

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

CASE NUMBER: 276/2023

In the matter between:

VICTORIA KELOAGETSWE LESHORI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Leshori v Road Accident Fund* (276/2023) [2025] 15 August 2025

Coram: Stanton J

Heard: 21 July 2025

Delivered: 15 August 2025

Summary: *Two special pleas – Serious injury assessment - Court does not have the jurisdiction to determine the seriousness of the injury - Third special plea - Plaintiff failed to comply with s 24 of the Road Accident Fund Act 56 of 1996 – Third special plea is postponed pending the finalisation of the appeal in Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others.*

ORDER

1. The adjudication of the first and second special pleas pertaining to the plaintiff's serious injury assessment is postponed *sine die*;
2. In respect of the defendant's first and second special pleas, the defendant shall in terms of Regulation (3)(3)(c) and 3(3)(d) of the Road Accident Fund Act 56 of 1996 ("the Act"), within five days from the date of service of this order, decide whether the plaintiff's injuries are serious, or not, and transmit the decision, in writing, to the plaintiff's attorney of record;
3. In so doing, the defendant must:
 - 3.1 Determine whether it is satisfied that the plaintiff's injuries, sustained in the motor vehicle collision that occurred on 26 June 2020, have been assessed as serious in terms of the method provided for in the Road Accident Fund Regulations, and accordingly accept that the plaintiff qualifies to claim for non-pecuniary loss; or
 - 3.2 In the alternative to 3.1, reject the plaintiff's serious injury assessment report (RAF 4 Form), and simultaneously furnish the plaintiff's attorney of record with the written reasons for the rejection; or
 - 3.3 In the alternative to 3.1 and 3.2 above, direct the plaintiff to submit herself for further assessment, at the defendant's cost with a medical practitioner appointed by the defendant, to determine whether the plaintiff's injuries are serious, or not;
4. The third special plea pertaining to the plaintiff's non-compliance to s 24 of the Act is postponed *sine die*, pending the finalisation of the appeal in *Legal*

Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others;

5. No cost order is granted.

JUDGMENT

Stanton J

Introduction:

- [1] On 09 February 2023, the plaintiff instituted an action for damages against the Road Accident Fund (“the RAF”) arising from a motor vehicle accident that occurred on 26 June 2020.
- [2] The RAF defended the action and in addition to its plea on the merits, it raised three special pleas: (a) two pleas pertaining to the assessment of the seriousness of the plaintiff’s injury in terms of s 17(1) of the Road Accident Fund Act 56 of 1996, as amended, (“the Act”) and its Regulations; and (b) the plaintiff’s failure to comply with s 24 of the Act.
- [3] The parties agreed that the special pleas would be dealt with separately and shall be argued on the pleadings and notices. I also ruled that the discovered documents should be admitted for this purpose.

Special pleas one and two– serious injury assessment:

- [4] According to the first and second special pleas, which to my mind should be considered as one special plea, the RAF, in essence, avers that:
- 4.1 This Court does not have the jurisdiction to assess whether the plaintiff’s injuries are serious, or not, and as a result, the plaintiff’s claim for non-

pecuniary loss should be dismissed, alternatively that the claim for general damages should be referred to the appropriate forum, as set out in the Regulations; and

- 4.2 The RAF prays that the plaintiff's claim be dismissed as the plaintiff failed to submit a Serious Injury Assessment Report, and as such, the alleged injury has not yet been determined as serious in terms of Regulations 3(4) to 3(14).

[5] The plaintiff did not file a replication to the special pleas.

