

**REPUBLIC OF SOUTH AFRICA**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG**

**CASE NUMBER Y2021/55540**

(1) REPORTABLE: **NO**  
(2) OF INTEREST TO OTHER JUDGES: **NO**  
(3) REVISED: **NO**  
**15 Sep 2025**

**In the matter between:**

**BRUTON RUSSEL FREDERICK**

**Applicant**

on behalf of Estate Late Bergmann

Walter Ray Gerhard

and

**ROAD ACCIDENT FUND**

**Respondent**

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**J U D G M E N T**

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**PILLAY, AJ**

**Introduction**

1. The applicant, the estate of the Mr Bergmann, is the plaintiff in the main action for damages against the defendant arising from the death of Mr Bergmann ("the deceased") who died from bodily injuries sustained in a motor vehicle collision.

2. On 8 February 2022, the defendant offered the plaintiff a compromise which was formulated as follows:

*“The Road Accident Fund (RAF) has considered the available evidence relating to the matter in which the motor vehicle accident giving rise to this claim has occurred. The RAF has concluded that the collision resulted from the sole negligence of the RAF’s insured driver.*

*Consequently, without prejudice, the RAF offers to settle the issue of negligence vis-à-vis the occurrence of the motor vehicle collision on the basis that the insured driver was solely negligent in causing the motor vehicle collision.*

*This offer is limited to the aspect of negligence as to the way in which the collision occurred. This offer may not be interpreted or construed in a manner that would have the RAF concede any other aspect of the claim. To avoid doubt, the RAF reserves all its rights in law with regards to all other procedural and substantive aspects of the claim.”*

3. This compromise was accepted by the applicant who now brings this application for past medical and hospital costs and expenses which were reasonably expended to treat/ameliorate the deceased’s injuries after the collision and until his demise.

4. Initially, the applicant sought this relief in the form of an interim payment pending the determination of its claim for other heads of damages. However, by the time the application was argued, all other heads of damages had become settled between the parties. Both parties thus approached the matter on the basis that the applicant sought final relief and not an interim payment.
5. The respondent raised three points *in limine*. These are dealt with below.

### **Points *in limine***

#### *Hearsay*

6. The respondent contends that paragraphs 8 and 9 of the founding affidavit deposed to by the applicant's attorney of record constitutes hearsay allegations.
7. Paragraphs 8 and 9 of the founding affidavit states that:

“8      *As a result of the bodily injuries sustained by the deceased in the aforementioned motor vehicle accident, the deceased received hospital and medical treatment and incurred expenses in connection thereof. The Past Hospital and Medical Expenses were incurred as a direct result of the injuries sustained and the sequelae thereof following the accident. A confirmatory affidavit from the Medical Aid Scheme's administrator confirming these medical expenses as well as a confirmatory affidavit from the Executor of the deceased estate*

*confirming the amount due to the Estate is attached hereto as Annexure "CC3a and b" respectively.*

- 9 The Executor of the deceased estate, Russel Frederick Bruton, ceded the right to recover the past hospital and medical expenses to the Applicant/Plaintiff by way of deed of cession. The Deed of Cession is attached hereto as Annexure "CCA".
8. These allegations are thus supported by the confirmatory affidavits of the medical scheme administrator and the executor of the deceased's estate.
9. There is thus no merit to the hearsay complaint.

*Stay / postponement*

10. In its answering affidavit, the respondent contended that it implemented a policy change which dictated that it would no longer reimburse claimants for past medical expenses where same was paid over to the service provider by a medical aid.
11. The respondent however advised that the legality of this policy was challenged successfully in the High Court and in the Supreme Court of Appeal. The answering affidavit records that the respondent has applied for leave to appeal to the Constitutional Court. On this basis, in its answering affidavit and heads of argument, the respondent sought a postponement of

this matter pending the determination of this appeal by the Constitutional Court.

12. However, during oral argument, Ms Tivana who appeared for the respondent, informed the Court that the application for leave to appeal had been summarily dismissed by the Constitutional Court. As a consequence, the request for postponement as raised in the respondent's answering affidavit and heads of argument, fell away.

13. Ms Tivana, however informed the Court from the bar of a majority decision of this Court in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*<sup>1</sup> which upheld the respondent's policy. She indicated however that leave to appeal had been granted in that matter and that an appeal to the Supreme Court of Appeal was pending. Ms Tivana indicated from the Bar that the respondent sought a stay of this application pending the final determination of that appeal.

