



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

Case no: 9521/2019

In the matter between:

JILL LOUISE ALLEN

Plaintiff

And

ROAD ACCIDENT FUND

Respondent

Coram: Pangarker J

Hearing dates: 12 June 2025 and 21 August 2025

Judgment delivered: 12 September 2025

JUDGMENT

PANGARKER J

Introduction

[1] On 25 February 2018, the plaintiff was running with friends along the shoulder of Northshore Drive, Hout Bay, when she was struck by a vehicle driven by Mr Ntokozo

Shabala. The collision was caused solely as a result of the negligence of the insured identified driver, with the result that the plaintiff sustained the following serious injuries: facial injuries and lacerations, facial bone fractures, traumatic pneumothorax, multiple rib fractures, fibula fractures, severe left eye injury, skull fracture, right shoulder fracture and left index fracture. As a result of the injuries, the plaintiff was permanently disfigured.

[2] Furthermore, the plaintiff experienced hypovolemic shock, anaemia due to severe blood loss, polyuria and pneumonia while hospitalized. She underwent emergency surgery and thereafter extensive and varied medical interventions and treatment in what has been a long and arduous road to recovery.

[3] In June 2019, the plaintiff instituted a civil action against the defendant, the Road Accident Fund (RAF), for damages suffered as a result of the bodily injuries which she sustained in the collision and the *sequelae* thereof. Her total claim for past hospital and medical expenses, as amended, was R2 844 660, 59. The plaintiff's claims for future medical expenses¹, past and future loss of income and general damages were all settled.

The pleadings

[4] As indicated in the Amended Particulars of Claim, the claim for past medical and hospital expenses was not settled in its entirety. It is evident from the Rule 37 process and orders granted subsequently that the bulk of the past medical and hospital expenses were also settled. The only outstanding amount relates to the payment of the cost of laser therapy treatment (laser treatment) incurred by the plaintiff through the services of Libby Roos, described as a skin care therapist or aesthetic skin health expert. The amount claimed in respect of such expense, for laser treatment to the plaintiff's facial scars, amounts to R239 450.

[5] The plaintiff pleads that amongst the injuries she sustained as a result of the collision, she suffered facial injuries and lacerations, facial bone fractures, severe left

¹ Defendant provided a section 17(4)(a) undertaking provided

eye injury, a skull fracture and is permanently disfigured. The defendant conceded that she suffered a serious injury, which entitled her to claim general damages².

[6] The defendant, in relation to the averment that the plaintiff claimed past medical and hospital expenses, pleaded that it had no knowledge of the allegations, did not admit same and required proof of the expenses as alleged in Annexure E, the plaintiff's schedule of past medical and hospital expenses.

Issue in dispute

[7] The amount which the plaintiff paid for laser treatment for her facial scars, as constituting a past medical expense in her claim against the defendant, is the only issue in dispute between the parties. The defendant disputes that it is under any obligation to pay for the costs pertaining to the plaintiff's laser treatment for the facial scars caused by injuries which she sustained in the collision.

[8] Subsequent to various Court orders granted between 2021 and 2023, which indicate that the matter was partially settled and that only the balance of the past medical expenses and quantum remained in dispute, the defendant maintained its position that it was not liable for the payment of the laser treatment expense.

[9] The defendant did not amend its Plea to specifically indicate its stance on the balance of the past medical expenses in respect of the laser treatment expense and its actual basis for refusing to pay for such expense only became apparent during the trial and subsequent closing submissions.

The plaintiff's experts

[10] Before considering the oral evidence in the trial, it is a good starting point to refer to the important aspects set out in the expert reports related to the plaintiff's facial injuries, medical treatment and the efficacy of laser treatment for the plaintiff.

² See Dr C Edelstein's assessment, 12 April 2019, Annexures C and D

[11] It is common cause that Dr Arnold Douglas, a plastic surgeon, was the plaintiff's treating plastic surgeon upon her emergency admission to Constantiaberg Mediclinic immediately after the collision and remained her treating plastic surgeon thereafter. He was not called as a witness in the plaintiff's case as he was not keen to testify in the matter. However, as part of the documents filed and referred to during the trial³, Dr Douglas confirmed that he advised and recommended laser treatment to improve the plaintiff's facial scarring, which yielded very satisfactory results.

[12] The plaintiff called Dr Keith Cronwright as a witness. Dr Cronwright is a plastic and reconstructive surgeon who was placed in possession of all relevant medical, medical legal reports and documents pertaining to the matter as well as the photographic evidence of the plaintiff's facial injuries including "before and after" laser treatment photographs. Furthermore, despite filing a rule 36 (9)(b) summary regarding testimony which Ms Roos would tender, the plaintiff did not call her as a witness. Dr Cronwright's testimony and report are discussed below.

The defendant's expert

[13] The defendant appointed Dr Kajal Lutchminarian, specialist plastic, reconstructive and aesthetic surgeon based in Durban, to assess and provide a report on the plaintiff. Dr Lutchminarian consulted the plaintiff in March 2024 and subsequently compiled a report based on her consultation and assessment of the plaintiff, clinical data received and photographic evidence available in the matter. The plaintiff's counsel placed on record at the commencement of proceedings that the content of Dr Lutchminarian's report was admitted and accepted.

[14] According to Dr Lutchminarian, the plaintiff had, as a result of the collision, sustained *inter alia*, extensive facial fractures, lacerations and degloving injuries. Her traumatic brain injury was managed conservatively. Furthermore, the initial management of the plaintiff's facial injuries included facial reconstructive surgery with titanium mesh fixation, rhinoplasty, left eye ocular surgical intervention and

³ Part B, p49

rehabilitation. The sequential management of facial injuries are recorded as being numerous outpatient visits, ophthalmic surgical intervention and laser scar and skin rejuvenation.

[15] Dr Lutchminarian notes that the plaintiff consulted Libby Roos skin care clinic for her facial scarification, requiring 50 laser session treatments with a total cost of approximately R200 000. As confirmed by photographic evidence presented in the matter, and which the experts were privy to and considered, the plaintiff presented with the following residual deformities: an overt left eye and socket deformity, left zygoma prominence and left enophthalmos with mild facial asymmetry.

