

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO. 2025-057581

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

In the matter between:

E[...] B[...] M[...] (M[...])

OBO S[...] M[...],

H[...] M[...],

X[...] M[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Ms E[...] B[...] M[...] who acts on behalf of her three minor children, S[...] M[...], H[...] M[...] and X[...] M[...], institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision which occurred on 3 March 2022, near Konig Street and Sir George Grey Street, Roodepoort, Johannesburg, Gauteng Province, where the biological father of the plaintiff's minor children sustained severe bodily injuries of which he died.

[2] The plaintiff seeks relief on behalf of the minor children are:-

- 2.1. past loss of earnings
- 2.2 future loss of earnings
- 2.3 funeral expenses.

[3] The issue of funeral expenses is postponed *sine die*.

[4] The summons was served on the defendant on 30 April 2025. 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;
- (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] Liability had previously been settled at 100% in favour of the plaintiff. The issue of general damages has also been settled. 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

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

³ [2024] ZACC [4]

[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

[11] 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 court as follows.
3. Merits are conceded 100% in favour of the Plaintiff's proven damages.
4. That the defendant shall pay the plaintiff's attorneys of record the sum of R 1 845 876.00 (ONE MILLION EIGHT HUNDRED AND FORTY-FIVE THOUSAND EIGHT HUNDRED AND SEVENTY-SIX THOUSAND RANDS.) in respect of the plaintiff's claim of past and future loss of support of the minor children namely:
 - 4.1 S[...] M[...] – R 440 853.00
 - 4.2 H[...] M[...] – R 547 918.00
 - 4.3 X[...] M[...] – R 856 105.00
5. The issue of Funeral Expenses is postponed *sine die*.
6. The above-mentioned amount shall be paid within 180 days from the date of court order into Maphaha Attorneys' trust account as follows:

ACCOUNT HOLDER: MAPHAHA ATTORNEYS TRUST
NAME OF THE BANK: FIRST NATIONAL BANK

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

ACCOUNT NUMBER: 6[...]
BRANCH: W[...]
PLAINTIFF'S REF: RE0312/M[...]

7 The Plaintiff's attorneys (MAPHAHA ATTORNEYS) are ordered:

7.1 To cause a trust ("the TRUST") to be established in accordance with the Trust Property Control Act No. 57 of 1998 on behalf of the minor children, upon receiving payment from the defendant.

7.2 The Plaintiff's attorneys (MAPHAHA ATTORNEYS) must keep the monies received on behalf of S[...] M[...], H[...] M[...] and X[...] M[...], as set out in clause 5.1 of this order in an interest bearing Trust account for the benefit of S[...] M[...], H[...] M[...] and X[...] M[...] and shall only be allowed to pay such monies over to the Trustee of the Trust to be created in terms of clause 5.1 of this order, once the Master of the High Court has issued the Trustee with the necessary letter of authority;

7.3 The Plaintiff in her representative capacity on behalf of S[...] M[...], H[...] M[...] and X[...] M[...] attorneys of record (MAPHAHA ATTORNEYS) shall attend to the creation of an inter vivos Trust in order to protect the awarded funds to the exclusive benefit of S[...] M[...], H[...] M[...] and X[...] M[...], The Trustee shall be obliged to furnish security to the Master in accordance with paragraph 2 supra.

7.4 The Defendant is ordered to pay the costs in respect of the creation and future administration of the said Trust to be formed in order to manage and administer the compensation payable to S[...] M[...], H[...] M[...] and X[...] M[...] (in terms of Trust Property Control Act, 57 of 1988) as referred to in paragraph 1 of this order, which costs shall

include the fees of the Trustee, and which costs of administration shall be limited to the amount of costs and fees chargeable by *Curators Bonis* in terms of the Administration of Estate Act, Act 66 of 1965, as amended.

7.5 Upon establishment of a Trust and opening of a bank account of the Trust, the Plaintiff's Attorneys shall pay the capital amount as referred to in paragraph 1 above, into the Trust's said bank account for the benefit of S[...] M[...], H[...] M[...] and X[...] M[...].

