HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 35459/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 7 APRIL 2026

SIGNATURE

In the matter between:

M[…]2 M[…] Plaintiff

and

SELWYN BRIAN DROBIS ATTORNEYS Defendant

P[…] I[…] M[…] Third Party

Summary: *Attorney – liability – breach of obligations to client - a claim for damages against Road Accident Fund under-settled. The attorney settled a claim instituted by him on behalf of the father of a minor in a negligent fashion, without proper attention to his client's case and, as a result thereof, on a factually incorrect basis. Claim further finalised after the minor had already attained age of majority. The attorney's attempt to rely on the alleged acceptance*

of the settlement by the erstwhile minor's father by way of third party proceedings, was rejected. On the separated issue of liability, the attorney was found to be liable for whatever difference can be proven between the actual loss suffered by the plaintiff and the under-settled amount. The extent of the loss is still to be proven.

ORDER

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1. The defendant is declared to be liable for the difference between whatever loss the plaintiff may prove to have suffered in respect of a claim against the Road Accident Fund pursuant to a motor vehicle accident which had occurred on 30 May 2007, and the amount of R30 000.00.

2. The determination of the quantum of the above loss is postponed sine die.

3. The defendant's claim against the third party is dismissed.

4. The defendant is ordered to pay the costs of the plaintiff and the third party on the scale as between attorney and client, including costs previously reserved. Counsel's fees shall be taxable at scale B.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 7 April 2026.

DAVIS, J

Introduction

[1] On 30 May 2007 two 13-year-old twin brothers, M[…]1 and M[…]2 were injured in a motor vehicle accident. They were both passengers in a vehicle when a minibus taxi (driven by the insured driver) collided with the vehicle conveying the brothers, resulting in an accident.

[2] A claim was instituted against the Road Accident Fund (the RAF) by the defendant, an attorney of this court, Mr Selwyn Brian Drobis, on behalf of one of the brothers, the current plaintiff. The plaintiff, then still a minor, was represented by his father and natural guardian. At all relevant times Mr Drobis was practising as a sole practitioner. He features in that capacity as the defendant in the current proceedings,

[3] The plaintiff alleges that his claim was negligently pursued by the attorney and subsequently settled with the RAF on a factually incorrect basis. This happened when the plaintiff had already attained the age of majority, but without a mandate from him and without his knowledge. Moreover, the plaintiff claims that his claim against the RAF was grossly under settled and he now claimed the difference between the true value of his claim and the under-settled amount from the attorney.

[4] The attorney in turn, claims an indemnity from the plaintiff's father by way of third party proceedings.

[5] By agreement between the parties, the issues of merit and quantum were separated in terms of Rule 33(4) and this judgment accordingly only deals with the merits of the plaintiff's claim and the merits of the defendant's claim for a declaration against the third party.

Evidence

[6] The oral evidence led on behalf of the plaintiff consisted of his own evidence and that of an attorney Jan Odendaal van der Westhuizen and a medical practitioner, Dr Schutte. On behalf of the defendant, his secretary at the time, Ms Laurel Theron and the defendant himself testified. The plaintiff's father testified as the third party.

The plaintiff's evidence

[7] The plaintiff, who was 31 at the time of the trial, testified that on the day of the accident he and his brother were passengers in a motor vehicle. Later evidence indicated that the driver of this vehicle was his father's neighbour. The plaintiff was seated in the left front passenger seat and his brother in the rear. They were travelling from Daveyton to Tsakane. On the way, when the vehicle had passed Springs, a white minibus taxi approached from the opposite direction. Without warning and without any use of indicators, the minibus turned to its right across their lane of travel and an accident occurred. As a result, the plaintiff became trapped in the vehicle as his door could not open. The rear door where his brother was seated, could however open and the two boys exited the vehicle from there.

[8] The plaintiff was aware that he was injured. His face was bleeding and he had difficulty breathing. He was assisted by way of an oxygen mask administered by ambulance personnel who had arrived on the scene later. He was taken to the Far East Rand Hospital where he remained for a day. Thereafter he was taken to the Pholosong Hospital from where he was discharged.