[16] Dr. Lutchminarian also recorded that the plaintiff was employed as a tourism consultant, involved in safari tours and returned to work after approximately a year post-hospitalisation. The facial injuries and scars had a significant impact on the plaintiff's self-esteem. According to Dr Lutchminarian, she believed the plaintiff would benefit from non-surgical scar therapy which would require financial outlay. Furthermore, the non-invasive scar management in the form of laser genesis over an extended period had yielded excellent results which significantly reduced and minimized the scars on the plaintiff's face.

[17] Dr Lutchminarian's opinion was that surgical scar revision and plasty, as a low priority procedural option, would be aesthetic in nature. While the doctor noted that this procedure would have been more cost effective than the laser treatment which the plaintiff underwent, she considered that such surgical intervention was contraindicated for the plaintiff as there was a high risk of intra and post-operative bleeding due to the plaintiff's use of anticoagulant for her thrombosis.

[18] Insofar as Dr Lutchminarian discussed skin rejuvenation and laser practice in South Africa, at the time of compiling her report in early 2024, she indicated that there were no set guidelines nor strict regulation on skin laser administration and management in the country and that the minimum requirement documented was that any cosmetologist certified by the suppliers with a minimal number of hours of training, qualified him/her to offer the service, provided that the laser equipment was approved.

[19] Dr Lutchminarian concluded that the plaintiff's high impact facial trauma with pan- facial fractures required reconstructive surgery. The facial scarring was noted and regarded as *"highly visible, extensive and disfiguring and was managed non operatively by means of a laser genesis system"*⁴. She also agreed with Dr Douglas that the laser treatment had yielded exceptional results with minimum residual scars and that there was an improvement in scar and skin quality. Significantly, Dr Lutchminarian recognized that Ms Roos was not a medically qualified doctor, but that *"minimal requirements would entail a certification and equipment SAPHRA approval"*⁵.

The joint expert minute

[20] In the joint minute of the parties' experts dated 25 October 2024, Doctors Douglas and Lutchminarian agreed that:

- "1. *Plaintiff consulted Libi Roos Skin Care Clinic for her facial scarification and required a total 50 Laser session (sic) at a cost of ±R230 000.00 following a motor vehicle accident on 28 February 2018.*
2. *Plaintiff required extensive surgery to her facial bones and facial skin. This left her with significant scars to her face.*
3. *Laser scar and skin rejuvenation are excellent non-invasive modalities for scar management with the aim of minimizing and concealing scars.*
4. *The laser modality has yielded exceptional results with minimal residual scarification with improvement in scar and skins (sic) quality in the case of the plaintiff.*
5. *Laser treatment of the scars does not only improve the appearance of the scars but improves the negative functional effects that scars have on especially the face.*
6. *Scars, when they contract, become thick, can peel various facial structures of the face e.g. nose, mouth and eyes, causing distortion and functional impairment."*

⁴ Dr Lutchminarian report, p11

⁵ Dr Lutchminarian report, p11. The reference in the report to "SAPHRA" is incorrect and should read SAHPRA, the South African Health Products Regulatory Authority

[21] Significantly, the experts agreed on the use of laser treatment for scar management and the positive outcome of such treatment in the plaintiff's case. In ***Bee v Road Accident Fund***⁶, the majority judgment emphasized that unless a trial Court was dissatisfied with the parties' experts' agreement contained in a joint minute and wished to hear further evidence on those aspects, the trial Court would be bound and entitled to accept the material upon which the experts had agreed in the minute.

The plaintiff

[22] At the time of the collision, the plaintiff was employed at a tourism company in safari planning which included international trade shows. She explained that her role in the industry was to "sell Africa" to locals and tourists alike. She would accompany clients on their safari trips around the world and interacted with other members of the global tourism industry, as well as local and international guests and tourists.

[23] On the 28 February 2018, she was running with friends opposite the beach in Hout Bay when she heard the screech of brakes, looked up and in a split second, the insured's vehicle had made contact with her body. As a result of the massive impact, she found herself lying face down in the sand and had a vague recollection that she was drifting in and out of consciousness. She was transported per ambulance as a trauma victim to Constantiaberg Mediclinic for emergency medical treatment and underwent a 12-hour emergency operation.

[24] The plaintiff testified that she was in intensive care for 18 days and she confirms the injuries which she sustained as indicated above and as set out in the various medical and expert reports. After discharge from the intensive care unit (ICU), she was in a general ward for another 10 days and explained that Dr Douglas was her treating plastic and reconstructive surgeon. With reference to the letter addressed by Dr Douglas⁷, the plaintiff confirmed that she had the last surgery on her face in June

⁶ [2018] ZASCA 52 par [73]

⁷ Exhibit B, p49

2024. In total, and as a result of the injuries sustained to her face during the collision, she underwent approximately 12 or 13 operations to her face.

[25] The plaintiff testified and identified the photographs included in Dr Cronwright's report as depicting an MRI scan taken shortly after she was brought into hospital and the horrific facial injuries she had sustained⁸. She explained that the first two years after the collision saw most of the surgical and reconstructive work done to her face and that a prosthesis was placed under her left eye in order to keep it in place and support the eye.

[26] The plaintiff testified that the first time she saw her face/herself after the collision was when an ICU nurse wheeled her into the shower room where she left her. It was then that the plaintiff saw the horror of her face in the bathroom mirror. In an unemotional, clear fashion, she testified that there were huge scars from her forehead along and down her nose over her lips and ending on her chin.

[27] The plaintiff was questioned about her facial appearance before and after the collision. She explained that prior to the collision, she was proud of her looks and that people considered her to be pretty. However, after the collision, she thought that her life would never be the same again, in that her appearance had altered, her face was lopsided and scarred and she was concerned about how friends, family, colleagues, and guests with whom she interacted, would respond to her changed facial features. The plaintiff thought that she would have to hide for the rest of her life.

[28] Prior to the incident, the plaintiff regularly went to Ms Roos for anti-aging facials, and she was aware of the latter's previous positive laser treatment outcome with a client who had also suffered multiple facial injuries and scars in a motor vehicle collision. According to the plaintiff, she was terrified of doing more damage to her face and discussed all her facial scar treatment with Dr Douglas, who supported and recommended laser treatment for the management of her severe scars. As a result of

⁸ See par 1.4, Dr Cronwright report; the same photographs appear in Dr Lutchminarian's report (pages are un-numbered)

Dr Douglas' "go-ahead," the plaintiff's husband attended to contacting Ms Roos and three other persons regarding laser treatment for the plaintiff⁹.

