

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

CASE NO. 2023-04853

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

15/01/2026

In the matter between:

C[...] M[...]

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

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Ms C[...] M[...] who acts on behalf of her minor daughter, S[...] M[...], institutes action against the Road Accident Fund (“the RAF”) seeking damages arising from a motor vehicle collision which occurred on 10 December 2015, near Zikode Street, Jabulani, Gauteng Province, where the plaintiff’s minor child was a pedestrian.

[2] The following heads of damages have become settled:

2.1 liability 100% in favour of the plaintiff.

2.2 general damages.

[3] The only issue before this court is compensation for future loss of earnings and earning capacity.

[4] The summons was served on the defendant on 30 January 2023. 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, for evidence to be led by way of affidavit.

[5] The parties have subsequently, 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.

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

[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 upon by the parties and may not rewrite them.

[9] Liability had previously been settled at 100% in favour of the plaintiff, together with the general damages. 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 for this court to make the settlement agreement an order of court.

Order

[7] As a result, the following settlement agreement is made an order of Court.

7.1 The Applicants Rule 38(2) application 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)

7.2 The Respondent is to pay R3 805 407.60 (Three Million Eight Hundred and Five Thousand Four hundred and Seven Rands and Sixty Cents) in full and final settlement of this claim in respect of loss of earning capacity, arising from a motor vehicle accident which occurred on the 10th December 2015.

7.3 The aforesaid amount shall be paid within 180 days of this order into the trust account of Applicant's attorney of record as follows:

ACCOUNT HOLDER: S[...] [...] A[...]

BANK: F[...] N[...] B[...]

TYPE OF ACCOUNT: T[...] A.[...]

ACCOUNT NUMBER: 6[...]

7.4 The Defendant is liable for payment of 100% of the reasonable costs of the Trustee appointed in terms of paragraph 7 hereof, in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including his/her fees in this regard, which shall be recoverable in terms the Section 17(4)(a) Undertaking, and which may also include and be subject to the following:

7.4.1 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 but no be limited to disbursements incurred.

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

7.4.3 The reasonable costs of the furnishing of security in obtaining an annual bond, if required by the Master of the High Court, or to meet the requirements of the Master of the High Court.

7.4.4 The costs incurred in administering the Undertaking in terms of Section 17(4)(a).

7.5 That the net proceeds of the amount referred to in paragraph 2 above, after the deduction of Applicant attorney's legal costs ("the capital amount"), shall be payable to a Trust in respect of SPHESIHLE M[...], to be established within 6 months from date of receipt of the "capital amount".

7.6 Upon the establishment of the Trust referred to in paragraph 4 above and opening of a bank account of the Trust, the Applicant's attorneys shall pay the capital amount as referred to in paragraph 5 above, including the accrued interest, into the Trust's said bank account.

7.7. The Terms of the Trust are as follows:

7.7.1 The proposed Trustee is AVIWE DYILI (Id Number: (8[...]) of ABSA Trust Ltd, whose written consent to act as Trustee in the Trust is

annexed hereto marked “**X1**” together with the Trust Deed marked “**X2**”.

7.7.2 If AVIWE DYILI (Id Number: (8[...]) of ABSA Trust Ltd, is 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 its sole discretion be entitled to appoint another trustee.

7.7.3 The trustee is required to furnish security for the administration of the assets of the trust.

7.7.4 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.

7.7.5 The trustee shall administer the trust subject to the powers and terms, which follow.

7.7.6 The trustee must in writing accept his/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.

7.7.7 A body corporate may be a trustee.

7.7.8 The trustee 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 trustee, the person who keeps the books of the trust or any beneficiary may call a meeting of the beneficiaries, assisted by their guardians if applicable, which meeting shall appoint a trustee or trustees, failing which the Master will appoint a trustee.

7.7.9 A trustee 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.

7.10 In administering the trust, the trustee shall follow such procedure as they deem fit.

7.11 Proper books of account shall be kept.

7.12 The trustee may appoint an auditor for the trust but are not obliged to do so. Mr AVIWE DYILI (Id Number: (8[...]) of ABSA Trust Ltd, shall have the sole signing powers on all banking accounts and shall have the power to veto

any decision. Nevertheless, he shall consult with the other trustees, if any, as to any distributions.

7.13 Any trustee or trustee's 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.

7.14. The trustee 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:

7.14.1 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.

7.14.2 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.

7.14.3 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.

7.14.4 To borrow money.

7.14.5 To secure the payment of moneys borrowed in any manner including the mortgaging ceding and/or pledging of property.

7.14.6 To lend money to any person or company.

7.14.7 To invest money in any manner.

7.14.8 To open and operate banking accounts and to overdraw such accounts.

7.14.9 To make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments.

7.14.10 To enter into indemnities, guarantees and suretyship and to secure payment thereunder in any way.

7.14.11 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.

7.14.12 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.

7.14.13 To make donations.

7.14.14 To undertake and execute any trust.

7.14.15 To act as principals, agents, contractors or trustees.

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

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

7.15 The trustee may determine her own procedure.

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

7.17 The trustee has an absolute and unlimited discretion, in all matters relating to the trust but may not act contrary to this order and the trust deed to be drafted in accordance herewith.

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

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

7.20 The trustee shall under no circumstances be personally liable to creditors of the trust.

7.21 No asset, capital or income of the trust will vest in any beneficiary until such is actually paid over, handed over or delivered by the trustee 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.

7.22 The trustee may in her absolute discretion, at any time prior to termination of the trust, transfer or pay any part of the trust fund to one or more of the beneficiaries, as the free and absolute property of such beneficiary.

7.23 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.

7.24 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.

8. The Respondent shall pay Applicant's High Court party and party costs either as taxed or agreed, which costs shall include the following but not limited thereto:-

8.1 Costs of Applicant's Counsel for the 21 and 24 October 2025 at scale B.

8.2 The reasonable taxable costs of obtaining all medico-legal reports, Addendums, RAF4 Serious Injury Assessment reports, actuarial reports from the Applicant's experts, which were furnished to the Respondent.

8.3 The reasonable taxable transportation costs incurred by the Applicant in attending medico-legal consultations with the parties' experts.

9. Payment of costs in terms of the preceding paragraph shall be subject to the following conditions: -

9.1 The Applicant shall, in the event that costs are not agreed, serve a notice of taxation on Respondent; and

9.2 The Applicant shall allow Respondent 180 (One Hundred and Eighty) days to make payment of the taxed costs.

10. There is a valid contingency fee agreement.

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 15 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 15 January 2026.

APPEARANCES

Date of hearing: 24 October 2025

Date of judgment: 15 January 2026

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