

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 66649/16

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED

2 June 2025

WRIGHT J

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

BRANDON LYLE LONGMANS

Respondent

JUDGMENT

WRIGHT J

1. On 15 August 2015, Mr Longmans was injured in a motor vehicle accident. Summons was issued against the Fund, claiming damages. On 8 June 2018, the Fund agreed to be liable for 80% of Mr Longmans' damages. Some time prior to 2 August 2024, the parties had settled their differences on all heads of damages save for loss of earnings.
2. The matter was set down for trial on 2 August 2024 on the question of loss of earnings.

3. Numerous expert reports by doctors and an actuary were filed on behalf of Mr Longmans. These reports become evidence, according to modern practice, when affidavits by the experts confirming the correctness of their reports are filed and the affidavits, read together with the reports are allowed into evidence by the court under Rule 38(2).
4. There is on file an actuarial addendum report dated 17 May 2024, in which it is calculated that the correct figure for loss of earnings, after the deduction of the agreed 20% apportionment against Mr Longmans, is R6 052 365. The actuary, Mr Pretorius confirmed the correctness of the report in an affidavit filed on record.
5. On 2 August 2024, there was appearance for Mr Longmans but none for the Fund. The matter was allocated to Kubushi J. Counsel for Mr Longmans sought and obtained an order in terms of a draft order prepared by him in which R6 052 365 was sought.
6. The Fund now seeks to rescind the order of 2 August 2024. It relies only on Rule 42(1)(a), it being alleged that the order was erroneously sought and granted.
7. The Fund does not suggest that it was unaware of the set down for 2 August 2024. Nor does it suggest that it tried to send a legal practitioner to the hearing. The answering affidavit makes it clear that the Fund was well aware of the court date but chose not to attend.
8. The Fund raises one point. It says that the order was erroneously sought and granted because some years earlier, Dr Liebenberg, an orthopaedic surgeon retained by Mr Longmans had submitted a report in which he recommended that Mr Longmans be reassessed later to see if a tibia-fibula non-union had healed or not. The re-assessment had not taken place by 2 August 2024.
9. At 12:29 pm on 2 August 2024, a person employed by the Fund emailed the attorneys for Mr Longmans stating that Mr Longmans had not been

reassessed despite having been called for reassessment. At 1pm on the same day, the attorneys for Mr Longmans replied, stating that the court had already granted the order.

10. On 13 August 2024, the attorneys for the Fund requested reasons from Kubushi J for her order. These were supplied on 6 September 2024.

11. The present application is dated 10 October 2024. It includes a prayer for condonation of the non-compliance by the Fund with time periods. Rule 42(1)(a) does not specify a time within which an application should be brought. The Fund explains that it spent some time attempting to settle the matter before launching the application. In my view, the application was brought within a reasonable time and falls to be dealt with on its merits.

12. In my view, the application for rescission is unsound. The Fund chose not to oppose the order sought. It cannot now attempt an appeal by labelling it a rescission. There was no error in seeking the order or in granting it. The Fund could have timeously taken steps to have Mr Longmans reassessed. It did not.

13. The ground for rescission now raised has nothing to do with procedure. It is an attack on the merits of the evidence. This ground of attack is not applicable in a rescission application.

14. It is not at all clear that the email sent by the Fund at 12:29pm on the day of the order was received by Mr Longmans' legal practitioners before they sought the order. Even if it was, there was no obligation on them not to proceed.

ORDER

1. The application is dismissed with costs on scale B.

GC Wright

**Judge of the High Court
Gauteng Division, Johannesburg**

HEARD : 2 June 2025

DELIVERED : 2 June 2025

APPEARANCES :

Applicant Att LT Makhura

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