[29] Shortly after her discharge from hospital, the plaintiff commenced laser treatment offered by Ms Roos. She described the treatment as initially being quite tricky because of the insertion of metal implants in her face as a result of the fractures sustained in the collision. Treatment thus commenced very slowly, as the implants would heat up during laser treatment, which Ms Roos would then halt. Furthermore, the plaintiff was always mindful that more treatment to her face could cause further damage, having already undergone 12 or 13 prior facial surgeries but she trusted Ms Roos's capabilities and expertise in the field of laser treatment.

[30] Initially the laser treatment was every two to three weeks for very short spurts of time and as the treatment started improving her scarring, the plaintiff attended Ms Roos's clinic once a week, and thereafter, sessions were more regular. In total, the plaintiff underwent 50 laser treatment sessions over 18 months.

[31] The Plaintiff testified furthermore that as the treatment progressed, she was able to look at herself in the mirror and started regaining her self-confidence. The improvement in her facial scars gave her the motivation and confidence to return to work and socialize again. As an illustration of the success of the laser treatment, the plaintiff referred to photographic evidence which depicts her scars before laser treatment and the appearance of the scars after treatment¹⁰. Consequently, she stated that she was thrilled at the outcome and results of the laser treatment and proud that she had made the decision to undergo such treatment at Dr Douglas' recommendation.

⁹ It is unclear whether the three people were skin care therapists, cosmetologists or medical practitioners

¹⁰ Exhibit A, photographs 31 and 32, depict the facial scarification when the laser treatment had already commenced and photograph 33 indicates the plaintiff's face after laser treatment. Photograph 39 shows the plaintiff (face only) as at 29 January 2025.

[32] The plaintiff also testified that she felt that she could put the accident behind her and that her life was back to normal. She explained that she would receive pleasant comments from people regarding her looks and this occurred without them knowing what she had looked like prior to the collision. She was always mindful that laser treatment was not affordable to everyone and grateful that she was able to access it. She was proud of the steps she had taken and explained that the outcome of the laser treatment caused her to regain her dignity and self-worth.

[33] The plaintiff testified further that her medical aid scheme did not pay for the laser treatment and with reference to schedule 2 of Exhibit A, she confirmed that she had spent R239 450 on laser treatment by Ms Roos¹¹. Most payments were made in cash by her or her husband from their emergency fund. With reference to the various invoices from Ms Roos, the plaintiff also testified that because she was a longstanding existing client, she did not pay at every session as they had a relationship built on trust. Sometimes payments were made at the end of the month, in cash, and others were made by electronic funds transfer (EFT)¹².

[34] During cross examination, the plaintiff was steadfast that the decision to undergo laser treatment for her facial scars only occurred after a discussion with and recommendation by Dr Douglas. She and her husband then discussed the possibility, and he attended to contact Ms Roos and other potential service providers who offered laser treatment. According to the plaintiff, Dr Douglas did not have the necessary laser equipment to offer the laser treatment and after he saw the progress of the treatment undertaken by Ms Roos, Dr Douglas visited the latter as he, too, was amazed at the results which the laser treatment had achieved for the plaintiff.

[35] The plaintiff was asked why she did not shop around for laser treatment quotes. Her response was that she had a relationship of trust as a client with Ms Roos and was aware of the positive results achieved with a previous client who was also involved in a collision. The defendant's legal representative put to the plaintiff that the RAF's issue with the claim in relation to the laser treatment was that there was no practice code on

¹¹ Proof of invoices from Ms Roos for the period during which the plaintiff received laser treatment

¹² Exhibit A, p17, 19, 20, 21-29

any of Ms Roos's invoices. In response, the plaintiff stated that she believed that Ms Roos did not have an ICD code, and on her understanding, Ms Roos was not a member of a professional health body, which was (to the plaintiff) irrelevant to the issue and condition of her face was at the time.

[36] The plaintiff also confirmed that when she consulted with Dr Lutchminarian, the defendant's expert, she had already undergone and completed laser treatment¹³. According to the plaintiff, all the plastic surgeons agreed that the laser treatment had yielded excellent results and was not a waste of time insofar as the management of the plaintiff's facial scars were concerned.

[37] On the Court's questions as to the effect of the facial injuries, the plaintiff testified that because of the horrific injuries to her face at the time, she did not wish to have people visit her while she was in hospital but understood that one could not stop people from visiting. She had a husband and stepchildren, she was in her 50s and she was grateful and happy that she could still walk, that she was not brain damaged and that she was still alive. Finally, the plaintiff explained that when she considered her situation and condition from that perspective, she had to be positive about effect of the laser treatment on her scars.

Dr Keith Cronwright

[38] Dr Keith Cronwright, a plastic and reconstructive surgeon based in Claremont, testified to his report and referred to the photographic evidence, explaining that the plaintiff's serious cranial facial injuries were the worst such injuries he had seen in all his years of experience, which stretched back to 1996¹⁴.

[39] According to Dr Cronwright, the laser treatment was to assist in the healing of the plaintiff's multiple cutaneous scars and the machine used by Ms Roos was a Cutera laser genesis with multiple wavelengths (NdiYag laser)¹⁵. He explained that a

¹³ The plaintiff explained that the laser treatment concluded in 2020, as it was not necessary to undergo more treatment and the country was entering into the early stages of the COVID pandemic

¹⁴ Exhibit B

¹⁵ Exhibit C, Basic principles of lasers, Steven Stenhoff and Jane Mills, p135

laser is not a one-size-fits-all. Dr Cronwright testified that the ridged scar on the plaintiff's face, which ran from her forehead down the length of her nose was thermally ablated by laser treatment with the result that the ridge and redness around the scar eventually dissipated, in what he described as "*an amazing outcome*"¹⁶.

[40] As a further illustration of the positive outcome of laser treatment, the witness referred to the plaintiff's cutaneous scars pre-laser therapy on 7 April 2018 versus the appearance of her face more recently in January 2025¹⁷. He described the remarkable difference in the appearance of her face in the photographs as being like "*chalk and cheese*". In paragraph 3.8 of his report, Dr Cronwright states:

"Comparison of the below photographs (2018 vs 2025) is chalk and cheese. The prominent curvilinear scar that traversed from claimant's glabella along the nasal bridge, onto the upper and lower lips and terminated on her chin – is now virtually imperceptible!"