[9] The plaintiff sustained facial scarring above his eye and on top of his head, injuries to his cheek and jaw (also referred to in medical records and pleadings as mandible injuries), loss of all his front teeth and lacerations to his nose and forehead. He could not eat for some time. The plaintiff demonstrated in court that he now uses a set of false front teeth.

[10] At the hospital a soft tissue neck injury and a wrist injury were also diagnosed and the plaintiff's arm was placed in a plaster of Paris cast.

[11] Afterwards the plaintiff visited a dentist in Springs and also the local clinic where his stitches were later removed.

[12] Despite the visit to the dentist, the plaintiff had to endure going without front teeth for about 7 years.

[13] The plaintiff was never told of the cause of a further injury (which did not feature in the lodgement documents) being a persistent pain in his right knee, making walking long distances painful.

[14] The plaintiff remembers going with his father to an attorney to institute a claim on his behalf against the Road Accident Fund. He even remembers falling asleep in the attorney's office. It later appeared that this attorney was the defendant.

[15] While the plaintiff was still in school, the family did not have money for tertiary studies. Knowing about the lodgement of the claim, the plaintiff read up about the RAF who he then contacted. He was told that his claim was an "old" one, which could not be located.

[16] In the second half of 2015 the plaintiff found out that his claim was still "open". This was in addition to his father having told him of a lack of communication from the defendant. On the telephonic advice from the RAF, the plaintiff approached new attorneys, being Campbell Attorneys, who later became his attorneys of record in this matter.

[17] Subsequently the plaintiff had completed school and eventually graduated from University in June 2018. By that time Campbell Attorneys had told the plaintiff that the defendant has settled his claim and that it would be paid out.

[18] In cross-examination, the plaintiff was extensively cross-examined as to when he had approached Campbell Attorneys and his subsequent complaint about the conduct of the defendant to the Legal Practice Council (the LPC), but nothing much turns on this.

[19] Of much more substance, was the exploration of the defendant's pleaded defence that the eventual settlement of the plaintiff's claim had been discussed with his father prior to the acceptance of the RAF's offer.

[20] It is apposite at this juncture to note that the defendant had instituted action against the RAF on behalf of the plaintiff's father, acting in turn on the plaintiff's behalf. It is also common cause that, upon having received a settlement offer from the RAF, the defendant, had accepted the offer on 22 July 2025. The amount of the accepted settlement was for R30 000.00 plus R8 000.00 contribution to costs.

[21] Of equal importance are the file notes made by the defendant's secretary at the time in the attorney's office file labelled "M[…], PI obo M v RAF". The file notes which formed the crux of cross-examination are worth quoting. They are these:

"*18/5/2015*	-	*receives son's id copy*
18/5/2015	-	*emailed handler re: repudiation*
2015/06/03	-	*emailed 4 follow up*
08/07/2015	-	*received offer – confirmed with client and advisers (sic) to accept*
22/07/2015	-	*call Mputhi – he has acceptance to send for payment*".

[22] The file notes were supported by a list of telephonic communications which reflect particulars which read as follows:

"*CLIENT NAME:*	*M[…], PI obo M*
CALL MADE TO:	*RAF*
CURRENT PHONE NUMBER:	-
DATE AND TIME OF CALL:	*16-1-2014*
CALL DURATION:	*11:03 AM*
NOTES:	*Handler Justice//Still open//*

CLIENT NAME:	*M[…], PI obo*
CALL MADE TO:	*0[…]//*
CURRENT PHONE NUMBER:	

DATE AND TIME OF CALL: *16-01-2015*

CALL DURATION: *1 minute Asked him to call back*

CLIENT NAME: *M[…],PI obo*

(pedestrian- scratched out)

CALL MADE TO: *0[…]*

CURRENT PHONE NUMBER: *0[…]*

DATE AND TIME OF CALL: *2015-05-11*

CALL DURATION: *5 minutes – Explained his son*

is 1st year (UJ) passenger

CLIENT NAME: *M[…], PI*

CALL MADE TO: *SMS claimant to send ID*

CURRENT PHONE NUMBER: *0[…]*

DATE AND TIME OF CALL: *13-5-2015 @ 11:12 am*

NOTES: *SMS for ID copy of son*

ID received

CLIENT NAME: *M[…]*

CALL MADE TO: *RAF*

CURRENT PHONE NUMBER:

DATE AND TIME OF CALL:	*1:12pm*
NOTES:	*2 minutes – confirmed Handler. No Def. Attorney on record"*

[23] The plaintiff confirmed that the cellular phone number referenced above was that of his father, but denied that he had been told by his father about either the offer from the RAF, the calls from the defendant's office or any advice or acceptance of any offer.

