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REPUBLIC OF SOUTH AFRICA



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

CASE NO:71833/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES/NO

DATE:

SIGNATURE:

In the matter between:

YVONNE CATHERINE ANN WILSON

APPLICANT

and

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

RESENGA AJ:

Introduction

[1] “*Don’t think there are no crocodiles just because the water is calm*”.¹

[2] The applicant is a major female, aged 28 at the time of the accident and currently aged 36. The applicant was seriously injured in a motor vehicle accident on 31 August 2017.

Relevant Background

[3] On 4 February 2021, the parties reached a settlement agreement, which settlement agreement was made an order of Court by my sister Mia J. The following issues were settled:

- (a) merits, 100% in favour of the plaintiff;
- (b) general damages in the amount of R800 000;
- (c) past and future loss of earnings in the amount of R2 685 028.45 and
- (d) an undertaking in terms of section 17(4).

[4] In terms of paragraph 3 of the order, the aspect of past medical expenses was postponed *sine die*. This is the only outstanding issue for adjudication before this court.

[5] On 19 May 2023, Phooko AJ struck out the respondent’s defence due to the respondent’s failure to comply with an order issued on 16 August 2022. As a result, the applicant issued an application for default judgment against the respondent, and served same on 24 July 2023. On 1 April 2025 the applicant served a notice of set down on the respondent with the default judgment application date for 24 June 2025.

¹ African proverb.

[6] The applicant prepared a rule 38(2) application, requesting that her damages affidavit, and the expert reports, be allowed into evidence before this Court. This application was served on the respondent on 12 March 2025 and was accordingly granted.

Past medical expenses

[7] The applicant submits that in her personal capacity, she incurred hospital and medical expenses in the amount of R98 049.22 and she confirms this under oath.² However, the applicant only provided vouchers for her medical expenses in the amount of R87 607.22, which amount is made up as follows:

- (a) Dr T Johnston – R 2 785.00
- (b) Dr J Desai – R3 125.00
- (c) Dr Oren – R 3 468.92
- (d) Smileway – R2 193.10
- (e) Dr J Desai – R20 000.00
- (f) Dr J Desai – R56 035.20

[8] In respect of the applicant's medical personal expenditure, the applicant seeks an order in the amount of R87 607.22. Discovery Health provided a schedule, wherein it is stated that an amount of R427 232.59 was paid by the medical aid in respect of the applicant's medical care as result of accident-related injuries.

[9] Tshelofelo Tshidi, a Motor Vehicle Third Party Recovery Services department officer, further confirmed under oath that Discovery Health paid an amount of R427 232.59 for the applicant's medical and hospital expenses as result of the accident-related injuries.

[10] In respect of the applicant's past medical expenses incurred, the applicant also seeks an order in the amount of R427 232.59 paid by Discovery Health. The applicant seeks an order in the total amount of R514 839.81, which comprises of the amount stated above.

²Confirmed in para 20 of damages affidavit, section 26, item 10, pages 26-47.

RAF directives on past medical expenses

The first directive

[11] In August 2022, the Road Accident Fund (RAF) issued a directive, in which the RAF instructed its employees not to make any payments to claimants in the event that their medical scheme has already paid for their medical expenses arising from a road accident.

[12] The RAF directive dated 12 August 2022 provides as follows:

"Dear colleagues

All Regional Managers must ensure that their teams implement the attached process to assess claims for past medical expenses. All RAF offices are required to assess claims for past medical expenses and reject the medical expenses claimed if the Medical Aid has already paid for the medical expenses. The regions must use the prepared template rejection letter (see attached) to communicate the rejection. The reason to be provided for the repudiation will be that the claimant has sustained no loss or incurred any expenses relating to the past medical expenses claimed. Therefore, there is no duty on the RAF to reimburse the claimant. Also attached is a list of Medical Schemes."