[41] Furthermore, he expressed the view that the results of laser treatment on the plaintiff's scars were quite exceptional and as far as he was concerned, the success rate of the laser treatment was 95%.

[42] During cross-examination, Dr Cronwright was questioned about the registration of Ms Roos with a professional body. He testified that he was not aware that the Health Professions Council of South Africa (HPCSA) required a person/service provider to be registered with it to provide laser treatment to a third party such as the plaintiff. He elaborated that, in his opinion, laser treatment was a technician's job and questioned whether a plastic surgeon (such as himself) would have the time and/or inclination to go to the trouble of offering laser treatment. He also stated that if a plastic surgeon wished to offer such service, they could. He also confirmed that the NdiYag laser was a scar management laser.

¹⁶ Dr Cronwright report, par 1.5 plus photographs before and after laser treatment (17 April and 26 June 2018 laser treatments)

¹⁷ Dr Cronwright report, par 3.8 plus photographs

[43] The defendant's legal representative put to Dr Cronwright that the RAF did not dispute that the plaintiff had laser treatment for her facial scars, but it was of the view that she could or should have sought such treatment from a registered service provider. Whilst he conceded that Ms Roos was not the only service provider whom the plaintiff could have approached for laser treatment, Dr Cronwright reiterated that the HPCSA did not require registration of a professional for the purpose of offering laser treatment. On a question posed by the Court, Dr Cronwright testified that generally, plastic surgeons would not have the NdiYAG laser readily available.

Nizaamudien Abdul

[44] Mr Abdul, a bill reviewer employed by the RAF, was the sole witness for the defendant. His role is to assess medical expenses which are claimed from the defendant. He explained that in respect of medical expenses, the third party could claim any expenses which are linked to the accident in which he/she was involved and was required to provide invoices to this effect which would strengthen his/her case. Once the invoices are assessed, the claim is either approved or queried.

[45] With reference to the plaintiff, Mr Abdul stated that the problematic aspect of the plaintiff's claim related to the laser treatment expense because the treatment was not provided by a registered healthcare professional. He thus rejected the plaintiff's claim for this expense on the basis that the laser treatment was offered by a service provider who was not registered with the HPCSA and described this as the first rejection.

[46] Mr Abdul then escalated and transferred the laser treatment expense to the RAF's executive department which assessed the claim. He testified that the executive department had no issue with the laser treatment and its outcome for the plaintiff but that there was no indication in any of the reports as to why she was not referred to a registered healthcare provider, such as a dermatologist. The plaintiff's claim for laser treatment was thus rejected again.

[47] Mr Abdul testified that insofar as the approval and payment of medical expenses were concerned, the RAF operates within a framework and had Ms Roos been a registered healthcare provider, there would have been no issue and no dispute regarding the plaintiff's payment of such expense for laser treatment. He elaborated that the outcome of the laser treatment had no bearing on the RAF's rejection of such an expense, but rather, as seen from his testimony, the issue was simply that Ms Roos was not a registered health care provider or practitioner.

[48] During cross examination, Mr Abdul confirmed that the RAF's executive department indicated to him that it did not pay for services provided by an unregistered service provider based upon the RAF Act. However, he could not direct the Court to a/the specific part of the legislation which supported this view. It was put to him that it was not a requirement that the person who provided laser treatment had to be registered with the HPCSA and that there was no legislative provision in the RAF Act which excluded the payment for laser treatment.

[49] In response, Mr Abdul indicated that he did not know if the statement was correct or not. In this regard, counsel for the plaintiff specifically referred Mr Abdul to sections 17 and 19 of the RAF Act, with the result that the witness admitted that it was clear that the Act did not provide for the exclusion of payment for laser treatment. Mr Abdul was also not aware of any other legislation which excluded the RAF from making such payment to a third party.

[50] Mr Abdul was unable to comment on the statement put to him that had the plaintiff not gone for laser treatment and hence returned to work, the general damages claim would have been much larger.

The plaintiff's submissions

[51] Counsel for the plaintiff emphasized that when claiming for damages suffered because of the unlawful actions of another party, the aim is to put the plaintiff in a similar position financially which she would have been in had the unlawful action not

occurred. Patrimonial damages constitute damages for patrimonial loss, that is, actual pecuniary loss sustained by the wronged victim¹⁸.

[52] The Court was requested to consider sections 17 and 19 of the RAF Act, and the main thrust of the argument was that an expense such as laser treatment does not fall within the exclusions in section 19 of the Act. Furthermore, the Court was urged to consider the purpose of the RAF Act, the common law and section 10 of the Constitution of the Republic of South Africa, 1996. The plaintiff's view was that the money spent on paying for the laser treatment service in order to address her serious scarring may be recouped from the RAF since the plaintiff's estate suffered a loss in having to pay a service or health care provider for such treatment.

[53] It was submitted that the Court should be able to find that the positive results achieved by the laser treatment largely succeeded in ensuring the plaintiff's restoration of dignity, which is guaranteed by section 10 of the Constitution. Counsel for the plaintiff submitted that section 19 of the RAF Act is the only section which deals with the exclusion of liability of the defendant, but significantly, that the section contains no grounds/provisions for the exclusion of a claim for past medical expenses related to laser treatment.

[54] Thus, on behalf of the plaintiff, her counsel submitted that with reference to section 17, a third party (such as the plaintiff) was entitled to claim as past medical expenses, laser treatment for facial scars, consequent upon bodily injury sustained in a motor vehicle collision.

[55] The Court was requested to interpret the RAF Act broadly, in favour of the plaintiff, and that the reference to "*any loss*" in section 17, supports the granting of the plaintiff's claim for laser treatment. To the extent that the Act refers to medical tariffs, it was submitted that such tariffs refer to those prescribed in terms of the National Health Act 61 of 2003 for future medical costs and future loss of income in section 17(4B) of the Act, read with sub-sections 4(a), 5 and 6 thereof, which do not apply in this matter.

