

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 7675/2022

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

DATE 2026/03/03 SIGNATURE..... 

In the matter between:

BOITUMELO MOHLALA**Plaintiff**

and

ROAD ACCIDENT FUND**Defendant**

JUDGMENT

BURNETT, AJ

INTRODUCTION

- [1] This is an application for default judgment against the Road Accident Fund in terms of Rule 31 (2) of the Uniform Rules of Court read with the Practice Directives of this division.
- [2] The merits have previously been finalised, and the matter was enrolled for determination of general damages only, the previous heads of damage having already been finalised.
- [3] In her Particulars of Claim, the Plaintiff claims R 1 000 000.00 (one million rand) in respect of general damages.
- [4] The necessary original documentation, i.e. a) combined summons; b) return of service; c) application for default judgment; d) notice of set down and e) merits court order, was properly filed with this court. There was proper service of the combined summons, application for default judgment and notice of set down on the Defendant. The court was satisfied that the matter was correctly enrolled and proceeded to hear it.
- [5] There was no appearance on behalf of Defendant.

APPLICATION IN TERMS OF RULE 38 (2)

- [6] At the start of the hearing, the Plaintiff brought a formal application in terms of Rule 38 (2) of the Uniform Rules of Court, in terms of which she sought for her evidence to be led by way of affidavit. Rule 38 (2) reads as follows: -

“The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.”

- [7] The original application, as well as a supplementary affidavit to further support her application, was filed before the court.
- [8] Having regard to the fact that the matter before the court is a default judgment application, and that it would be practical and convenient to hear the evidence of the Plaintiff, and her expert witnesses via affidavit, the court granted the application in terms of Rule 38 (2).

PREVIOUS ORDERS

- [9] On 5 May 2023 the Honourable Judge Kganyago made an order that: -
 - [9.1] Merits settled in favour of the Plaintiff.
 - [9.2] The Defendant shall pay 100% (hundred percent) of the plaintiff's proven or agreed damages.
 - [9.3] The issue of quantum is to be posted *sine die*.
 - [9.4] Costs in the cause.

[10] On 31 January 2025 the Honourable Acting Judge Mashifane ordered *inter alia* that:

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[10.1] Default Judgement was granted.

[10.2] The Defendant compensates the Plaintiff an amount of R 2 973 229.31 (two million nine hundred and seventy-three thousand two hundred and nine rand and thirty cents only) after deductions of the merits apportionment.

[10.3] The issue of general damages is postponed *sine die* pending the outcome of the defendant.¹

SERIOUS INJURIES

[11] Compensation for general damages (otherwise known as non-pecuniary loss) in Road Accident Fund matters is governed by section 17 of the Road Accident Fund Act² read with the regulations. When the Road Accident Fund Act³ was amended, it placed certain limitations on claims for general damages.

[12] From the time of enactment of the Amendment Act, non-pecuniary loss became limited to “*compensation for a serious injury.*”⁴ If a claimant wants to claim general damages against the fund, the claimant must have a serious injury, and in order to prove that she does have a serious injury, she must be assessed by a medical

¹ It is unclear what “*pending the outcome of the Defendant*” means. injuries are serious.

² Act 56 of 1996.

³ Act 19 of 2005.

⁴ Section 17 (1) of the Road Accident Fund Amendment Act 19 of 2005.

practitioner. The medical practitioner must complete a Serious Injury Assessment Report. Regulation 1 defines this report as a duly completed RAF4 Form.

- [13] The amendment in section 17(1)(A) is regulated by Regulation 3 of the Amendment Act which sets out the prescribed method of assessing a serious injury and the definition thereof.⁵
- [14] Upon receipt of the RAF4 Form and after consideration thereof, if the Road Accident Fund is not satisfied that the injuries were correctly assessed as serious, it can reject the RAF4 Form and in consequence thereof the claim for general damages.⁶ The Road Accident Fund has 90 days *“from the date on which the Serious Injury Assessment Report was sent by registered mail or delivered by hand to the Respondent, to accept or reject the Serious Injury Assessment Report or direct that the third party submit himself or herself to a further assessment.”*⁷ Neither the Road Accident Fund Act, nor the regulations prescribes whether the acceptance or rejection of the RAF4 Form must be in writing.

