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

CASE NO. 2023 - 117329

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

11/12/2025

In the matter between:

N[...] M[...]

OBO U[...] M[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Ms N[...] M[...] who acts on behalf of her minor child U[...] M[...] born on the 1 August 2016, institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision which occurred on 19 April 2016, near Konig Street and Sir George Grey Street, Roodepoort, Johannesburg, Gauteng Province, where the minor child was a pedestrian.

[2] The plaintiff seeks the following relief on behalf of the minor child -:

- 2.1. past loss of earnings
- 2.2 future loss of earnings
- 2.3 past and future loss of earnings.
- 2.4 general damages

[3] The issue of the merits was settled at 80/20 in favour of the plaintiff as well as general damages.

[4] The summons was served on the defendant on 10 November 2023. The *dies* for filing a notice of intention to defend has expired and the plaintiff proceeds by way of default judgment in terms of Rule 32, read with Rule 38(2) of the Uniform Rules.

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

Legal Principles

[6] 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;

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

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

[7] 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

[8] 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.

[9] The present settlement agreement, quantifies damages for loss of earning capacity, provides for an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, and deals with costs. It is directly connected to the dispute, lawful in its terms, and consistent with the statutory framework.

Conclusion

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

³ [2024] ZACC [4]

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

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

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 12 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 12 December 2025.

APPEARANCES

Date of hearing: 23 October 2025

Date of judgment: 12 December 2025

For the plaintiff: Adv. RR Mambani
(Tel: 003 767 4434)

Instructed by: Maphaha Attorneys
(Tel: 011 333 0641, email:-
rudzani3@maphahaattorneys@co.za)

For the Defendant: State Attorney
Ms N Mhlongo
(Tel: 073 452 7151, email NkatekoM@raf.co.za)

X

#58

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2023-117329

ON THE 23RD OF OCTOBER 2025

Before the Honourable Justice Bhoola AJ

In the matter between:

U[...] M[...]

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

Link No: 3920401

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be the **23rd day of October 2025**

COURT ORDER

By agreement between the parties:

1. The Defendant is ordered to pay the Plaintiff at a sum of **R3 619 815.16 (Three Million Six Hundred and Nineteen Thousand, Eight Hundred And Fifteen Rands and Sixteen Cents)** in respect of loss of earnings in full and final settlement of the claim.

Breakdown:

Loss of earnings R4 524 768.95 less 20% apportionment

Total R3 619 815.16.

2. Payment of the amount referred to above must be made directly into the Trust Account of the Plaintiff's Attorney, the Banking details of the Plaintiff's Attorneys are:

ACCOUNT HOLDER:	R[...] T A[...] I[...]
BANK:	FNB
BRANCH CODE:	2[...]
BRANCH NAME:	N[...] M[...] S[...] C[...]-A[...]
ACCOUNT NUMBER:	6[...]
ACCOUNT TYPE	T[...] A[...]

3. The Defendant shall pay interest on the aforesaid sum at the rate of 10.5% per annum calculated from the expiry of 180 days from the date of the order to the date of final payment.

4. The Defendant is ordered to pay the Plaintiff's taxed or agreed costs to date hereof on a High Court party and party scale B, including but not limited to the costs of the plaintiff's attorneys; counsel's fees for perusal, preparation, drafting of heads of argument, and appearance in default judgment court on **21 October 2025**; costs of the default judgement application; reasonable costs for travelling, transportation, subsistence and accommodation if any, by or on behalf of the plaintiff when attending medico-legal examinations and costs for all the expert reports including of the following:
 - a. Dr. P Kumbirai - Orthopeadic Surgeon;
 - b. Dr. Mazwi - Neurosurgeon;
 - c. Andile Moyo - Educational Psychologist;
 - d. Metse Psychologist - Clinical Psychologist;
 - e. Lawrance Makananisa - Occupational Therapist;
 - f. Mthimkhulu - Educational Psychologist;
 - g. Nomfanelo Manaka - Industrial Psychologists;
 - h. Actuary - Johan Sauer Actuaries & Consultants.
5. The Plaintiff shall allow the Defendant 30 days to pay the agreed or taxed costs after date of agreement or taxation.
6. The Defendant shall furnish a 80% undertaking for future medical expenses in terms of section 17(4) of the RAF Act, to reimburse the plaintiff for costs of any future accommodation in hospital or nursing home, treatment, rendering of service to him or supplying goods to him arising out injuries sustained by the plaintiff in a motor vehicle accident on which this cause of action is based after such costs have been incurred and upon proof thereof.

7. There is a valid contingency fee agreement entered into between the plaintiff and the attorney of record.
8. The Plaintiff's attorneys are ordered to establish a Trust for the benefit of the plaintiff and to deposit the net proceeds of the action on plaintiff's behalf, after the deduction of taxed attorney own client costs, to the credit of such Trust.
9. The Plaintiff's attorneys are, authorised and ordered until such time as the trustees are able to take control of the capital amount and to deal with same in terms of the trust deed, to pay from the capital amount any reasonable payments to satisfy any of the plaintiff's needs that may arise and that are required in order to satisfy any reasonable need for maintenance, treatment, care, aids, or equipment that may arise in the interim.
10. The terms of each such trust are to include:
 - 12.1 Trustees nominated by the plaintiff and the plaintiff's attorneys.
 - 12.2 If any of the trustees are unable or unwilling to accept appointment or for any reason becomes unable to continue to act once having been appointed, then the Master of the High Court will in his sole discretion be entitled to appoint another trustee.
 - 12.3 The trustees are required to furnish security for the administration of the assets of the trust. The Trustees fees for the administration of the trust are to be calculated at the rate of 1% per annum of the trust assets under administration.
11. The trustees shall administer the trust subject to the powers and terms, which follow:

- 13.1. The trustees must in writing accept their appointment as such and the benefits and duties conveyed by the trust deed and acknowledge receipt of the donation in terms of which the trust will be established. A body corporate may be a trustee.
- 13.2. The trustees may at any time in writing appoint additional trustees, or one or more trustees to succeed any or all of them, or one or more agents with powers of substitution and delegation, to perform any acts on their behalf. If ever there is no trustees, the person who keeps the books of the trust or any beneficiary may call a meeting with the beneficiary, assisted by their guardians if applicable, which meeting shall appoint a trustee or trustees, failing which the Master will appoint a trustee.
- 13.3. A trustees shall cease to act as such if he/she resigns, or becomes mentally disturbed or ill, or alcoholic, or incompetent or unable to act as trustee, or being a corporate body, it is liquidated. If any trustee ceases to act, the remaining trustee/s shall continue to act and shall have full powers in terms hereof.
- 13.4. In administering the trust, the trustees shall follow such procedure as they deem fit. Proper books of account shall be kept. The trustee may appoint an auditor for the trust but are not obliged to do so.
- 13.5. Any trustees or trustees' agent who is a professional person will be entitled to perform professional work for the trust and to charge reasonable professional fees for such services over and above the fees allowable to the Trustee as set out herein and The Master of the High Court is entitled to call for taxation of any fees so charged.

- 13.6. The trustees has the power to perform in the name of the trust or in their own name on behalf of the trust, any acts and enter into any contracts and undertake any obligations, whether commercial or otherwise, which may be done by a natural person of full legal capacity, which powers include but are not limited to the following:
- 13.6.1 To purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every other kind or description of movable and immovable property;
 - 13.6.2 To manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account of in any way otherwise deal with its undertaking or all or any part of its property and assets;
 - 13.6.3 To apply for, purchase or by any other means acquire, protect, prolong, and renew any patents, patent rights, licenses, trademarks, concessions, or other rights and to deal with and alienate them;
 - 13.6.4 To borrow money;
 - 13.6.5 To secure the payment of moneys borrowed in any manner including the mortgaging ceding and/or pledging of property;
 - 13.6.6 To lend money to any person or company;
 - 13.6.7 To invest money in any manner;
 - 13.6.8 To open and operate banking accounts and to overdraw such accounts;
 - 13.6.9 To make, draw, issue, execute, accept, endorse, and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
 - 13.6.10 To enter into indemnities, guarantees and suretyship and to secure payment thereunder in any way;
 - 13.6.11 To form and have an interest in any company or companies for the purpose of acquiring the undertaking or all or any of the assets or

liabilities of the company or for any other purpose which may seem, directly or indirectly, calculated to benefit the trust, and to transfer to any such trust or companies the undertaking or all or any of the assets or liabilities of the trust;

13.6.12 To take part in the management, supervision and control of the business or operations of any other company or business and to enter into partnerships;

13.6.13 To make donations;

13.6.14 To undertake and execute any trust;

13.6.15 To act as principals, agents, contractors, or trustees;

13.6.16 To pay gratuities and pensions and establish pension schemes, profit-sharing and plans and other incentive schemes; and

13.6.17 To enter into contracts anywhere in the world and to execute any contracts, deeds, and documents in any foreign country.

13.7 The trustees may determine their own procedure.

13.8 The assets of the trust may be held in the name of the trust, or the trustees or any nominee of the trustees, if appropriate.

13.9 The trustees have an absolute and unlimited discretion, in all matters relating to the trust but they may not act contrary to this order and the trust deed to be drafted in accordance herewith.

13.10 The trustee/s and/or the successor or successors shall be required to provide security for the due administration of the trust.

13.11 The trustees shall not be personally liable to the beneficiaries for any trust losses, except caused by gross negligence or deliberate wrong.

13.12 The trustees shall under no circumstances be personally liable to creditors of the trust.

12. The income and capital beneficiary is **U[...]** **M[...]** [the plaintiff].

13. No asset, capital or income of the trust will vest in the beneficiary until such is actually paid over, handed over or delivered by the trustees to the beneficiary. No capital or income benefit to which any beneficiary is or may become entitled by virtue of this trust deed shall, prior to actual payment or transfer thereof by the trustees to the beneficiary, be capable of being ceded, assigned or pledged, or transferred in any way, or be capable of attachment by any creditor or trustee of a beneficiary upon insolvency, unless the trustees consent thereto in writing.
14. The trustees may in their absolute discretion, at any time prior to termination of the trust, transfer or pay any part of the trust fund to the beneficiary which will become the free and absolute property of such beneficiary.
15. Any asset or money which beneficiary receives pursuant to this trust deed shall not form part of any joint estate and shall not be subject to any marital power.
16. The trust deed can only be amended in writing with the consent of the Master of the High Court and, failing such consent, with the leave of this Court provided however that no amendment which is in conflict with the provisions of the Court Order may be effected without the prior leave of the Court having been granted thereto.
17. The trust shall terminate by Court order, such request to be brought by the trustees at their discretion. The Court to be satisfied that such dissolution is in the beneficiary's best interest, at that material time

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By Order of Court

For the Plaintiff
Adv. VJ Chabane
072 792 9219

Chabanevj@rsabar.com

Instructed by Radebe T Attorneys Inc

010 824 4075

info@radebetatorneys.co.za

For the Defendant

Ms. N Mhlongo

State Attorney

011 330 7600 /072 452 7151

Nkatekom@raf.co.za