[24] The defendant's counsel referred the plaintiff in cross-examination to a power of attorney dated 2 July 2015. He confirmed his signature but could not make out his identity number on the illegible copy. This power of attorney was for Campbell Attorneys.

[25] This led to some debate as to whether the plaintiff had approached Campbell attorneys in 2015, 2016 or 2017. It is common cause that the settlement amount was only paid in 2018.

[26] The next witness for the plaintiff was attorney Jan Odendaal van der Westhuizen (Van der Westhuizen). He was at all relevant times a senior associate at Campbell Attorneys.

[27] Van der Westhuizen testified that the plaintiff had contacted him in late June 2015 and that they had consulted in 2015 to prosecute a possible claim against the Road Accident Fund. He was told by the plaintiff that the latter's father had previously consulted with an attorney but that he "had no idea" what had happened to the claim.

[28] Van der Westhuizen confirmed the power of attorney referred to above signed by the plaintiff on 2 July 2015. This was at Campbell's Attorneys' offices in Pretoria.

[29] Van der Westhuizen then testified as to the submission of a claim on behalf of the plaintiff to the Road Accident Fund together with the RAF1 forms (in terms of the then existing legislation) which had been received by the RAF on 2 February 2016. Upon the Fund's failure to respond within the prescribed 120 days, Campbell attorneys instituted action against the RAF on behalf of the Plaintiff on 25 October 2016.

[30] When, on 8 November 2016, the RAF emailed Van der Westhuizen that it had settled the plaintiff's claim, Van der Westhuizen wrote to the defendant on 9 November 2016. The letter to the defendant read as follows:

> "*Please note that we hold instructions to lodge a claim on behalf of client in this matter with the RAF as a result of injuries sustained in an accident on 31 July 2007. Indeed we have done so and we have proceeded with summons. We have now been informed by the Road Accident Fund that the matter has in fact been settled with your offices. Please advise the following:*
>
> 1. *By whom were you instructed in this matter;*
> 2. *Whether you are in receipt of a written mandate/power of attorney; and*
> 3. *Whether the matter has indeed been finalized and if so, what the outcome is. We await your feedback.*"

[31] When no response was received, a follow-up letter was sent on 9 December 2016. The response, dated 12 December 2016 only came to Van der Westhuizen's attention on 26 May 2017. As a result of the fact that the letter did not come to Van der Westhuizen's attention, he followed the matter up on 9 January 2017. This elicited a response dated 16 May 2017 which read as follows:

> "*As advised in our correspondence dated 12 December 2016 we accepted an offer made by the Road Accident Fund in the amount of R38 000.00 all inclusive. Please send us latest contact details for the client so we may arrange payment*."

[32] Van der Westhuizen then provided the defendant with Campbell Attorney's trust account particulars. Thereafter he continued to ask for proof of payment.

[33] On 22 May 2018 Campbell attorneys, on the instructions of the plaintiff, instituted the current action. By that time neither the plaintiff nor Campbell Attorneys have received payment. The lack of payment continued being a dispute between Van der Westhuizen and the defendant's attorneys, Hogan Lovells, right up to a pre-trial conference on 12 February 2019.

[34] On 30 March 2019 Hogan Lovells reported to Van der Westhuizen as follows:

> "*With regard to payment of settlement amount, we have reminded our client to do so and hopefully payment will be effected in due course. As indicated previously, our client has mobility and functional impairments and as such, we implore on you and your client to be patient in this regard*."

[35] It subsequently appeared that the RAF had authorized payment to the defendant on 22 July 2015. Van der Westhuizen did not have any direct evidence as to when the defendant had received the payment, but Campbell Attorneys only received the payment from the defendant the day after it had lodged a complaint on behalf of the plaintiff with the LPC on 19 March 2019.