8. The Plaintiff is liable for the payment of all the reasonable costs of the Trustees appointed, in respect of the establishment of the Trust and any other reasonable costs that the Trustees may incur in the administration thereof which may include and ne subject to the following:

8.1 The Fees and administration costs shall be determined in accordance with the Trust Property Control Act, 57 of 1988 (the Trust Act), as amended from time to time, and shall include not be limited to disbursements incurred.

8.2 The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed.

8.3 The reasonable costs of furnishing of security in obtaining required by the Master of the High Court, or to meet the requirements of the Master of the High Court.

9. The terms of the trust are as follows:

9.1 The TRUSTEES of this trust are ABSA TRUST LIMITED as represented by its nominee from time to time and the minor children's mother, E[...] B[...] M[...] as the second Trustee. The nominee an

employee of ABSA TRUST LTD, whose written consent to act as Trustee in the Trust and trust deed are annexed hereto marked "M1" and "M2" respectively.

9.2 The TRUSTEE shall be entitled to resign from his office after having given at least 30 (thirty) days written notice of such resignation to the FOUNDER, before the resignation takes effect.

9.3 Should the TRUSTEE for any reason whatsoever no longer fulfil the office of trustee, the FOUNDER shall be entitled to appoint another person as trustee, who shall then occupy the office subject to the provisions of this Deed.

9.4 The donor hereby donates to the Trustees the sum R 1 845 876.00 (ONE MILLION, EIGHT HUNDRED AND FORTY-FIVE THOUSAND, EIGHT HUNDRED AND SEVENTY-SIX THOUSAND RANDS), Less any Fees, VAT, Disbursements and Costs, which shall vest in the Trustees with immediate effect and is to be held in Trust and administered in accordance with the provisions of this Trust Deed. It is hereby confirmed that the creation of this trust is not a donation but a payment for compensation as a result of an action against the ROAD ACCIDENT FUND.

9.5 The BENEFICIARIES are: S[...] M[...], H[...] M[...] and X[...] M[...].

9.6 The beneficiaries will have immediate vested rights in the trust fund.

9.7 For so long as any capital remains, or any portion thereof, the TRUSTEES may in their sole discretion, make such payment of the income, and in such amounts as they shall decide for reasonable

maintenance or for any other purposes which they may decide to be in the BENEFICIARIES' interest. If the income is not sufficient for the purpose the trustees may utilise capital. Any surplus income not utilized for the purposes set out herein shall be capitalised.

9.8 The trust shall terminate by leave of the high court. The TRUST shall exist for a period until each minor child reaches the age of 18 years, respectively, where after the residue of the money of each child in accordance with their own portion of settlement held in the Trust Fund will be deposited into their own respective bank accounts of their choice.

9.9 To accept any further amounts or endowments on behalf of the beneficiaries.

9.10 POWERS OF TRUSTEE: The TRUSTEE shall have unlimited and absolute power, for the purposes of this trust, in its sole and absolute discretion, to:

9.10.1 Exchange, replace, re-invest, sell, let, insure, manage, modify, develop, improve, convert to cash or deal in any other manner with any asset which from time to time form part of the TRUST FUNDS with the consent of the beneficiary.

9.10.2 Provide for the day to day care of the beneficiary as and when such needs arise. This includes, but is not limited, to various aspects of the health, educational, daily and social needs of the beneficiary.

9.10.3 Institute or defend any legal proceedings or otherwise to take any other steps in any court of law or other tribunal and to subject controversies and disagreements to arbitration.

9.10.4 To call up and/or collect any amounts that may from time to time become due to the TRUST FUND.

9.10.5 Settle or waive any claim in favour of the trust.

9.10.6 Exercise any option and to accept and exercise any rights.

9.10.7 Exercise any rights or to incur any obligation in connection with any shares, stocks, debentures, mortgage bonds or other securities or investments held by this trust.

9.10.8 Open accounts at any bank or other financial institution and to manage such accounts and if necessary, to overdraw such account.

