

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

(1) REPORTABLE: NO

CASE NO: 27384/2018

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 31 October 2025

In the matter between:

BOTHA: WILLEM PETRUS ENGELBRECHT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

ALLY AJ

[1] This matter came before this Court wherein the Plaintiff claimed past and future hospital and medical expenses arising out of a motor vehicle collision which occurred on 23 July 2017.

[2] The Plaintiff was represented by Adv. N. Adam and the Defendant by Mr L. Klaas.

[3] At the outset Plaintiff's Counsel moved for an amendment¹ which had been filed and served on 26 May 2025. Defendant had no objection to the amendment and the amendment was granted.

[4] The Plaintiff's Counsel then moved an application in terms of Rule 38(2) of the Uniform Rules of Court for the Plaintiff to lead evidence by way of affidavit. After hearing submissions from Plaintiff's Counsel and no objection from the Defendant, the application was granted.

[5] Plaintiff's Counsel, as part of her introductory remarks, submitted that liability had been settled at 80% in favour of the Plaintiff and that general damages and loss of earnings had also been settled.

[6] Plaintiff's Counsel submitted that an undertaking in terms of Section 17(4) of the Road Accident Fund Act², hereinafter referred to as 'the Act', in respect of future hospital and medical expenses followed as of law when the Defendant settled the issue of liability and general damages.

[7] Plaintiff's Counsel submitted that the Defendant was liable for the past hospital and medical expenses in terms of Section 17(1) of 'the Act'.

[8] The issue of the liability of the Defendant for past hospital and medical expenses where such expenses have been paid by a medical aid fund has received considerable attention by our Courts.

¹ CaseLines: Section 004 at pages 49-51

² Act 56 of 1996 as amended

[9] Mr Klaas for the Defendant submitted that the defendant is not liable for the past hospital and medical expenses of the plaintiff in circumstances where, as in this case, plaintiff's medical aid scheme, Discovery, has paid for such expenses.

[10] Mr Klaas's first argument was that this Court should postpone this matter until the Full Bench matter of **Discovery 2**³ had been decided by the Supreme Court of Appeal.

[11] It must be stated that the defendant did not file and serve a formal application for a postponement but requested such postponement from the bar. Furthermore, it should further be noted that defendant's plea in this matter did not deal specifically with plaintiff's claim for past hospital and medical expenses except to plead in paragraph 9 of the plea:

"The Defendant has no knowledge of the allegations contained in this paragraph, accordingly denies same and the plaintiff is put to the proof thereof."

[12] Mr Klaas for the defendant was asked whether he intends amending defendant's plea and he responded in the negative.

[13] Mr Klaas submitted, however, that the defendant was permitted to raise a point of law even though the plea does not raise such an issue.

[14] Accordingly, the following issues need to be decided:

14.1. whether the defendant is entitled to have the matter postponed pending the finalisation of the Discovery 2 matter by the Supreme Court of Appeal?

³ Discovery Health (Pty) Ltd v Road Accident Fund [117206/23] 2024

14.2. whether the plaintiff has proved his claim for past hospital and medical expenses and that defendant is liable to pay such expenses.

[15] In considering the application for postponement of the trial, it is my view that a Court must consider the following:

15.1. the attitude of the respondent to such application;

15.2. the grounds for such postponement by the party applying for postponement;

15.3. prejudice to the parties.

[16] The Plaintiff objected to the postponement and submitted that firstly, there was no formal application for a postponement, secondly the plaintiff would be prejudiced by a postponement and thirdly that the defendant approaches this Court on the date of the trial for postponement.

[17] In my view, whilst a party is permitted to request a postponement, however, where there is an objection from the other party, such request, in my view must be in the form of a substantive application which can be dealt with in detail by the opposing party.

[18] The defendant submits that the **Discovery 2** case is relevant to this case and this Court should exercise its discretion in favour of granting the postponement especially where any prejudice to the plaintiff can be ameliorated by a costs order.

[19] The problem with the submission of the defendant in respect of the postponement is that on the papers before the Court, no plea except a bare

denial by defendant exists and the defendant specifically abandoned any application for amendment of its plea. It should be noted further that the ground submitted for postponement was not to amend the plea to incorporate the basis for denying the claim for past hospital and medical expenses but rather as indicated above, to await a decision by the Supreme Court of Appeal in **Discovery 2**.

[20] In my view, the plaintiff will suffer prejudice if the matter is not finalised today taking into account that this litigation was commenced approximately 7 years ago. The defendant has not applied for amendment of its plea and this Court cannot see why a postponement should be granted to await a decision in a different matter. This Court also aligns itself with the judgment of Daffue J in *Van Niekerk v Raf*⁴ in relation to denying a postponement requested by the defendant.