⁵ Regulation 3 of the Act provides that: - *“(1) (a) a third party who wishes to claim compensation for non-pecuniary loss shall submit himself or herself to an assessment by a medical practitioner in accordance with the regulation. (b) The Medical practitioner shall assess whether the third party’s injury is serious in accordance with the following method: (ii) If the injury resulted in 30% or more impairment of the Whole person as provided in the AMA Guides, the injury shall be assessed as serious. (iii) An injury which does not result in 30% or more impairment of the Whole Person may only be assessed as serious if that injury: (aa) resulted in a serious long-term impairment or loss of a body function; (bb) constitutes permanent serious disfigurement; (cc) resulted in severe long-term mental or severe long-term behavioural disturbance or disorder; or (dd) resulted in loss of a foetus.”* (2 December 2022) para 15 for an explanation on the effect of the change.

⁶ See *Mertz v RAF* (A96/2021) [2022] ZAGPPHC 961 (2 December 2022) para 16 for a discussion on this.

⁷ Regulation 3(3)(c).

[15] Following the promulgation of the Road Accident Fund Amendment Act and its accompanying regulations, it was held in **Road Accident Fund v Faria**⁸ that the assessment of serious injuries is an administrative function and not a judicial one.⁹ The court cannot assume an administrative function and decide on whether the claimant's injuries are serious.¹⁰ A trial court in an action for damages cannot decide as to whether a Plaintiff sustained a serious injury.¹¹ The trial court can only quantify the damages in relation to the serious injury, if it has been accepted by the Road Accident Fund that the Plaintiff's injury is serious.

DISCUSSION

[16] If the Plaintiff's injuries resulted in a 30% or higher whole-body impairment, the injury is deemed serious, and the claimant is entitled to claim general damages. In circumstances where the injuries have not resulted in a 30% whole body impairment, general damages may be awarded if, according to the narrative test, the injury has resulted in "*serious long-term impairment or loss of body function, permanent serious disfigurement, severe long-term mental or severe long-term behavioural disturbance or disorder, or the loss of a foetus.*"

⁸ 2014 (6) SA 19 (SCA) para 36. Also see *Adv Knoetze obo NB Malinga and Another v Road Accident Fund* [2022] ZAGPPHC 819 (2 November 2022).

⁹ *Mertz v RAF* (A96/2021) [2022] ZAGPPHC 961 (2 December 2022) para 18.

¹⁰ *Alvina Chetty v Road Accident Fund* (A91/21) [2021] ZAGPPHC 848 (7 December 2021) para 19.

¹¹ See the *Road Accident Fund v Duma*, *Road Accident Fund v Kubeka*, *Road Accident Fund v Meyer*, *Road Accident Fund v Mokoena* [2012] ZASCA 169 at para 19 wherein it was held that: "*in accordance with the model that the legislature chose to adopt, the decision whether or not the injury of a third party is serious enough to meet the threshold requirement for an award of general damages was conferred on the Fund and not on the court. That much appears from the stipulation in regulation 3(3)(c) that the und shall only be obliged to pay general damages if the Fund-and not the court-is satisfied that the injury has correctly been assessed in accordance with the RAF 4 form as serious. Unless the Fund is so satisfied the plaintiff simply has no claim for general damages. This means that unless the plaintiff can establish the jurisdictional fact that the Fund is so satisfied, the court has no jurisdiction to entertain a claim for general damages against the Fund. Stated somewhat differently, in order for the court to consider a claim for general damages, the third party must satisfy the Fund, not the court, that his or her injury was serious.*"