The second directive

[13] The second directive issued by the RAF as an internal memorandum on 13 April 2023³ provides that it was to be used for internal purposes only and was not to be distributed to external stakeholders. This directive commences with the following:

"NOTE:

- A. This is an internal memorandum/document for internal purposes only, administration of claims, and management of claims risk.
- B. This document is not to be distributed to external stakeholders.
- C. Each affected claim must be assessed on its own merits using the principles as provided for in the RAF Act, RAF regulations, all applicable directives, this directive and all relevant SOPs.

³ Referred to herein as "the phantom directive".

- D. The previous directive of 12 August 2022 is the subject matter of two separate court processes including an appeal and will apply in claims lodged during the period from date of the directive up until 28 November 2022.
- E. This directive shall apply to all claims submitted from 29 November 2022.”

The third directive

[14] The third directive, also issued as an internal memorandum on 2 November 2023, provides that the RAF is not liable to reimburse claimants who have agreed to reimburse their medical aid schemes for past medical expenses as such agreements fall within the exclusionary provision of section 19(d)(i) of the RAF Act.

The applicable legal principles

[15] In October 2022, the court in ***Discovery Health v Road Accident Fund*** (Mbongwe J Judgment)⁴ declared the August 2022 directive unlawful, and set the directive aside. The order granted by Mbongwe J read as follows:

- “42.1 The directive issued by the Acting Chief Claims Officer of the first respondent on 12 August 2022 is declared unlawful.
- 42.2 The directive issued by the Acting Chief Claims Officer of the first respondent on 12 August 2022 is reviewed and set aside.
- 42.3 The first respondent is interdicted and restrained from implementing the directive aforementioned.”

[16] The main reasoning behind the court’s order has been summarised as follows:

“[27] As can be noted from the above exclusions and limitations, the RAF Act does not provide for the exclusion of benefits the victim of a motor vehicle has received from a private medical scheme for past medical expenses. The principle was expressed by the court in the matter of ***D'Ambrosini v Bane 2006 (5) SA 121 (C)*** in the following words:

⁴ [2022] 768 ZAGPPHC.

‘medical aid scheme benefits which the plaintiff has received, or will receive, are not deductible in determining his claim for past and future hospital and medical expenses.’

...

[29] It is apparent from the above statements of the legal position that the first respondent is not entitled to seek to free itself of the obligation to pay full compensation to victims of motor vehicle accidents.”

[17] The Mbongwe J Judgment in essence made the following key findings —

- (a) Section 17 of the RAF Act imposes an obligation on the RAF to compensate victims of motor vehicle accidents where bodily injuries have been sustained or death has occurred as a result of the negligent driving of a motor vehicle.
- (b) A claim for compensation against the RAF is a delictual claim and is therefore subject to the general rules concerning the quantification of damages for personal injury.
- (c) The compensation to which a claimant is entitled is the difference between their patrimonial situation before and after the delict has been committed.
- (d) The benefits received by a claimant from a private insurance policy are not considered for the purposes of determining the quantum of a claimant's damages against the RAF. This is because a benefit that accrues or is received from a private insurance policy originates from a contract between the insured claimant and the insurer for the explicit benefit of the claimant. The receipt of such a benefit by the claimant does not exonerate the RAF from the liability to discharge its obligation in terms of the RAF Act.
- (e) The RAF Act excludes or limits the RAF's liability in certain instances. It does not, however, provide for the exclusion from its liability where

benefits for the same injuries have been received by victims of motor vehicle accidents from a private medical scheme for payment of past medical expenses arising from those injuries.

- (f) Medical aid scheme benefits which a claimant has received, or will receive, are not deductible from their claim against the RAF for past and future hospital and medical expenses.
- (g) The RAF is not entitled to seek to free itself from its obligation to pay full compensation to victims of motor vehicle accidents under section 17 of the RAF Act.
- (h) These principles set out in the Mbongwe J Judgment are supported by common law principles, as set out in ***Jaffer v Road Accident Fund***.⁵

[18] Dissatisfied with the outcome of the Mbongwe J Judgment, the RAF appealed to both the Supreme Court of Appeal and the Constitutional Court, and both courts refused the leave to appeal. On 31 March 2023, the Supreme Court of Appeal refused the RAF's application for leave to appeal, on the basis that it had no reasonable prospects of success.

