

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO. 032948/22

- (1) REPORTABLE: ~~YES~~/NO
- (2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
- (3) REVISED

12/12/2025

In the matter between:

BOOI XOLISWA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Mr Booi Xoliswa, institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision which occurred on 1 November 2021, near Mfula Street, Extension 9, Germiston, Gauteng Province.

[2] The relief sought against the RAF includes

2.1 the aspect of liability which has become resolved between the parties

2.2 an undertaking for future medical/hospital expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the Act")

2.3 compensation for past and future loss of earnings.

2,4 compensation for general damages,

[3] The summons was served on the defendant on 19 March 2025. The *dies* for filing a notice of intention to defend had expired and the plaintiff proceeds by way of default judgment, read with Rule 38(2) of the Uniform Rules.

[4] The parties have reached a settlement agreement, which they request to be made an order of court.

Legal Principles

[5] The Constitutional Court in *Eke v Parsons*¹ established that a settlement agreement may be made an order of court if:

- (a) litigation is pending;
- (b) the agreement relates directly to the dispute between the parties; and
- (c) the agreement is competent and proper, serving the interests of justice.

[6] In RAF matters, the Supreme Court of Appeal has confirmed that once litigation is pending, a settlement agreement resolving the dispute should ordinarily be made an order of court, unless it is incompetent or contrary to public policy.²

¹ (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015)

² PM obo TM v Road Accident Fund [2019] ZASCA 97

[7] More recently, the Constitutional Court in *Mafisa v Road Accident Fund*³ emphasised that courts must respect the terms agreed by the parties and may not rewrite them.

[8] The present settlement agreement regulates liability at 80% in favour of the plaintiff, quantifies damages for loss of earnings, provides for an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, postpones general damages *sine die*, and deals with costs. It is directly connected to the dispute, lawful in its terms, and consistent with the statutory framework.

Conclusion

[6] I am satisfied that the agreement meets the criteria set out in *Eke v Parsons*⁴ and subsequent RAF authorities. It is therefore competent and proper to make the settlement agreement an order of court.

Order

[7] As a result, I make the following order-:

1. The application in terms of Rule 38(2) is granted.
2. The settlement agreement entered into by agreement between the parties, is made an order of marked "X".

CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

³ [2024] ZACC [4]

⁴ (CCT 156/22) [2024] ZACC 4; 2024 (6) BCLR 805 (CC); 2024 (4) SA 426 (CC) (25 April 2024)

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 11 December 2025 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 11 December 2025.

APPEARANCES

Date of hearing: 21 October 2025

Date of judgment: 12 December 2025

For the plaintiff: Adv. N Davidson
(Tel: 082 498 2567)

For the Defendant: P Makatini
(Tel: 072 452 7012)

IN THE HIGH COURT OF SOUTH AFRICA

X

GAUTENG DIVISION, JOHANNESBURG

12/12/2024

CASE NO: 32948/22

IN JOHANNESBURG ON THIS THE 21st OF OCTOBER 2025

BEFORE THE HONOURABLE JUSTICE BHOOLA A. J.

In the matter between:

BOOI, XOLISWA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

COURT ORDER

By agreement between the parties, and by order of the above Honourable Court, the following order is made: -

1. The Defendant is liable for 80% of the Plaintiff's agreed or proven damages.

2. The Defendant is ordered to pay to the Plaintiff the amount of R 229 427.48 (TWO HUNDRED AND TWENTY-NINE THOUSAND, FOUR HUNDRED AND TWENTY-SEVEN RAND AND FORTY-EIGHT CENTS) in respect of the Plaintiff's claim for *Loss of Earnings*, by payment to the Plaintiff's Attorneys of record within 180 days, by payment into their trust account, details as follows:

M[...] E[...] D[...] A[...] Trust Account

F[...] N[...] B[...], R[...] Branch

Account Number: 6[...]

Branch Code: 2[...].
3. The Defendant is ordered to furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision of 1 November 2021, after such costs have been incurred and upon proof thereof, limited to 80%.
4. Interest *a tempore-morae* calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975 shall accrue on the amount referred to in paragraph 2 above calculated from 14 calendar days after date of this order to date of payment.
5. The Plaintiff's claim for general damages is to be referred to the HPCSA and is postponed *sine die*, together with the Plaintiff's claim for past medical and hospital expenses.

6. That the Defendant will pay the agreed or taxed party and party High Court costs of the action in respect of both merits and quantum on the appropriate scale, being that of scale B, subject to the discretion of the Taxing Master, up to and including the date on which this draft is made an order of the above Honourable Court, such costs to include:-
- 6.1 the costs attendant upon the obtaining of payment of the capital amount referred to in paragraph 2 above;
- 6.2 the costs of and subsequent to the appointment of counsel, including but not limited to the following: for trial, including counsel's full day fee, preparation and drafting of the heads of argument and practice note;
- 6.3 the costs of all medico-legal, radiological, actuarial and addendum reports and/or forms obtained and in the Plaintiff's bundle, but not limited to the following: Dr. Scher, Dr. Sneider, Dr. Makua, Ms. da Costa, Ms. Fletcher, Ms. Leibowitz and Mr. Loots, if any as may be agreed or allowed by the Taxing Master;
- 6.4 the reasonable costs / travelling expenses incurred by and on behalf of the Plaintiff in attending the medico-legal examinations for the Plaintiff;
- 6.5 the Plaintiff is declared a necessary witness and therefore the Plaintiff's reasonable travelling expenses to attend the trial;
- 6.6 the reasonable travelling expenses for the Plaintiff's attorney to attend the trial; and

- 6.7 the Plaintiff's attorneys shall serve the notice of taxation on the Defendant's attorneys and shall allow the Defendant 180 days within which to make payment of such costs.
7. The Plaintiff has concluded and signed a written Contingency Fee Agreement whereby the Plaintiff at no stage carried any risk for fees or any portion thereof.
- 7.1 The Contingency Fee Agreement complies with the Contingency Fee Act 66 of 1997.
- 7.2 In terms of such agreement, the Plaintiff shall be liable for fees equal to or higher than the normal fee on an attorney and own client scale, provided that such fees which are higher than the normal fees (hereinafter referred to as "the success fee") shall not exceed such normal fees by more than 100 per cent and provided further that, as the claim is one sounding in money, the total of any such success fee payable shall not exceed 25% of the value of the claim, which amount shall not, for purposes of calculating such excess, include any costs.

BY THE REGISTRAR

For the Plaintiff: N. Davidson (082 498 2567)

For the Defendant: P. Makatini (072 452 7012)