- [17] The Plaintiff submitted herself for a medical assessment and a RAF4 Form was duly completed and submitted to the Road Accident Fund and received a whole-body impairment determination at 9%. The Plaintiff has not achieved 30% or more bodily impairment and accordingly seeks general damages based on the narrative test.
- [18] It was found in *Mngomezulu v RAF*¹² that the narrative test is a safety net for those claimants who have not achieved a 30% whole bodily impairment in accordance with the AMA¹³ guidelines.
- [19] In *Daniels and 2 Others v RAF*¹⁴ found that the narrative test was not limited to rare and isolated cases but could be applied in any instances where the claimant has not achieved a 30% whole bodily impairment. The test is based on the daily activities of the claimant, which include *inter alia* such as grooming, toileting, feeding, dressing, bathing, driving, sexual function, money management, shopping and housework and the role that the claimant plays in life. The narrative test is a broader test than the whole-body impairment test.
- [20] The Plaintiff appointed expert witnesses to give evidence in support of her claim based on the narrative test. The court is satisfied that these witnesses are in fact expert witnesses, and their evidence is accepted as such.
- [21] The Plaintiff further filed a supplementary affidavit at the commencement of the matter in which she deposed to under oath, *inter alia* that: -

¹² Unreported case no 4643/2010 (Gauteng High Court).

¹³ American Medical Association.

¹⁴ Unreported case no 8853/2010 (Western Cape High Court).

“On 30 October 2024 the defendant rejected General Damages, and we proceeded with loss of earnings on 31 January 20225. A copy of the rejection letter is attached as Annexure B1.” No letter was attached.

“The matter was then referred to the HSCSA on the 29 January 2025. On the 22 July 2025, HPCSA accepted the seriousness of the injuries. A copy of the outcome is attached hereto and marked B2.” The letter was not attached as an annexure to the affidavit; however, a copy of the letter was handed up separately by the Plaintiff's counsel.

- [22] The letter from the HPCSA (Health Professions Council of South Africa) stated *inter alia* that: -

“After consulting all available evidence presented to the committee, it was found that the injuries sustained by the patient is classified as Serious in terms of the narrative test.”

- [23] The question is whether this letter alone is sufficient to prove to the court that the Road Accident Fund has taken an administrative decision pertaining to the seriousness of the Plaintiff's injuries. The answer to this is negative.

- [24] Firstly the rejection letter of the Road Accident Fund was not attached to the supplementary affidavit, and there is no explanation from the Plaintiff as to why she referred the serious injury assessment to the HPCSA as opposed to taking the Road Accident Fund's administrative decision on review, if there was in fact a decision. A letter from the Health Professions Council cannot simply be submitted to court without giving it any factual context.

[25] According to the supplementary affidavit, the Road Accident Fund rejected the Plaintiff's injuries as serious on 30 October 2024, but there is no explanation as to what the order of 31 January 2025 means when it states that: "*The issue of general damages is postponed sine die pending the outcome of the defendant*" and if this condition has been fulfilled.

ORDER

[26] I accordingly make the following order: -

[26.1] The matter is postponed *sine die*.

[26.2] The Plaintiff must submit a supplementary affidavit to satisfy this court that: -

[26.2.1] It has fulfilled paragraph 3 of the order dated 31 January 2025 and more particularly the section that refers to "*pending the outcome of the defendant*".

[26.2.2] The Road Accident Fund has taken an administrative decision on whether the Plaintiff's injuries are serious.

[26.2.3] The role of the HPCSA in this matter, to what extent the referral of the assessment of the injuries to the HPCSA was by agreement with the Road Accident Fund, and whether the Road Accident Fund has accepted the decision taken by the HPCSA.

[24.3] Costs in the cause.



BURNETT, E J
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - ADV. N PHATUDI

INSTRUCTED BY: - NKP MANAMELA ATTORNEYS

DATE OF HEARING: - 11 NOVEMBER 2025

DATE OF JUDGMENT: - 3 MARCH 2026