[19] On the 24 April 2023, the RAF approached the Constitutional Court seeking leave to appeal Mbongwe J's Judgment. On 18 October 2023 the Constitutional Court refused the RAF's application for leave to appeal the Mbongwe J order, finding that the matter did not engage its jurisdiction.

[20] In the matter of ***Sibiya v Road Accident Fund***⁶ the court concluded as follows:

"I am in agreement with the submissions made by the Plaintiff's counsel in the present matter that the *Mlambo* judgment has not changed the legal position as confirmed by the *Mbongwe* judgment. As stated in *Esack*, the *Mlambo* judgment did not decide the issue of deductibility of payments made by medical aid

⁵ [2025] ZAWCHC 136 at para 17.

⁶ [2025] ZAMPMHC 29 at para 31.

schemes from compensation to be paid to road accident victims. However, even if it did, it would have contradicted the decisions of the Supreme Court of Appeal and the Constitutional Court which essentially approved the Mbongwe judgment by refusing leave to appeal that judgment”

[21] The Supreme Court of Appeal in ***Bane v D'Ambrosi***,⁷ held that the Medical Schemes Act⁸ did not have the effect of depriving plaintiffs of their claims for hospital and medical expenses in delictual actions. The Supreme Court of Appeal stated as follows:

“Counsel’s submission is that the claim for future medical expenses should be restricted to the additional premiums which the respondent will have to pay to his medical aid scheme because he is now classified as a ‘chronic sufferer’. This argument was rejected by Van Zyl J when he ruled on the second issue in the stated case. As to the counsel’s attempt to equate the statutory obligation upon medical aid societies to accept all applicant as members to some sort of ‘national health scheme’ or ‘social insurance benefit’, Van Zyl J pointed out that payments which the medical aid was and is obliged to make to the respondent constitute the discharge by the medical aid of contractual obligations flowing from the contract concluded between it and the respondent. As such they constitute *res inter alios acta* and the appellant cannot claim the benefit of them. I fully agree with the learned judge’s approach on this issue.”

[22] In the matter of ***Esack N.O v Road Accident Fund***⁹ the court held as follows:

“Having discussed the cases referred to above, the majority judgment proceeds to discuss a decision of the Supreme Court of Appeal which restated the principle without deciding whether the benefits had to be deducted from the award, and states:

‘This, the Supreme Court of Appeal confirmed in *Road Accident Fund v Cloete NO and Others*, a mere ten days later after *Bane v D'Ambrosi*, which, as we know, concluded that payment made by a claimant’s medical scheme is *res inter alios acta*.’”

⁷ [2009] ZASCA 98; 2010 (2) SA 539 (SCA); [2010] 1 All SA 101 (SCA) at para 19.

⁸ Act 131 of 1998.

⁹ [2025] ZAWCHC 27; 2025 (4) SA 201 (WCC).

[23] The legal issues raised in the Mbongwe J Judgment and findings made thereof insofar as the liability of the RAF on past medical expenses are final. The Mbongwe J Judgment to this day remains standing despite resilient and persistent challenges by the RAF both in the Supreme Court of Appeal and Constitutional Court.

[24] The law and courts exist to bind all of us. The Constitution of the Republic of South Africa, section 165(5) provide as follows: “An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

[25] In 2010 the court in **Ray N.O. v Road Accident Fund**,¹⁰ the Western Cape High Court held that the “Payment by Bonitas of the Plaintiff’s past medical expenses does not relieve the defendant of its obligation to compensate the plaintiff for past medical expenses.”