The background

[6] On 01 September 2022, the RAF 1 form, together with annexures, but without serious assessment reports (RAF 4), was transmitted to the RAF. The covering letter notes that "When a claimant has suffered a serious injury, a RAF 4 serious injury assessment form will be made available on an urgent basis, but before prescription." The covering letter also specifies that the following documents were attached to the duly completed RAF 1 form and medical report:

- 6.1 A copy of the accident report;
- 6.2 A copy of the docket received from Beaufort West SAPS;
- 6.3 An affidavit deposed to by the plaintiff in compliance with the provisions of s 19(f) of the Act;
- 6.4 A copy of the sketch plan and key thereto;
- 6.5 A copy of the plaintiff's identity document;
- 6.6 Color photographs of the plaintiff's injuries;
- 6.7 Copies of the plaintiff's hospital records received from Kakamas hospital;
- 6.8 A copy of the plaintiff's pay slip;
- 6.9 A special power of attorney duly signed and stamped;
- 6.10 A consent form to enable the RAF to inspect the plaintiff's medical records; and
- 6.11 A copy of the contingency fee agreement.

[7] On 14 October 2022, the RAF acknowledged receipt of the plaintiff's claim, but informed the plaintiff's attorney that no valid claim was lodged as there is no substantial compliance to s 24(5), read with the RAF's Board Notice 271 of 2022 ("the Board Notice"),¹ as:

7.1 The medical section of the RAF 1 form was not completed by the treating doctor in terms of s 24(2)(a) of the Act; and

7.2 The failure to file:

7.2.1 The plaintiff's identity document;

7.2.2 Pay slips, post and pre accident;

7.2.3 The employer's certificate of the plaintiff's service showing
The nature of employment, the period of service, remuneration, prospects of advancement and compensation and retirement age;

7.2.4 Any other proof of income of the plaintiff, a letter from the employer or an affidavit from an employer or any person that can confirm that the plaintiff earned an income to support her dependents;

7.2.5 The RAF 4 (serious injury report), duly completed;

7.2.6 Medical legal reports or documentation establishing or substantiating the plaintiff's temporary or permanent disability and the loss of earnings claimed; and

7.2.7 An itemised tax invoice from a registered medical provider or hospital for past medical expenses, with proof of payment of the medical expenses.

[8] The combined summons was served on the RAF on 28 February 2023. The RAF's plea and special pleas were served on the plaintiff's attorney of record on 27 March 2023.

¹ Government Gazette NO. 46322 on 06 May 2022.

[9] Dr van Heerden's (a plastic and reconstructive surgeon) and Dr Deacon's (an orthopaedic surgeon) Serious Injury Reports (RAF 4) were served on the RAF on 17 April 2023 and 11 May 2023 respectively.

[10] The minute of the pre-trial conference of 24 January 2024 reflects that:

'6.1 The seriousness of the plaintiff's injuries has been placed in dispute by the RAF in its special pleas.

6.2 The plaintiff has delivered favourable serious injury assessment reports by Doctor Deacon (orthopaedic surgeon) and Doctor Van Heerden (plastic and reconstructive surgeon). The plaintiff's representative requested the defendant's attorney to get instructions on conceding seriousness in the plaintiff's favour.'

Legal argument:

[11] Initially, Ms. Mhlanga, on behalf of the RAF, submitted that the RAF does not intend to proceed with the two special pleas pertaining to the serious injury assessment. In a turnabout she, however, relying on *Makuapane v Road Accident Fund*² and *Road Accident Fund v Lebeko*,³ argued that a court cannot make a determination whether a plaintiff's injuries are so serious that such a plaintiff is entitled to a claim for general damages against the RAF as the stipulation in Regulation 3(3)(c) is to the effect that "... *the Fund shall only be obliged to pay general damages if the Fund – and not the court - is satisfied that the injury has correctly being assessed in accordance with the RAF 4 Form as Serious.*"

[12] Mr. Botha, on behalf of the plaintiff, argued that this Court should follow the approach in *Mertz v Road Accident Fund* ("*Mertz*")⁴ where the court of appeal

² (9077/2022) [2023] ZAGPPHC 15 (19 January 2023).

³ [2013] JOL30 399 (SCA).

⁴ [2022] JOL 57121 (GP).

confirmed that the trial court should have deemed that the RAF had accepted the injuries as serious in the absence of the RAF indicating the contrary.