¹⁸ The Quantum of Damages in bodily and fatal injury cases: General principles, Vol. 1, Fourth edition, MM Corbett, JJ Gauntlett, p4

[56] Finally, the plaintiff urged the Court to accept that there was no impediment to her claim for laser treatment for the serious scars to her face. In support, the plaintiff's counsel reiterated that the RAF, without demur, pays for carers, gardeners, domestic services, drivers, and the like, when such services are recommended on the advice of medical experts. The submission is that these service providers are not registered health professionals and not registered service providers. Finally, the plaintiff submitted that the defendant did not plead reliance on an internal directive or any section of the RAF Act in support of its view.

The defendant's submissions and the plaintiff's reply thereto

[57] The defendant's legal representative submitted that section 4 of the RAF Act vests the defendant with powers to stipulate terms and conditions upon which claims for compensation shall be administered. She submitted that section 4 requires that a service provider be registered with the relevant overseeing body of his/her profession. In this regard, the defendant relies on the recent judgment in this Division in **Fookwe v Road Accident Fund**¹⁹, as authority which disallowed payment for a past medical expense on the basis that there was no evidence that the service provider in question was registered with his professional organization/body.

[58] The defendant's submissions and stance are also based on the concern that unregistered service providers cannot or would not be held accountable should the treatment they render to the patient be incorrect or problematic. In this matter, the defendant did not deny that the laser treatment was successful, but it was argued, this was not the yardstick by which payment by the RAF was allowed. To drive home the point, the RAF's legal representative stated that the plaintiff elected to use Ms Roos for laser treatment when there were other options available to her. In view of the **Fookwe** decision, the Court was requested to dismiss the plaintiff's claim in respect of the laser treatment expense, with costs.

¹⁹ [2024] ZAWCHC 115 per Cloete J

[59] Counsel for the plaintiff, replying to the defendant's submissions, alerted the Court to the distinction that must be drawn between **Fookwe** and this matter. The Court in **Fookwe** was referred to a directive of the RAF, which was not the case in this matter as the defendant did not rely on a directive in its Plea, nor present any evidence to that effect. Furthermore, no submissions were made in **Fookwe** as to why an acupuncturist's²⁰ expense should or should not be included in Mr Fookwe's claim. Instead, the assumption was made that there was a specific professional body for acupuncturists. In that regard, it was submitted, the Court was reminded that **Fookwe** was distinguishable from this plaintiff's matter on a few grounds.

Common cause or undisputed facts

[60] Having considered the evidence in this trial, the indications are that the defendant does not dispute that the plaintiff was left with horrific and severe facial scars caused by the serious injuries and fractures to her face and skull which she sustained in the collision. Furthermore, she was advised by Dr Douglas that laser treatment was recommended to address, manage and reduce her facial scars.

[61] In addition, the defendant accepts that Dr Douglas visited Ms Roos once he observed the progress and positive results from the laser treatment. It is also undisputed that the plaintiff underwent 50 sessions of laser treatment with Ms Roos, and that the results were excellent and remarkable in reducing her scars. Ms Roos was known to the plaintiff through their previous interaction as a skin care therapist and client, and they had built up a relationship of trust.

Laser treatment as scar management

[62] At the outset, and considering the majority view in **Bee**²¹, the parties' agreements as contained in the joint minute of Dr Douglas and Dr Lutchminarian, are accepted by the Court. There was thus no reason for these experts to testify orally on

²⁰ Unregistered health care / service provider

²¹ Par [71]-[73]

any of the aspects forming part of their agreements. Secondly, the Court takes account of the fact that the plaintiff admitted the content of Dr Lutchminarians' report, which materially agrees with or follows the views of the plaintiff's experts²². The only issue, albeit slight, relates to Dr Lutchminarian's table addressing different types of laser treatment and a reference to cosmetologists and doctors. This aspect is addressed below but was not an issue forming part of the agreements in the joint minute.

[63] In summary then, all the plastic and reconstructive surgeons in this matter agreed that the outcome of the laser treatment had yielded excellent results, in that the massive curvilinear scar which ran from the bridge of the plaintiff's nose, downward over her lips to her chin, was all but unnoticeable. They also agreed that because of the success of the laser treatment, the plaintiff had regained her self-confidence and dignity sufficiently to return to work and has been working in the tourism industry ever since.

[64] From the plaintiff's testimony that Dr Douglas visited Ms Roos, it would not be unreasonable for me to conclude that the doctor must have satisfied himself that Ms Roos was sufficiently qualified and/or experienced and had the correct and necessary tools and equipment to offer laser treatment to the plaintiff. In the event that this was not the case²³, and even where Dr Douglas did not testify in the trial, it would not have made sense for him to have reached agreement with Dr Lutchminarian in the joint minute as to the excellent outcome of the laser treatment, as was indeed the case.

[65] In the circumstances, there was no evidence presented that Ms Roos did not have the necessary and correct equipment to offer the plaintiff laser treatment to manage her scars. To add, Dr Cronwright's testimony that Ms Roos used the NdiYAG laser for the plaintiff's treatment was also unchallenged.

²² Dr Douglas and Dr Cronwright

²³ In other words, if Ms Roos was ill equipped, untrained or inexperienced, did not have the correct equipment, etc.

[66] Turning attention to the need or purpose for the laser treatment, it is common cause from the medical reports that the plaintiff suffered extensive facial fractures, degloving facial injuries and multiple soft tissue injuries to her face²⁴. Furthermore, the CT scan image of her face and head²⁵ illustrates the severity of the numerous cranio-facial fractures which she sustained because of the collision.

[67] The plaintiff underwent extensive and prolonged emergency surgery on admission to hospital, which comprised the following procedures:

*“Open reduction and internal fixation of all facial fractures
Nasal reconstruction using costochondral graft (Dr A Douglas)
Removal of teeth with hopeless prognosis
Debridement and repair of lacerations and degloving injuries
Surgical packing of profuse bleeding from pterygoid region.”*²⁶

[68] In addition to the above, the plaintiff's testimony that the surgery was 12- or 13-hours further illustrates how extremely serious her facial injuries were. Dr Cronwright's statement that the plaintiff's injuries were the worst cranio-facial injuries he had seen since he commenced practicing in the 1990s, also confirms the severity of the numerous serious facial injuries and fractures which the plaintiff sustained in the collision.