[26] The Western Cape High Court in 2023, post the 2022 Directive, in **Van Tonder v Road Accident Fund**¹¹ made the following pertinent statement;

[30] The social security protection the RAF Act provides is in no way intended to impoverish medical schemes who, were the directive to stand, would face a one direction downward business trajectory as a result of their members becoming victims of motor vehicle accidents. The levy paid on fuel provides the funds for payment of compensation to motor vehicle accident victims and nothing in the law obliges medical aid schemes to contribute towards such compensation by the payment, from the time of hospitalisation and treatment of a motor vehicle accident victim, of medical expenses without a reasonable expectation of reimbursement upon settlement of the claimants’ claims in terms of the RAF Act”.

Analysis

[27] Discovery Health has litigated on the issue, has obtained a final order that the decision was subsequently held to be unlawful, and it was on that basis that the directive giving effect to that decision was set aside.

¹⁰ 2010 ZAWCHC 30 at para 20.

¹¹ [2023] ZAWCHC 305.

[28] The principle of *res judicata* precludes the RAF from making the same decision and raising the arguments advanced in the phantom and third directives. The *res judicata* principle applies even where the judgment may be deemed to be incorrect. Finality is key in every legal dispute. Whether the judgment is good, bad or indifferent, the principle has application to prevent endless litigation and abuses of Court processes which would arise from the re-litigation of same issues between the same parties.

[29] The Supreme Court of Appeal in ***Democratic Alliance v Brummer***¹² held as follows:

“Whether the findings made by the court or the order(s) granted are correct is of no relevance. A prior determination of an issue, although wrong, may nevertheless support a plea of *res judicata*. As held in *African Farms and Townships Ltd v Cape Town Municipality (African Farms)*,

‘Because of the authority with which, in the public interest, judicial decisions are invested, effect must be given to a final judgment, even if it is erroneous. In regard to *res judicata* the enquiry is not whether the judgment is right or wrong, but simply whether there is a judgment.’”

[30] Subsequent to the judgment of Mbongwe J, the Road Accident Fund issued two subsequent directives,¹³ directing their employees similar directives not to pay out medical aid claims. These directives were given despite the unsuccessful appeal attempts to both the Supreme Court of Appeal and Constitutional Court to overturn the Mbongwe J judgment.

[31] On 9 April 2025 Langa J noted this unfortunate conduct of the RAF in *Sibiya*¹⁴ as follows:

“ Not satisfied with the Mbongwe judgment, the RAF approached the Supreme Court of Appeal which also refused leave to appeal. The matter did not end there as the RAF approached the Constitutional Court but the latter also dismissed the application for leave appeal. Despite these decisions the Defendant has nevertheless persisted

12 [2022] ZASCA 151 at para 16.

13 Issued on 13 April 2023 and 02 November 2023.

14 2025 ZAMPHC 29 (09 April 2025) At para 27.

in refusing to pay claimants their past medical expenses and issued two similar directives”

[32] It was submitted by counsel for the applicant that the three directives above are not of consequence in this matter on the following basis, as:

- (a) The accident and lodgment of the claim pre-dates the issuing of the three directives, and
- (b) This argument was accepted in the matter of *Jaffer v Road Accident Fund*.¹⁵

[33] I fully agree that the directives cannot be applicable as they came after the date of the accident and lodgment of the claim. I furthermore agree that in anyway even if they did apply, the directives issue cannot at all arise under the circumstances as the 2022 directive has been successfully declared unlawful and remain interdicted.

[34] Counsel for the applicant therefore submitted that the majority judgment in the *Discovery Health v Road Accident Fund*¹⁶ does not have any bearing on this matter under the circumstances as it offended the principles of *stare decisis* by failing to consider the legal principles set out by the Constitutional Court and the SCA and further ignored the SCA ruling of *Bane v D'Ambrosi*.

[35] At the time of writing and delivering this judgment the full court judgment in the *Discovery health v Road Accident Fund* matter has been appealed to the SCA with the leave to appeal granted by all three judges on 9 April 2025 and remain pending before the Supreme Court of Appeal.