Applicable law:

- [13] Section 17(1) of the Act was amended to introduce limitations on the RAF's liability for general damages. Non-pecuniary loss was limited to compensation for a serious injury. A third party wishing to claim general damages must now obtain a serious injury assessment report from a medical practitioner. Regulation 1 defines this report as a duly completed RAF 4 form. The RAF can reject the third party RAF4 form if it is not satisfied that the injuries were correctly assessed.
- [14] The Supreme Court in *Road Accident Fund v Duma*, *Road Accident Fund v Kubeka*, *Road Accident Fund v Meyer*, *Road Accident Fund v Mokoena* ("*Duma*") held that the decision as to whether or not the injury of a third party is serious enough to meet the threshold requirement for an award of general damages, is conferred on the RAF, and not on the court, and that the court simply has no jurisdiction to entertain the claim. The conclusion was that the court had no authority to interfere with the RAF's decision to reject the RAF 4 forms.
- [15] Pursuant to *Duma*,⁵ Regulation 3(3)(a) was promulgated to provide that the RAF "*must within 90 days from the date on which the Serious Injury Assessment Report was sent by registered mail or delivered by hand to the Respondent, accept or reject the Serious Injury Assessment Report or direct that the third party submit himself or herself to a further assessment.*"
- [16] Regulation 3(d) requires from the RAF, if not satisfied that the injury was correctly assessed, to reject the serious assessment report and to furnish the third party with reasons for the rejection, or to direct, at the cost of the RAF, to

⁵ 202/2012, 64/2012, 164/2012, 131/2012) [2012] ZASCA 169; [2013] 1 All SA 543(SCA); 2013 (6) SA 9 (SCA) (27 November 2012).

submit himself or herself for a further assessment to ascertain whether the injury is serious.

- [17] Regulation 3, however, does not expressly require the RAF to in writing accept the injuries as serious, whereas it expressly provides that reasons for rejection must be in writing.

Evaluation of the evidence and legal argument:

- [18] The question is whether this Court can conclude that the RAF accepted the plaintiff's serious injury assessment reports. Simply put, can the conduct of the RAF in this matter lead to an inference of its acceptance of the serious injury reports.

- [19] I am not persuaded that I should apply the same approach as in *Mertz*. To my mind, *Mertz* is distinguishable from the matter *in casu*. I reach this conclusion based on the following:

19.1 The RAF is the decision-maker pertaining to accepting or rejecting the injury as serious;

19.2 The plaintiff in *Mertz* vigorously persisted with his attempt to obtain a concession from the RAF that the seriousness of the injury is admitted. The plaintiff and the RAF in *Mertz* held three pre-trial conferences. At the first pre-trial no expert notices had been filed by the plaintiff and the RAF recorded that it reserved its right to refer the plaintiff's serious injury assessment to the HPCSA. At the second pre-trial conference, the plaintiff had filed expert reports that embodied serious injury assessments by various medical specialists. At this pre-trial the RAF was requested to admit the serious injury within a specified time period, failing which, it would be deemed that the RAF admitted the contents of the reports. The RAF struck out this provision that the reports would be deemed to be admitted and noted that the issue would be revisited at the next pre-trial conference. It also reserved its right to have the serious

injury assessments referred to the HSPC. At the third pre-trial, the RAF was represented by an attorney, Mr. Ndlovu. He was again asked to admit the expert reports that included the serious assessment reports. Paragraph 6.2.5 reads as follows:

‘Defendant is requested to indicate exactly which findings in the Plaintiff’s expert reports it disputes.’

Defendant’s reply: ‘The Defendant shall revert by close of business on 15 January 2020, failing which it shall be accepted that the findings in the Plaintiff’s expert reports are deemed to be admitted.’

19.3 The third and final pre-trial did not, as the other two pre-trials did, contain the provision that the RAF reserves its right to have the issue of the serious injury assessment of the plaintiff referred to the HPCSA.

19.4 At trial, the content of the expert reports and the serious injury reports were admitted, because the deeming provision was alive.

[20] In this matter, the plaintiff did not seriously pursue the acceptance of the serious injury assessment by the RAF. No follow up letters were sent and the RAF was never placed on terms that its failure to revert to the plaintiff’s attorneys would result in an admission of the serious injury. Furthermore, the RAF at no stage admitted the content of the expert reports or serious injury assessment reports.