14. However, given the nature and impact of the relief sought, it was incumbent on the respondent to have brought a substantive application for a stay of these proceedings. The interests of justice and fairness required that the applicant have a fair opportunity to respond to the allegations which underpinned an application for stay, particularly where these differed from what was contained in the respondent's answering affidavit and heads of argument. It was simply not adequate or appropriate for the respondent to

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<sup>1</sup> 2025 (3) SA 225 (GP)

raise these issues for the first time during argument. In the absence of a substantive application for the stay of this matter, the request for a stay of proceedings was declined and I proceeded to hear argument on the merits of the application.

*Requirements for interim payment not met*

15. The respondent argued in its answering affidavit and heads of argument that the requirements for an interim payment were not met given that the merits of the claim had not been admitted by the respondent in writing. However, during oral argument, Ms Tivana accepted that application had since morphed into one for final relief. She accordingly withdrew this point *in limine*.

**The merits**

16. The sole basis upon which the respondent opposed this matter on the merits is the contention that the respondent cannot in law be held liable for past medical expenses in instances where these have been paid by a medical aid scheme and not by the plaintiff.

17. To bolster this point, the respondent relied exclusively on the majority judgment of Mlambo JP and Bam J in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*<sup>2</sup> However, as indicated above, the court in that

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<sup>2</sup> 2025 (3) SA 225 (GP).

matter granted leave to appeal against its judgment and an appeal to the Supreme Court of Appeal is currently pending.

18. The effect of this is that the legal position continues to be as set out in *Bane v D'Ambrosi*<sup>3</sup>, where the SCA held that payments made by a medical scheme on behalf of a member constitute a discharge of the medical scheme's contractual obligation towards that member and thus constitute *res inter alios acta*. The respondent may not claim the benefits thereof. Thus, a plaintiff on whose behalf a medical scheme made payments towards medical expenses, may still claim those past medical expenses in delictual actions.

19. Given that this judgment binds this Court, it renders further discussion on this issue unnecessary.

20. In the circumstances, and given that the parties have settled all the other heads of damages, the applicant's claim for final payment must succeed.

21. As to question of costs, no argument was raised as to why costs should not follow the result.

## **Order**

22. I make the following order:

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<sup>3</sup> 2010 (2) SA 539 (SCA)

1. The respondent shall pay to the applicant the sum of R4 341 700.92 (Four million, three hundred and forty-one thousand, seven hundred rand and ninety-two cents), in respect of the applicant's claim against the respondent for past hospital and medical expenses.
2. In the event of the aforesaid amount not being paid timeously, the respondent shall be liable for interest on the outstanding amount at the prevailing interest rate, calculated from the 15<sup>th</sup> calendar day after the date of this order to date of payment.
3. The respondent shall pay the costs of the application on high court scale B including, for the sake of clarity, but not limited to
  - 3.1. The costs incurred in obtaining payment of the amount mentioned above;
  - 3.2. The costs of and consequent to the appointment of counsel, on scale B, including, the preparation and reasonable attendance fee of counsel for attending:
    - 3.2.1. the Pre-Trial conference held on 21 June 2024;
    - 3.2.2. the interlocutory application heard on 23 August 2023;
    - 3.2.3. the drafting and settling of the practice note; and
    - 3.2.4. the drafting and settling of the heads of argument.
  - 3.3. The costs of all medico-legal, radiological, MR, sonar, pathologist, actuarial and addendum reports and/or forms obtained, as well as

such reports and/or forms furnished to the respondent and/or its attorneys, as well as all reports and/or forms in their possession and all reports and/or forms contained in the applicant's bundles, including, but not limited to the following:

3.3.1. Mr G Jacobson, Actuary.

3.4. The reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the above expert

4. The amounts referred to above will be paid to the applicant's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

**NAME OF ACCOUNT HOLDER: A WOLMARANS INC**

**NAME OF BANK & BRANCH: ABSA BANK, NORTHCLIFF**

**ACCOUNT NUMBER: 4[...]**

**BRANCH CODE: 6[...]**

**TYPE OF ACCOUNT: CHEQUE (TRUST)**

**REFERENCE: MS ANNA KORDAS/MAT13067**

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**K PILLAY**  
**ACTING JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

For the Applicant: Adv B Molojoa instructed by A  
Wolmarans Inc

For the Respondent: Ms T Tivana instructed by The Road  
Accident Fund

Date of hearing: 21 July 2025

Date of judgment: 15 September 2025