[36] Van der Westhuizen's evidence in chief concluded with him confirming having taken photographs of the plaintiff at his first consultation in Campbell Attorneys' offices and had supplied them to a medical practitioner, Dr Schutte for purposes of assisting in the completion of a new RAF4 form.

[37] Cross-examination of Van der Westhuizen started out by debating the differences between the RAF1 and RAF4 forms and the application of the narrative test for purposes of determination of seriousness of injuries would be explored in order for the plaintiff to qualify for general damages when he had already qualified automatically in terms of the predecessor to the Road Accident Fund Act. Nothing much turns on this as the parties were *ad idem* that the plaintiff had at all relevant times been entitled to claim non-patrimonial damages.

[38] A lot of time in cross-examination was also spent on where Van der Westhuizen would have obtained instructions or found source documents from whence he had drafted the particulars of claim and, if he only had regard to the hospital records, from where he would have obtained any indication of the plaintiff's broken teeth. Van der Westhuizen answered as best as he could without his file notes that he referenced the plaintiff himself, the hospital records and Dr Schutte's report as his sources. What was also important of Van der Westhuizen's evidence and that extracted in cross-examination, was that there were two sets of hospital records, one for the plaintiff and one relating to his twin brother. The latter had been provided by the defendant.

[39] Dr Schutte testified on a virtual platform by agreement between the parties. He was in private practice when he saw the plaintiff on 17 May 2016 at his medical offices. These were in Kempton Park where he had practiced as a General Practitioner for many years before moving to Funda Medical in Midrand. He had completed the RAF4 form before his move to Midrand.

[40] He explained the contents of the RAF4 form and the changes in legislation which required a whole person impairment (WPI) determination after 2008. He confirmed the contents of the report as correct except for a discrepancy regarding the date of the accident. He also confirmed that the plaintiff was first admitted to the Far East Rand Hospital and then transferred to Pholosong on 30 May 2007. He explained the WPI summary and the references to the AMA guidelines. He confirmed that he obtained information from the plaintiff himself and from hospital records available to him at the time of examination. The relevant portion of his report was read into the record and read as follows:

> "4.*1* *Describe the nature of the motor vehicle accident: Passenger in vehicle, involved in accident, ambulance to Far East transferred to Pholosong Hospital.*
>
> *4.2* *Medical treatment rendered from date of accident present: Treated for fracture L wrist, radius, multiple lacerations, facial abrasions, loss of teeth, POP applied.*
>
> *4.3* *Current symptoms and complaints: Painful L wrist, forearm, struggles with heavy objects, work, AODL, facial scarring, disfigurement bothers him.*

4.4 *Diagnosis: L fracture, L wrist, radius, multiple symptoms, facial disfigurement.*

4.5 *Conclusion regarding physical examination: Rom L wrist, forearm, mild muscle atrophy, 4/5… power, facial disfigurement.*" (AODL and Rom were explained as abbreviations for "activities of daily living" and "range of movement" respectively).

[41] In cross-examination Dr Schutte was queried about why he had asked for a radiology report. His medical reason was that the plaintiff was 13 years old at the time of the accident and that was a fast growing age. With any fracture close to the wrist and any inter-articular injury, one would see damage or degeneration. Here there was a restricted range of motion or atrophy which indicated a risk of future problems. The fracture may act as a baseline to compare the condition thereof in future. The main reason was medically indicated and in order to examine pathology on a next date. The suggestion was that the radiology report indicated no abnormalities and Dr Schutte conceded that the healing was successful and that there was no displacement. He also indicated that although he had mentioned Far East Rand Hospital, the documents were illegible and incomplete and only the Pholosong records were legible. As the hospital records only included a reference to the mouth area but did not refer to any loss of teeth, he obtained details therefrom from his observation on the day and from the plaintiff.

[42] The above evidence concluded the plaintiff's case.