[69] From the evidence, it is apparent that the plaintiff also underwent several subsequent extensive surgeries to address her facial injuries until her discharge from hospital at the end of March 2018. Aside from maxillo-facial and plastic surgery, she was also treated by a prosthodontist for the various oral complications suffered and had five operations to her left eye, which she explained, was supported by metal plates. Thus, numerous internal fixations were needed to stabilize the plaintiff's cranio-facial fractures²⁷.

²⁴ Dr A Mohamed, Maxillo-facial and oral surgeon, Part B, p50. The content of the report was not disputed.

²⁵ CT scan, p51 - 52

²⁶ Dr Mohamed, maxillo-facial and report, p52

²⁷ Dr Cronwright report, p2

[70] To the extent that it is possible in a judgment to properly attempt a description of her face or facial features after the extensive surgical interventions prior to the commencement of laser treatment, and without being disrespectful to the plaintiff, the most fitting description is that her face was deformed and her skin was badly scarred. The photographs prior to commencing laser treatment depict a massive, ridged scar travelling from the plaintiff's forehead down her nose and over both lips, ending on her chin. Other scars are also apparent on the left side of the plaintiff's face, near her problematic left eye.

[71] The plaintiff's scars were bold and red and, objectively considered, anyone meeting or observing her in April 2018, would certainly have been struck by the unmistakably large scars running down the middle of her face.

[72] According to the evidence, the available treatment options to address the facial scarification were either further surgery or laser treatment. Ultimately, there was only one option available to the plaintiff: laser treatment. This is because when I consider Dr Lutchminarian's view on the surgery option, namely scar revision and plasty, it becomes clear that the surgical option held serious medical risks of bleeding during and after surgery due to the plaintiff's use of coagulants for thrombosis.

[73] It is also notable that while Dr Lutchminarian appreciated that scar revision and plasty would have been a more economical option for the plaintiff, considering the medical risks accompanying further surgery, the Court's view is that the serious complications to the plaintiff, had she undergone such procedure, outweighed the cost-effectiveness thereof. Thus, for these reasons, the only option available to address and manage the plaintiff's scars was laser treatment.

[74] The experts recognized that laser treatment, as a non-invasive modality for scar management, was hugely successful in addressing the plaintiff's scars which had all but dissipated by the conclusion of the treatment. This view is supported by the photographic evidence and Dr Cronwright's testimony and at the time of her appearance in Court, there were no visible scars on the plaintiff's face.

[75] Having regard to the above, it is thus evident that the motivation for choosing to undergo laser treatment, as recommended by Dr Douglas, was not based on

aesthetic reasons. In the plaintiff's circumstances, the extensive surgeries on her facial bones and skin left her with significant and prominent facial scars which required scar management and skin rejuvenation, which laser treatment caters for²⁸.

Referral to dermatologist or plastic surgeon

[76] The next aspect to consider is the defendant's submission that the plaintiff could or should have approached a registered health care provider who offered laser treatment, for example, either her own plastic surgeon or a dermatologist. Considering the evidence in this matter, it is accepted that none of the experts indicated that the plaintiff was referred to a dermatologist or plastic surgeon for laser treatment. Furthermore, it is apparent from Dr Cronwright's testimony that laser treatment really amounted to a "*technician's job*"²⁹ and not a medical doctor's, such as a plastic surgeon.

[77] Dr Cronwright's responses to questions posed in cross-examination as to whether the plaintiff could have received laser treatment from a plastic surgeon, were reasonable, especially since he explained that because the type of laser treatment which the plaintiff received was scar management, it was questionable whether a plastic surgeon would go to the trouble of offering such a service.

[78] Certainly, one may ask whether a plastic and reconstructive surgeon, who is a specialist in his/her field of practice, would have the time or inclination to offer laser treatment. To be clear, this discussion in no way suggests that there are no specialists who offer this kind of service, but in the plaintiff's specific circumstances, it is evident that Dr Douglas certainly did not offer laser treatment and did not refer his patient to a dermatologist either.

[79] When considering the matter with specific reference to the plaintiff's situation in 2018, her decision to undergo laser treatment was clearly not undertaken arbitrarily or

²⁸ Joint Minute, para 2-3

²⁹ Dr Douglas – cross-examination

upon a whim. She was concerned that laser treatment, after having undergone numerous surgeries to her face, could damage her face and skin further. Secondly, Dr Douglas had recommended laser treatment as it would assist with scarring. Thirdly, accepting the plaintiff's unchallenged testimony regarding Dr Douglas's visit to Ms Roos when he saw improvement in her scars, it must follow that in all probability he was satisfied that Ms Roos was sufficiently capable and experienced to provide treatment to the plaintiff.

[80] The plaintiff's testimony on these aspects remained steadfast and was not rebutted by the defendant in any way. Furthermore, neither of the three plastic surgeons indicated that laser treatment for scar management should have been provided by a doctor, whether a plastic surgeon or dermatologist.

[81] Thus, having regard to these findings, the defendant's submission that the plaintiff should have seen a dermatologist or her own plastic surgeon for laser treatment ignores the circumstances of the plaintiff's case, the advice and recommendation provided by Dr Douglas and the testimony of Dr Cronwright. Accordingly, the submission that the plaintiff was required to have been referred to a dermatologist or plastic surgeon, is unsustainable.

[82] In addition to the above, the plaintiff's version that she went to Libby Roos based on the latter's previous positive outcome with laser treatment for another patient who was scarred in a motor vehicle collision, and due to her relationship of trust with Ms Roos, is accepted as a reasonable and logical explanation. It must be remembered that the plaintiff's husband not only approached Ms Roos but also contacted three other individuals regarding laser treatment services before deciding on Ms Roos's services.

[83] Accordingly, therefore, no negative inference or conclusion is drawn for any suggested failure on the part of the plaintiff to "shop around" for quotes for laser treatment.

Legislative provisions

[84] This brings me to the further contention that the RAF's issue and its two rejections³⁰ were because Ms Roos was not registered as a health care provider. Considering this issue, the plaintiff admitted that Ms Roos' practice did not have an ICD code and from the expert evidence, joint minute and Mr Abdul's testimony, it is common cause that Ms Roos was not registered with the HPCSA.