9.10.9 Take advice from any attorney or advocate or any other expert for the account of the relevant trust account.

9.10.10 Appoint professional or other persons on a temporary or permanent basis to conduct the whole or any portion of the business of the trust under supervision of the TRUSTEE or to manage the investment of part or the entirety of the funds of the trust and to remunerate such persons for their services out of the funds of the trust.

9.10.11 Accept any disposal in favour of this trust and to comply with any conditions regarding such disposal.

9.10.12 To all things and to sign all documents required to give effect to the aims of this trusts.

9.10.13 ACCOUNTING

The TRUSTEE shall keep complete records, statements and accounts of all transactions and shall prepare proper statements in connection with all financial activities in accordance with the Generally Accepted Accounting Practice in South Africa.

9.10.14 REMUNERATION

The TRUSTEE shall be entitled to a management fee of 1% (ONE PERCENT) per annum plus VAT, calculated on the capital held under administration. In addition, the TRUSTEE shall be entitled to charge market related fees in respect of specialized services which it may have performed on behalf of the trust.

9.10.15 REGISTRATION OF THE TRUST

The TRUSTEE undertakes to register this trust deed at the office of the Master of the High Court under the Trust Property Control Act 1988 as amended and shall be entitled to settle the costs payable in respect of such registration, out of the income and if necessary out of the capital of the trust.

9.10.16 EXEMPTION FROM SECURITY

The TRUSTEE shall be obliged to furnish security to the Master of the High Court or any other authority for the proper compliance of its duties as such.

9.10.17 INDEMNITY

The TRUSTEE and any person in its employment, shall insofar it may be valid in terms of the Trust Property Control Act, Act 57 of 1988, be indemnified against liability for expenses, incurred in the execution of its duties as trustee in terms of this trust deed and against any loss the TRUST FUND may suffer as a result of the depreciation of any investment made by the TRUSTEE.

9.10.18 PROHIBITION AGAINST ENCUMBRANCE

No beneficiary receiving benefits under this trust deed may utilize his or her interest in the TRUST FUND as security for debt or encumber it in any

manner whatsoever and should such event occur, shall the encumbrance of benefits of those beneficiaries not be recorded against the TRUST FUND.

9.11.19 EXCLUSION FROM JOINT ESTATE

Any benefit accruing or payable to any beneficiary in accordance with this trust deed, does not form part of the joint estate of that person and that person's spouse and no husband of any female person, whether the marriage be in or out of community of property, shall have or receive any marital power, control, power of alienation or administration in respect of any benefit received by any such female beneficiary under this deed.

9.11.20 AMENDMENT OF THIS DEED

The provisions of this trust deed, excluding the appointment of the beneficiaries, may only be amended in writing jointly by the FOUNDER and the TRUSTEE of the trust. If the Court has given consent to it.

10. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party legal costs on a High Court Scale on scale B, which costs will include plaintiff counsel's day fee and preparation fees of 23 October 2025 and 24 October 2025., also to include but will not be limited to, the following:

10.1 The reasonable taxable fees of consultation and preparation for trial, qualifying and reservation fees (if any and on proof thereof) as well as the costs of the Plaintiff's medico-legal reports and medico-legal addendum reports; including assessors report and fees.

10.2 The costs of the Plaintiff's counsel, including settlement and/or professional fees (where applicable);

10.3 The costs in respect of the preparation, drafting and copying of all of the bundles of trial documentation, legal expert reports, pleadings and formal notices, together with all indexes thereto;

10.4 The costs attended upon obtaining of payment of payment of the amounts referred to in this order.

11. The plaintiff shall in the event of the costs not agreed, serve the notice of taxation on the defendant's attorney of record.

12. The plaintiff shall allow the defendant 180 days to make payment of the taxed costs.

13. The contingency fees agreement between plaintiff and its attorney is declared invalid. The plaintiff's attorney shall only be entitled to recover from the plaintiff ordinary attorney and client fees which may be taxed but shall not exceed 25% of the capital awarded to the plaintiff.

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 09 January 2026 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 09 January 2026.

APPEARANCES

Date of hearing: 24 October 2025

Date of judgment: 09 January 2026

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