[43] Ms Laurel Theron was the defendant's first witness. She had worked at Selwyn Drobis Attorneys from January 2013 to July 2015. She was not legally trained and worked as the office administrator. Her responsibilities were getting documents from clients and other parties and liaising with the RAF and with

clients. She reported on all her activities to the defendant. She was the one who saw to the obtaining of accident reports and copies of identity documents. She would also "organise" offers received from the RAF. This she would give to the defendant to check. He would then either instruct her to accept the offer or to "push forward".

[44] When an offer was deemed to be acceptable by the defendant, she would call the client, inform him/her of the offer and tell the client that she had discussed this with the defendant. She would then relay to the client that the defendant thought the offer to be acceptable and when the client accepted the offer she would revert back to the defendant.

[45] She could not recall any of the relevant documents in the present matter but recall that mostly the defendant would sign the documents. She had never come across a case where a client had not accepted the offer on the advice of the defendant.

[46] Ms Theron confirmed the list of telephone conversations referred to in paragraph [22] above as one of the documents that she had compiled to record calls to the RAF and to the plaintiff. All the notes on that list were completed in her handwriting and her signature appears of the bottom thereof. She had also made the following notes on a separate blank page:

> "*Two sons in car → Pholosong →* cell →→→first year (UJ)*"

[47] Ms Theron also confirmed a file update note which read as follows:

> *"CONCLUSION: AWAIT RESPONSE FROM FUND*
>
> *UPDATE ON FILE REQUESTED - OFFER*
>
> *SUMMONS DONE (2012/GVDL)*

PHONED FUND, TO SOURCE HANDLER: n[…]

DATE: 2015-06-04

CLAIMANT: M[…], PI obo M

SIGNED OFF: LAUREL THERON (signature)"

[48] As to the actual offer and the acceptance thereof she didn't know who wrote her name on the acceptance document and who ostensibly signed on her behalf but she confirmed that the offer was actually accepted on behalf of the plaintiff.

[49] In cross-examination Ms Theron testified that the defendant was not often at the office during 2015 as he was wheelchair bound. They mostly communicated by phone. She also confirmed that the RAF had initially repudiated the claim, incorrectly not having taken into account that the plaintiff was a minor at the time. This was corrected in writing by a letter from the defendant dated 25 May 2015 which read as follows:

"*The aforementioned matter was repudiated by yourselves on the grounds of the matter being lodged late, however it obviously did not come to their attention that the claimant was a minor at the time of the accident and has only just turned 21 this year, I have therefore amended the RAF1 as per request and attach it hereto, please we could receive an offer on this matter as it was wrongly repudiated and needed to get it settled ASAP.*

Kind regards.

Laurel Theron

(<u>SELWYN DROBIS</u>)"

[50] It was after receipt of this letter that the RAF made the offer which was accepted as already explained.

[51] Counsel for the third party (the plaintiff's father) also cross-examined Ms Theron. This started by the explanation in the defendant's letter of 12 December 2016 to Van der Westhuizen that they had last spoken to the client in May 2015. This was contrasted with Ms Theron's notes who indicated that she had spoken to their client on 8 July 2015. She could not explain the difference but also could not identify the signature on the letter of 12 December 2016 which was sent after she had already left the defendant's office. She was confronted with the plaintiff's father's version that he never spoke to her about the settlement of the claim and that his power of attorney to the defendant had lapsed when the plaintiff had reached the age of majority in 2012.

[52] By agreement between the parties, the defendant testified by way of an arranged virtual hearing of his evidence. He was wheelchair-bound but his evidence was clear. He testified that he had been a practicing attorney for 42 years and only handled claims against the RAF (or its predecessor). He practiced in Sandton and always had staff working for him, mostly administrative and secretarial. He could not recall having had any other attorneys in his office and has been a sole practitioner since 2008. He has been suffering from multiple sclerosis for a number of years and was confined to a wheelchair. He also had difficulty in using his hands and over the years his physical condition had deteriorated but his memory remained good.

[53] He recognized the power of attorney provided to him by the plaintiff's father which gave him the obligation to execute a claim on behalf of the plaintiff. He could not however recall having ever met the plaintiff or his father and the signature at the bottom of the power of attorney might have been that of Ms Theron. He was not present when it was signed.