[21] I can reach no other conclusion than that the conduct of the RAF in this matter does not establish an inference that the seriousness of the injuries was accepted.

Third special plea – non-compliance with s 24 of the Act:

- [22] Mr Botha submitted that the plaintiff lodged her claim form on 01 September 2022 with the required and sufficient information to enable the RAF to access the claim; and as such, there was substantial compliance to s 24 of the Act.
- [23] According to Ms Mhlanga, whilst the RAF acknowledged receipt of the claim form, the plaintiff's attorneys was informed that it was not compliant with s 24 of the Act in view of the requirements set out in the RAF's Board Notice 271 of 2022 ("the Board Notice").⁶

Analysis:

- [24] Section 24 of the Act, in relevant part, regulates the procedure for the lodgement of claims; and provides:

'A claim for compensation and accompanying medical report under section 17

(1) shall—

- (a) be set out in the prescribed form, which shall be completed in all its particulars;
- (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

...

- (4)(a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.'

⁶ Government Gazette No. 46322 on 06 May 2022.

[25] Regulation 7(1) reiterates that a claim for compensation, and the accompanying medical report referred to in section 24(1)(a) of the Act shall be in the Form RAF 1, attached as annexure A to the Regulations, or such amendment or substitution thereof, as the RAF may from time to time give notice of in the Gazette.

[26] What arises for consideration is the question whether the claim was lodged in terms of the Act and its Regulations.

[27] I briefly deal with the status of the Board Notice to place the RAF's contention that the plaintiff failed to substantially comply with the lodgement requirements in context.

[28] Paragraph 20 of Annexure A to the Regulations stipulates:

'Please complete the following information to validate your claim for substantial compliance to section 24 of the Act.

1. The identity of the insured (paragraph 1);
2. The date and place of the accident (paragraph 5);
3. Identify the insured motor vehicles (paragraphs 6/7 and 8);
4. A completed statutory medical record report (paragraph 22);
5. Amount claimed as compensation (paragraph 19);
6. Attach accounts, vouchers, invoices etc. to support your claim for medical expenses;
7. Complete this form as prescribed in section 24 of the Act ; and
8. in the event of loss of support or funeral expenses are claimed, provide documents in proof of the death of the deceased;
9. Should the space provided in this claim form be insufficient to answer any question, you are welcome to attach a further page to this claim form in which such further information can be provided to the Road Accident Fund.'

[29] On 06 May 2022, the RAF adopted and implemented the Board Notice. In the Board Notice, the Minister prescribed the RAF 1 Claim Form ("the RAF 1 Form") in a schedule. The RAF 1 Form requires the completion of the form to claim

compensation in terms of s 17 of the Act. It stipulates that any form that is not completed in its full particulars shall not be acceptable as a claim in accordance with s 24(4)(a) of the Act.

- [30] On 20 March 2024, in *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* (“*LPIIF v RAF*”),⁷ the court found the delegation by the Minister unlawful; and declared that the Board Notice is unlawful, is reviewed and set aside. The court reached this conclusion on the basis that the Board of the RAF may make recommendations to the Minister, but that the Minister ultimately makes the decision; and whatever power the RAF enjoys to administer claims in terms of s 4(1)(a), it cannot trespass upon the Minister’s power in terms of s 24(1) read with s 26(1).

- [31] On 26 August 2024, the court *a quo* granted the RAF leave to appeal the judgment in *LPIIF v RAF*,⁸ but emphasised that:

‘Here, as we have explained, is an issue of public importance, that must serve before the SCA. At the centre of this case, like *Mautla*, is the interpretation of statutory powers and their application. We have in our judgment pronounced on these matters and do not think there is a reasonable prospect that another court would decide these questions differently. However, for the reasons given above, we are of the view that there are compelling reasons to grant leave to appeal paragraph (iii) of our judgment so as to permit the SCA to decide issues relevant to the Board Notice and its remedial consequences that are common as between *Mautla* and the present matter. There is no basis to grant leave to appeal to the applicants for leave in respect of the exercise by the Minister of her powers to issue the RAF 1 form because the applicants for leave did not oppose the review in respect of the exercise of these powers. No such appeal would be competent, and such leave was abandoned before us.