[85] In support of its rejections of the laser treatment claim and its stance that registration with the HPCSA is obligatory, the defendant relies on section 4 of the RAF Act, which it was submitted, vests the RAF with powers to stipulate the terms and conditions upon which claims for compensation shall be administered. The submission by the RAF's legal representative was that one of these requirements is/was that the service provider should be registered.

[86] Section 4(1) sets out the powers and functions of the RAF, as follows:

- 4. Powers and functions of Fund - 4. (1) The powers and functions of the Fund shall include-**
- (a) *the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered; '*
 - (b) *the investigation and settling, subject to this Act, of claims arising from / loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;*
 - (c) *the management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties; and ·*
 - (d) *procuring reinsurance for any risk undertaken by the Fund under this Act.*

³⁰ Firstly, by Mr Abdul and secondly, by the RAF's executive department

[87] Certainly, section 4(1)(a) allows the defendant to stipulate terms and conditions on which claims for compensation by third parties shall be administered, and section 4(2) sets out the mechanisms available to the RAF to achieve the objectives in section 4(1)(a) to (d).

[88] Bearing in mind Mr Abdul's testimony, the RAF rejected the laser treatment claim twice because Ms Roos was not registered with the HPCSA. However, the testimony of Dr Cronwright, which was not disputed, was that a skincare therapist or cosmetologist such as Ms Roos, was not required to be registered with the HPCSA. Although not referring to the HPCSA registration, Dr Lutchminarian noted a similar view in her report, wherein she indicated that:

"Currently there are no set guidelines nor strict regulation on skin laser administration and management in South Africa.

Minimum requirements documented is that any cosmetologist certified by the suppliers with a minimal number of hours of training qualifies these providers to offer these services and provided that the equipment is approved by SAPHRA³¹."

[89] Dr Lutchminarian provides a small table below her comment wherein she lists procedures such as microdermabrasion, chemical skin peels, fractional CO2 lasers and IPL (pulse dye) laser, plus costs, provider and sessions. She indicates that the two laser procedures are provided by either a medical doctor or a cosmetologist. With respect to the expert, it is unclear what the Court is to make of the reference or the table, particularly in relation to the plaintiff's circumstances at the time she attended laser treatment in 2018.

[90] The point is, that to the extent that the defendant may rely on these statements and table in its expert's report, presumably (though it is not clear) as an indication that the plaintiff should have attended a dermatologist, herein lies another difficulty: the table lists CO2 laser and IPL, neither of the two being the laser used on the plaintiff,

³¹ Dr Lutchminarian report, p6

which was an NdiYAG laser. Thus, the table and its relevance to the plaintiff, if any, and/or Ms Roos, was left unclarified by the defendant.

[91] A further point is that in any event, the experts, including Dr Lutchminarian, did not indicate in their reports that the plaintiff should only be referred to a dermatologist or plastic surgeon for laser treatment. Ultimately, the Court's decision does not turn on this aspect, particularly as Dr Cronwright was clear in his testimony regarding the type of laser used on the plaintiff, and the aspect regarding referral to a dermatologist or the exclusivity of offering laser treatment did not arise in the joint minute either.

[92] Returning to the Act, it is clear that section 17(1) imposes an obligation on the RAF or its agent to compensate any claimant for any loss or damage they suffered as a result of any bodily injury to themselves or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or his or her employee in the performance of the employee's duties as such.³²

[93] The liability of the RAF in section 17 is subject to the rest of the Act, more specifically section 19. Section 19 sets out the instances where the RAF's liability is excluded³³. Thus, having regard to section 19 (a) to (g), the plaintiff's counsel's submission that the section does not refer to past medical expenses and/or laser treatment claims, nor to claims where a health care provider was not registered with the HPCSA at the time of providing the claimant with the relevant treatment, is quite correct. Section 19 therefore, is of no assistance to the defendant in its case that it was entitled to reject the laser treatment claim as a past medical expense.

[94] The defendant also referred to section 17(4B) (a) to support its case that the claim for laser treatment is to be excluded. However, the reference to section 17(4B) (a) relates to health services provided by public health care facilities, and the

³² Summary of section (1). Further detail in s17, not relevant

³³ Section 18 also refers to the RAF's liability which is limited in certain instances, but the section is not relevant to this matter

applicable tariffs related thereto. It goes without saying that the reference to section 17(4B) is also not helpful to the defendant as the section plays no role in the disputed issue in this matter.

[95] In the interpretation of the provisions of the RAF Act, the Court must be cognisant of section 3 of the Act which refers to the object of the RAF, as follows:

3. Object of the Fund - *The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.*

[96] Read with section 17, section 3 generally promotes a wide or broad interpretation of the provisions of the legislation³⁴. As such, a Court should be mindful that the object of the Act is compensation to a third party for loss or damage wrongfully caused by the driving of motor vehicles.

[97] While the plaintiff's counsel addressed why a wide interpretation of the Act's provisions should be adopted, in view of the findings in this matter there is no need to address the approach to interpretation of the RAF Act's provisions, in detail. Suffice to indicate that the Constitutional Court in **Coughlan NO v Road Accident Fund**³⁵ emphasized that the purpose of the RAF is to "give the greatest possible protection to claimants"³⁶. As such, the interpretation of the provisions of the Act are undertaken as extensively as possible in favour of the plaintiff as claimant.

[98] In my consideration of section 17 therefore, the facts indicate that the plaintiff has fulfilled its requirements in that: in terms of section 17(1)(a) she established the identity of the insured driver; she is a third party who sustained bodily injuries to herself in a collision caused by the identified driver of a motor vehicle; the collision was caused by the sole negligence of the aforesaid driver; the plaintiff suffered loss and damage to her estate; and she was assessed as having suffered a serious injury.

³⁴ RAF Practitioner's Guide, HB Klopper, A17-20

³⁵ [2015] ZACC 9; Engelbrecht v RAF 2007 (5) BCLR 457 (CC) par 23

³⁶ Coughlan NO, par [59]

[99] Furthermore, the plaintiff successfully lodged a claim with the RAF in terms of Regulation 1(a) read with section 24 and proved that she suffered patrimonial and non-patrimonial loss. In this regard, therefore, the plaintiff has complied with all the requirements in terms of the Act.

[100] The defendant's stance that the laser treatment should have been performed by a health care professional registered with the HPCSA has, in the Court's view, no basis in terms of the legislation referred to above. To the extent that the defendant referred to section 4(1) and (2) of the Act, there is no dispute that the RAF is entitled to take steps and actions incidental or conducive to the exercise of its powers or functions, to manage its affairs and administer compensation³⁷.