[54] As to the customary process in his office, he testified that ordinarily, a client would "come in". Either he or a staff member would question the client and would present him or her with a power of attorney and explain the contents thereof to the client. Ms Theron was very experienced and he delegated the duty of obtaining powers of attorney to her. He could not however remember who his secretary was in 2008. He reiterated however that he would have remembered the plaintiff and his father as he remembered most of the clients that he had personally consulted with.

[55] When asked about his personal involvement in the matter, he remembered having seen medico legal reports and having received the offer from the RAF. He remembered having considered it and telling Ms Theron to phone the client to say that he (the defendant) thought the offer reasonable and that the client should accept it. He did not make notes in the office file but his secretary or admin staff did so. Despite this, he maintained that he was actively involved in his practice except when he got tired during the day, when he would leave early and go and have a rest.

[56] When asked on what basis he came to the conclusion that the offer was a reasonable one he stated that "*those days that was a reasonable offer*". He testified that after having received the offer he looked at a few reports on similar injuries contained in *Quantum of Damages* by Corbett & Buchanan (which he referred to as the "Bible") and, based on this, he considered that the offer was reasonable.

[57] When he was referred to documents indicating that the plaintiff was one of a set of twins, he stated that it never came to his knowledge that there were two sons and he did not know that at the time of the acceptance of the offer. He was not aware of Ms Theron's note in the file that there were two sons in the motor vehicle that was involved in the accident.

[58] The defendant was asked whether he knew at the time of the acceptance of the offer that the plaintiff was a major and he said "*ja, I think I did*". He could however not recall whether he told Ms Theron to also engage with the plaintiff when she spoke to the father. He could not recall who wrote the letter in December 2016 indicating that last contact with the client was in May 2015 but conceded that it does seem to be a mistake as the claim was only finalised in July 2015.

[59] The defendant confirmed that the offer was accepted on his advice and that his particulars and practice number was reflected on the acceptance of the offer. Whoever may have signed the acceptance had been authorized by him at the time although he could not remember who did so. If he was not in the office he usually asked "a legally qualified colleague".

[60] In respect of the issue of the plaintiff being one of a set of twins the defenant was referred to admission documents of both M[…]1 M[…] and M[…]2 M[…]. The defendant responded that he thought the former was a shortened name of the latter and that he did not know that they were twins.

[61] The defendant was also quizzed about why, if he had already received a power of attorney in 2008, the claim was only lodged with the RAF in 2011. His answer was that it was "possible" that "we" were waiting for certain things or did not hear from the client.

[62] When asked about the delay from when Campbell Attorneys had approached him in 2016 to the eventual payout in March 2019, he stated that he was waiting for instructions from his client before paying out. When doing so he apparently still regarded the plaintiff's father as the client.

[63] Following on the above, the defendant was quizzed about the letter sent by him on 25 May 2015 protesting against the RAF's repudiation of the claim. This is the letter wherein the defendant stated that the plaintiff "has only just turned 21 this year". When confronted with the fact that, once the plaintiff had reached the age of majority, the power of attorney obtained from his father fell away, the defendant's response to this anomaly in his conduct was that he was "trying to think if he actually knew of this letter". He conceded that he must have been aware of it but could not recall it. He stated however that after he had written to the RAF about the incorrect repudiation he asked for an amended offer and sent an "amended MMF1 form" wherein the plaintiff was reflected as the claimant.

[64] Pursuant to the above, the defendant was confronted with the fact that, at the time of acceptance of the offer, the plaintiff and no longer his father, was the actual client. When asked why the defendant then attempted to obtain instructions from the father, he said "*I must be honest, I can't remember what happened at the time … we did it on the basis that we thought was correct*".

[65] The defendant was also cross-examined by counsel for the plaintiff's father. When told that the plaintiff's father would deny that anyone phoned him about any settlement offer on 8 July 2015 and that he gave an instruction to accept the offer, the defendant simply denied these statements. He also however, denied that he would not have been entitled to rely on any power of attorney by the plaintiff's father after the plaintiff had become a major on 6 February 2012.

[66] That concluded the evidence for the defendant.