In the course of hearing the application for leave to appeal, it was drawn to our attention that the applicants for leave had been making use of their application to avoid giving

⁷ [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

⁸ *Road Accident Fund and Others v Legal Practitioner’s Indemnity Insurance Fund and Others* (Leave to Appeal) (046038/2022) [2024] ZAGPPHC 854 (26 August 2024) paras 15 to 16.

effect to the interim remedial regime ordered by us. We expressed considerable concern as to this course of conduct. While the applicants for leave are entitled to seek leave to appeal in respect of those orders made by us that they contested in the main application, it is not clear how they can frame an application for leave to encompass the exercise by the Minister of her powers to issue the RAF 1 form and use such application to rely upon suspension to avoid the remedial regime ordered by us, as it relates to the RAF 1 form, and its consequence for the administration of claims that fall within the authority of the RAF. While we make no findings at all on this matter, we have nevertheless ordered the CEO of the RAF to file an affidavit explaining the Fund's failure to implement the interim regime ordered by this court. Counsel undertook to prevail on the RAF to file this affidavit on or before 16 August 2024.' (My emphasis underlined.)

- [32] The remedial regime referred to by the court hearing the application for leave to appeal is contained in prayer (vii), where the court *a quo* ordered that:

'Claimants who sought the lodgment of their claims in terms of the Board Notice or the RAF 1 Form, but lodgment was declined by the RAF or was not acknowledged by the RAF, are afforded a period until 30 September 2024 to resubmit their claims to the RAF in terms of the 2008 RAF 1 Form and those claimants who thereby secure lodgment will enjoy the benefits of such lodgment as from the date on which lodgment was originally sought by them;'

- [33] The appeal before the Supreme Court of Appeal in *LPIIF v RAF* has not been adjudicated.

Conclusion:

- [34] In my view, it would not serve any purpose to grant a remedial order in *casu*; and I deem it prudent not to dispose of the third special plea, but to postpone the adjudication thereof until the pending appeal in *LPIIF v RAF* before the Supreme Court is finalised.
- [35] Based on my findings above, it is fair and equitable that no cost order is made.

In the result, the following order is made:

1. The adjudication of the first and second special pleas pertaining to the serious injury assessment is postponed *sine die*;
2. In respect of the defendant's first and second special pleas, the defendant shall, in terms of Regulation (3)(3)(c) and 3(3)(d) of the Road Accident Fund Act 56 of 1996 ("the Act"), within five days from the date of service of this order, decide whether the plaintiff's injuries are serious, or not, and transmit the decision, in writing, to the plaintiff's attorney of record;
3. In so doing, the defendant must:
 - 3.1 Determine whether it is satisfied that the plaintiff's injuries, sustained in the motor vehicle collision that occurred on 26 June 2020, have been assessed as serious in terms of the method provided for in the Road Accident Fund Regulations, and accordingly accept that the plaintiff qualifies to claim non-pecuniary loss; or
 - 3.2 In the alternative to 3.1, reject the plaintiff's serious injury assessment report (RAF 4 Form), and simultaneously furnish the plaintiff's attorney of record with the written reasons for the rejection; or
 - 3.3 In the alternative to 3.1 and 3.2 above, direct the plaintiff to submit herself for further assessment at the defendant's cost with a medical practitioner appointed by the defendant, to determine whether the plaintiff's injuries are serious, or not;
4. The third special plea pertaining to the plaintiff's non-compliance to s 24 of the Act is postponed *sine die*, pending the finalisation of the appeal in *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others*.
5. No cost order is granted.



STANTON J

On behalf of the plaintiff:

Adv A Botha

On instructions of:

Venter Rust Incorporated

On behalf of the RAF:

Adv J Mhlanga

On instructions of:

The State Attorney