[21] This brings me to the argument submitted from the bar by Mr Klaas regarding the issue of subrogation.

[22] I have already indicated above that this issue was not pleaded by the defendant. Mr Klaas submitted that a defendant need not plead subrogation in order to rely on same.

[23] Mr Klaas further submitted that this Court is bound by the Full Bench decision in **Discovery 2** and accordingly plaintiff's claim for past hospital and medical expenses should be dismissed. In my view, whilst the principle of *stare decisis* applies to a circumstance where a single judge is required to

⁴ FSHC [293/2022] 6 May 2025

follow a full bench decision, a party relying on same must show that the facts of such full bench decision are on all fours with the facts before the single judge. I repeat, the defendant has not come near pleading the facts as pertained in **Discovery 2** and on this basis alone cannot rely on this judgment because it is distinguishable. Furthermore, the **Discovery 2** matter has not changed the law in respect of deductibility of payments made by medical aid schemes from compensation to be paid to road accident victims.⁵

[24] I am of the view that the defendant has not made out a case for the refusal of the claim by the plaintiff for past hospital and medical expenses for the reasons set out above and furthermore has not made out a case for postponement of the trial.

[25] In this matter, there is no reason why costs should not follow the result and accordingly that defendant should pay the costs of the plaintiff.

[26] Accordingly, the following Order shall issue:

26.1. The defendant is liable for 80% of the plaintiff's agreed or proven damages;

26.2. The defendant shall pay to the plaintiff the sum of **R137 307-13 [one hundred and thirty-seven thousand three hundred and seven rand and thirteen cents]** within 180 days hereof, in respect of plaintiff's past hospital and medical expenses and 80% apportionment having been applied;

⁵ Bane v D'Ambrosi 2010 (2) SA 539 SCA; Esack NO v Raf 2025 (4) SA 201 WCHC

- 26.3. In the event of the amount in paragraph 26.2. not being paid on 180 days from date of this Order, the defendant shall be liable for interest on the said amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this Order to date of payment in line with the prevailing legislation;
- 26.4. The defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4) of Act 56 of 1996 for payment of **80%** of the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff resulting from a motor vehicle accident on **23 July 2017**, to compensate the plaintiff for such costs after the costs have been incurred and upon proof thereof;
- 26.5. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High scale in respect of the past hospital and medical expenses, up to and including 5 June 2025, and notwithstanding, and over and above the costs referred to in paragraph 26.5.1.2 below, subject thereto that:
- 26.5.1. In the event that the costs are not agreed:
- 26.5.1.1. the plaintiff shall serve a notice of taxation on the attorney of record;
- 26.5.1.2. the plaintiff shall allow the defendant 180 days from date allocatur to make payment of the taxed costs; and

26.5.1.3. Should payment not be effected on 180 days from the date of allocatur, the plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed or agreed costs from 15 days from date of allocatur to date of final payment;

26.5.2. Such costs shall include, as allowed by the Taxing Master:

26.5.2.1. the costs incurred in obtaining payment of the amounts mentioned in paragraphs 26.2 and 26.4. above;

26.5.2.2. the costs of and consequent to the appointment of counsel, Adv. N. Adam, on Scale B, including, but not limited to the following: for trial, including but not limited to counsel's full fee for 5 June 2025, and the preparation and reasonable attendance fee of counsel for attending;

26.5.2.2.1. the drafting of heads of argument;

26.5.2.3. the costs of Dr JP Marin [Orthopaedic Surgeon] in consequence of preparing and attending to the causation affidavit;

- 26.5.2.4. the cost of Mr Tsholofelo Tshidi
[Administrator at Discovery Health
Recoveries Department] in consequence
of preparing and attending to the affidavit
in respect of past hospital and medical
expenses;
- 26.5.2.5. the costs of and consequent to the
plaintiff's trial bundles and witness bundles,
including the costs of 2 copies thereof,
where applicable;
- 26.5.2.6. the costs of and consequent to the holding
of a pre-trial conference.

26.6. The amounts referred to in paragraphs 26.2 and 26.4 above shall be paid to the plaintiff'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:	M[...] G[...]

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **31 October 2025**.

Date of virtual hearing: 5 June 2025

Date of judgment: 31 October 2025

Appearances:

Attorneys for the Plaintiff: **A WOLMARANS INC**
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Counsel for the Plaintiff: **Adv. N. Adam**

Attorneys for the Defendant: **STATE ATTORNEY [JOHANNESBURG]**
luthok@raf.co.za

Counsel for the Defendant: **Mr L. Klaas**