



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

CASE NO. 25794/2022

DELETE WHICHEVER IS NOT APPLICABLE

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

09/01/2026

A handwritten signature in black ink, appearing to be "G. M. M. M. M.", is written over a blacked-out rectangular area.

In the matter between:

THABO JOHN LEPHOTO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Mr. Thabo John Lephoto, institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision which occurred on 6 September 2020, near the intersection of Blood River Area, Vryheid, Kwazulu Natal Province. The plaintiff was pushing a motor vehicle on the side of the road in the yellow lines, which had broken down, when a collision occurred between motor vehicle NGT47GP driven by Mr. K Motloung who lost control of his motor vehicle and collided with another motor vehicle with registration number NTUU1ZN driven by Mr M. Dubb. As a result of the collision Mr. M Dubb's motor vehicle propelled into the plaintiff who was a pedestrian at the time of the collision.

[2] As a result of the collision the plaintiff sustained the following injuries: a traumatic above the knee amputation to his left lower limb and a below -the-knee amputation to his right lower limb. The plaintiff underwent further amputation to his left leg during April 2023.

[3] The plaintiff seeks the following relief:

- 3.1. 100% liability in favour of the plaintiff.
- 3.2 loss of earnings
- 3.3 past medical expenses
- 3.3. general damages
- 3.4 future medical expenses by the furnishing of a section 17(4)(a) undertaking.

[4] The summons was served on the defendant on 28th October 2022. On the 2nd May 2023, the plaintiff was authorised to refer the matter to Default Judgment Court

to seek judgment by default. The defendant entered a notice of intention to defend the matter on 24 January 2024 and filed its plea on the 26 March 2024 after a notice of bar was served on it on 24 February 2024. On 22 July 2024 the court ordered the defendant to attend a pre-trial conference failing which the defendant's defence will be struck out. The order was served personally on the defendant on the 15 August 2024. The defendant failed to respond. The plaintiff proceeds by way of default judgment in terms of Rule 32, read with Rule 38(2) of the Uniform Rules.

[5] On the date of hearing, the parties have reached a settlement agreement, which the plaintiff requests that it 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:

- 6.1 litigation is pending;
- 6.2 the agreement relates directly to the dispute between the parties; and
- 6.3 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

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

[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.

Conclusion

[9] I am not satisfied that the agreement meets the criteria set out in *Eke v Parsons*⁴ and subsequent RAF authorities. The plaintiff in its heads of argument contented for the court to make an order for 100% liability in favour of the plaintiff. The court is reluctant to interfere and grant orders where parties entered into a settlement agreement.

[10] Upon review of the settlement order it is noted that the settlement agreement does not record liability and is silent on the disposition of the remaining heads of damages. Before the settlement agreement can be made an order of court, the parties are required to clarify whether liability is admitted, if so, at what percentage. Furthermore, the parties are silent on the other heads of damages. Once the draft order is corrected to reflect the above, it may be resubmitted for the court's consideration.

Order

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

10.1 The application in terms of Rule 38(2) is granted and the matter is determined in terms of Uniform Rule 38(2).

³ [2024] ZACC [4]

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

- 10.2. The parties are granted leave to clarify whether liability is admitted and, if so, at what percentage.
- 10.3. The parties are granted leave to indicate whether the remaining heads of damages are finally settled, or postponed *sine die*.
- 10.4. Once the draft order is corrected to reflect the above, it may be resubmitted for the court's consideration.



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

For the plaintiff: Adv. Nombeko Mabena
(Tel: 082 876 7547)

Instructed by: Keletso N. Kekane (CA)
April Wandile Attorneys
(Tel: 073 143 0674/010 615 0781/, email: wandzaa@gmail.com)

For the Defendant: State Attorney
Ms N Mhlongo
(Tel: 072 452 7151, email NkatekoM@raf.co.za)

A handwritten signature in black ink, appearing to be 'Nkateko M', is written over a black rectangular redaction mark.