[36] I have read and considered the full court judgment and it is therefore not necessary to specifically deal with it. The issues dealt with by Mbongwe J and the Full Court are not the same legal issues but are related and do overlap. The specific

¹⁵ [2025] ZAWCHC 136.

¹⁶ [2024] ZAGPPHC 1303; 2025 (3) SA 225 (GP); [2025] 2 All SA 113 (GP).

and relevant legal issues under the circumstances are those already disposed in the Mbongwe J Judgment, legal issues which in law became final and *res judicata*.

[37] I am of the view that the Mbongwe J Judgment was correctly decided and is logically further supported by several authorities across the Republic. The judgment is further affirmed or approved by the Supreme Court of Appeal and the Constitutional Court by refusing leave to appeal. It also aligns with the Supreme Court Appeal judgment of *Bane v D'Ambrosi*.

[38] This court was persuaded by counsel not to follow the Full Court decision in *Discovery Health v Road Accident Fund*. The full court decision is pending before the SCA as already explained above. I am of the view that whatever the Supreme Court of Appeal outcome may be, will not affect this matter.

[39] It is settled law¹⁷ that only reasonable and necessary medical expenses and hospital costs which can reasonably be attributed to the bodily injuries of the applicant may be recovered.

[40] The applicant is entitled to claim from the respondent only reasonable medical and hospital costs which reasonably result from the wrongful and culpable driving of a motor vehicle.

[41] These costs are usually proven by the submission of appropriate vouchers.¹⁸ In the event of a dispute regarding the reasonableness of medical and hospital expenses, the onus to prove that the incurring of such costs was reasonable rests on the applicant.

Conclusion

[42] The respondent's defence has already been struck out. Consequently, the vouchers of the medical accounts placed before court by the applicant are evidently

¹⁷ Corbett and Buchanan *The Quantum of Damages in Bodily and Fatal Injury Cases* (Juta & Co Ltd, Cape Town, 1960) Vol 1 at 37-38 and *Selikman v London Assurance* 1959 (1) SA 523 (W).

¹⁸ Copies of the actual medical accounts.

reasonable and remain undisputed. There is no legal impediment why the applicant cannot under the circumstances be entitled to her past medical expenses.

[43] The following order is consequently made:

43.1 The respondent shall pay to the applicant the amount of **R514 839.81** (five hundred and fourteen thousand, eight hundred and thirty nine Rand and eighty one cents) in full and final settlement of the applicant's claim against the respondent and in particular in respect of the claim for past hospital and medical expenses, within 180 days from the date of this order.

43.2 The said payment shall be made into the trust account of the applicant's attorneys of record, with the following account details:

Name of account holder:	Moss and Associates
Bank Name:	First National Bank
Branch Name:	RMB Private Bank
Account number:	6[...]
Branch Code:	250 655
Type of Account:	TRUST ACCOUNT
Deposit reference:	W204

43.3 The respondent shall make payment of the applicant's agreed or taxed party and party High Court costs of the action to date of this order, including costs attendant upon the obtaining of the payment of the amount referred to paragraph 1 above, including costs of counsel on scale B and for her appearance on 24th June 2025.

43.4 The respondent shall be liable for any costs attendant upon obtaining capital payment.

43.5 The applicant shall, in the event of the costs not being agreed, serve the notice of taxation of the respondent's attorneys of record;

43.6 The applicant shall allow the respondent 180 (One Hundred and

Eighty) days to make payment of the taxed costs.

- 43.7 The applicant and the applicant's attorneys of record have entered into a contingency fee agreement that does comply with the Contingency Fee Act 66 of 1997.

RESENGA AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Date of hearing:	24 June 2025
Date of judgment:	11 September 2025
Counsel for Applicant:	Adv A Nell
Instructed by:	Moss and associates Inc, Randburg C/O Wiese & Wiese Attorneys, Pretoria

For Respondent:

No appearance