[101] However, the reference to section 4(1) and 4(2) provides no basis for the view and submission that a claim for past medical expense such as laser treatment, is to be rejected because the health care provider was not registered with the HPCSA at the time of providing the treatment. While the defendant argued that it works within a "framework", it has simply failed to provide any evidence to indicate the legal basis upon which it holds the view that the provision of laser treatment should have been by a registered medical practitioner.

[102] At the risk of repetition, no directive³⁸ or reliance on legislation was pleaded nor was Dr Cronwright's testimony discredited insofar as the registration issue was concerned. Furthermore, Mr Abdul could also not explain the RAF's basis for requiring registration with the HPCSA, when Ms Roos, as a skin care therapist or cosmetologist, was not required to be registered with the HPCSA.

[103] In addition, the submission by the defendant that registration of the health care professional was required in case there is/was a problem with the service or laser treatment provided is a vague and unsubstantiated statement, and there is no way of knowing what exactly is meant by this submission. The point to be reminded of is that

³⁷ RAF Practitioners' Guide, H B Klopper, Issue 43, A-24

³⁸ No reference was made to a directive during the trial or argument

in any event, the laser treatment provided by Ms Roos was indeed highly successful, and the outcome thereof for the plaintiff was met with approval from all three experts, including the defendant's. As can be seen from the facts of this case and the expert opinions, by all accounts, Ms Roos rendered an exceptional service, with remarkable results particularly when the Court considers the plaintiff's large, unsightly scars after the series of surgeries to her face.

[104] In view of the above findings, there is/was no legislative requirement or provision that laser treatment had to be provided by a registered medical practitioner nor is there any provision in the Act which indicates that laser treatment, such as was required by the plaintiff who suffered horrific facial injuries, should be excluded.

The RAF's reliance on the *Fookwe* judgment

[105] In *Fookwe*, the Court was faced with submissions from the plaintiff only, after the RAF's legal representative was absent from the hearing when closing argument was to be heard. All heads of damages were agreed but for the past hospital and medical expenses. The Court considered the evidence, including that of Mr Abdul for RAF and thereafter dealt with the various past medical expenses.

[106] In paragraph [16] of the judgment, Cloete J disallowed a claim for payment to an acupuncturist which was previously rejected by RAF as there was no proof nor indication on his invoices that he was registered with his professional body³⁹. I have considered the parties submissions in respect of *Fookwe*, and the distinctions in the two matters must be drawn.

[107] In this matter, the Court is dealing with payment to a skin care therapist or cosmetologist, where the accepted evidence presented is that at the time of rendering the treatment in 2018 until its conclusion, there was no requirement that Ms Roos be

³⁹ Par [12.3] of the judgment

registered with the HPCSA. Furthermore, at the time of Dr Lutchminarian's report in 2024, the situation seemed unchanged as the indications are that there were no set guidelines or regulations on skin laser treatment.

[108] Thus, while it would seem from **Fookwe** that acupuncturists are/were required to be registered with a professional body, there was no evidence in this matter that Ms Roos, as skin care therapist/cosmetologist, was required to belong to a professional body or that such service providers even had a professional body in 2018. In my view, counsel for the plaintiff is correct in that **Fookwe** is distinguishable, and with respect, is not considered as binding this Court in its decision as to whether to allow the plaintiff's claim related to laser treatment.

[109] Mr Abdul could not counter Dr Cronwright's testimony that registration with the HPCSA was not a requirement for Ms Roos. The plaintiff's position was always that the Act did not exclude her claim for laser treatment and that Ms Roos was not required to be registered with the HPCSA. In addition, from my limited research regarding the cosmetology and skin care therapy practice in the country, the indication is that there was no requirement for registration with the HPCSA nor, it seems, was there a governing or professional body overseeing such practices in 2018, and possibly even presently⁴⁰.

[110] As the defendant's stance has been that registration with the HPCSA was indeed a requirement or (it would seem) registration with a professional body, it was up to the defendant to present evidence supporting its view. At the very least, it was up to the defendant to rebut the plaintiff's version that Ms Roos was not required to be registered with the HPCSA. Yet, it failed to do so, and its reliance on **Fookwe** does not assist its case.

⁴⁰ See salonbridge.co.za; www.dnet.co.za How to become a licensed cosmetologist

Conclusion and costs

[111] Ultimately, the RAF Act's purpose as set out in section 3 must be read with section 17 and section 10 of the Constitution. The plaintiff's estate was indeed reduced because of the loss and expense in relation to laser treatment which, as found above, was necessary in her circumstances. The laser treatment not only managed her scars but effectively erased them and in so doing, its success clearly restored the plaintiff's dignity and self-confidence to return to work and face the world again.

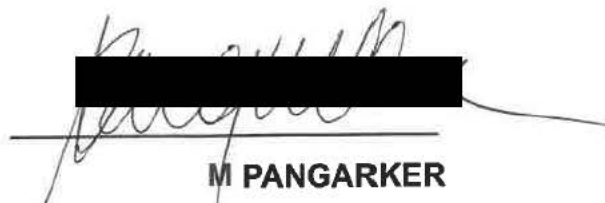
[112] From the evidence in this matter, and the submissions which were considered, the Court is satisfied that the plaintiff has fulfilled the requirements of section 17(1) of the RAF Act. Ms Roos's invoices and description of the treatment indicated therein were also considered, with reference to the 50 sessions which the plaintiff attended⁴¹.

[113] On closer scrutiny, the Court excludes two amounts: R1850 on 14 September 2018⁴² and R3500 on 16 October 2018⁴³ which refer to neck treatments, and not laser treatment. This would therefore reduce the plaintiff's claim for laser treatment as a past medical expense to R234 100. As far as costs are concerned, counsel's fees on scale B are certainly warranted.

Order

[114] In the result, the following order is granted:

The plaintiff's claim is upheld in the amount of R234 100, together with costs (counsel's fees on scale B).


M PANGARKER
JUDGE OF THE HIGH COURT

⁴¹ Exhibit A

⁴² Invoice 36

⁴³ Invoice 38

Appearances:

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For Defendant: Ms C Thomas
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