' medical aid funds. I am satisfied that the common law position is still relevant and should be followed, *ie* that a third party cannot rely on a defence that plaintiffs suffered no loss because they have been indemnified by their medical aid funds. I refer also to the recent judgment in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*⁴ which confirms this. Both the Supreme Court of Appeal and the Constitutional Court have dismissed the RAF's attempt to appeal the judgment.

[19] I am also aware of the judgment in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*.⁵ In my view there is no reason why the plaintiff should wait to see what will eventually happen with the further litigation which may also find its way to the Constitutional Court several years later. I am aware of the *stare decisis* doctrine, but am satisfied that I am not bound to either follow this judgment, or wait for the outcome on appeal. This judgment of another division of the High Court is not binding precedent that has to be followed in this division. It is merely persuasive. I am not prepared to follow it.

[20] The RAF is clearly relying on delaying tactics. If it was really serious with its intended amendment, this should have been done more than a year ago, or at the very best, at the stage when the matter was postponement in December 2024 for the adjudication of this part of the plaintiff's claim. Its Chief Executive Officer has issued the directives to be relied upon already in 2023. Also, in February 2025 and during the pre-trial conference the presiding judge was not alerted to the fact that an amendment still needed to be sought.

³ 2015 (1) SA 503 (SCA) paras 22 to 38.

⁴ 2023 (2) SA 212 (GP).

⁵ 2025 (3) SA 225 (GP).

The plaintiff's claim

[21] The plaintiff requested leave for evidence to be given on affidavit by her and the team leader of her medical aid fund in terms of rule 38(2). All relevant invoices issued and paid were annexed to the affidavits. The RAF did not file a notice to oppose this application and I consequently granted the relief sought.

[22] Once the 15% apportionment has been deducted from the total claim, I was satisfied that the plaintiff has proven an entitlement to payment in the amount of R83 787.76. Consequently, judgment was granted for payment of this amount as well as the plaintiff's taxed or agreed costs incurred since 3 December 2024.



JP DAFFUE J

Appearances

For plaintiff: Adv AJ du Toit
Instructed by: DSC Attorneys
c/o Rosendorff Reitz Barry
Bloemfontein

For the defendant: Ms J Gouws
Instructed by: Road Accident Fund
Bloemfontein