[67] The plaintiff's father testified that he was still employed at Ferro Industrial Metals in Brakpan as he had been at the time of the accident. On the day in question, he had received a call at his place of employment that his children had been involved in an accident and taken to hospital. Upon his arrival at the Far East Rand hospital he found the insured driver, being a family friend and both twins. The plaintiff was lying in a ward on a bed with his left wrist in a bandage and his face "damaged". The plaintiff's brother M[…]1 was not as injured as the plaintiff although he had "bumped" his head. The next day the plaintiff was transferred to Pholosong Hospital from where he was discharged. He was approached by "people" who said they would "help" him to claim. Through these "people" he had made contact with the defendant's office where he spoke to a lady and signed documents at her request.

[68] The plaintiff's father confirmed his signature on the power of attorney dated 24 October 2008. He was also subsequently told that there were documents "short". He was the one who had obtained the accident report, which he took to the attorneys. He spoke to the attorneys as and when he was contacted for further documents such as copies of identity documents. He was, however not contacted about the R38 000.00 offer and knew nothing about it.

[69] The plaintiff's father was taken through the various hospital records from the Far East Rand Hospital and Pholosong Hospital relating to both the plaintiff and his brother. These documents were however obtained by the defendant's offices and it is not clear when they were received.

[70] Although the plaintiff's father was adamant in his denial of the acceptance of an offer, he was somewhat uncertain about when he last spoke to

the attorneys and when he last told his son that he had not heard from them for "a long time".

[71] That concluded the evidence for the third party.

Evaluation

[72] Before dealing with the issues regarding breach of contract and lack of a mandate as pleaded by the plaintiff, it is apposite to state the following objective facts as gleaned from the documents relating to the claim/s instituted by the defendant against the RAF:

72.1 The first claim form lodged by the defendant's office with the RAF on 12 August 2011 indicated the plaintiff's father as the claimant. The plaintiff was in turn indicated as the injured person. Referring to him, the form initially read "passenger" but this was later deleted and in manuscript the word "pedestrian" was added. In the medical report which accompanied the form, the injured person was however indicated as M[…]1 M[…] with only lower limb injuries, save for a soft tissue injury which resulted in a painful left elbow and an abrasion of the left hand. The medical report was completed on 19 January 2009 by a medical doctor at the Far East Rand Hospital.

72.2 Summons had been issued by the defendant on 5 April 2012 and it was served on the RAF on 13 April 2012. In the summons the plaintiff's father was indicated as acting on the plaintiff's behalf in his capacity as father and/or natural guardian. The injuries sustained by the plaintiff were indicated in paragraph 6 of the particulars as "*injury to the left elbow … injury to the left hand*". Based on this, general damages of R80 000.00 were claimed.

72.3 In the "amended" claim form submitted by the defendant to the RAF for purposes of settlement, the claimant was indicated therein as being the plaintiff and he was described as having been a passenger. No new medical report accompanied this claim form.

72.4 The only power of attorney ever issued to the defendant, was that of the plaintiff's father dated 24 October 2008. At the time that the RAF's offer was accepted, the plaintiff had already become a major on 6 February 2012 upon attaining the age of 18. Despite the defendant erroneously referring to 21 years as age of majority in his subsequent letter to the RAF, he had not obtained any power of attorney from the plaintiff (at any age) nor had he or his staff ever consulted with the plaintiff.

[73] It is trite that an attorney who undertakes a mandate such as the one in question is considered to hold himself out as possessing the necessary skills and to discharge such mandate diligently. Such an attorney is liable for damages occasioned to by his/her negligence in the discharge of the duties emanating from such a mandate.[1] Once the defendant had accepted the power of attorney, his mandate was, in the words of the document, to "... *investigate the circumstances relating to [the] accident ... proceed after the initial statutory time period of 120 days from date of lodgment with issuing of summons against the Road Accident Fund [and] to take the necessary action ... to recover ... payment from the Road Accident Fund*".

[74] The acceptance of the mandate furthermore constituted an agreement between the plaintiff's father, acting on the plaintiff's behalf, and the defendant as their attorney. This obliged the defendant, either personally or through others

[1] *Mlenzana v Goodrick & Franklin* 2012 (2) SA 433 (FB) at paras [96] to [101].

under his care "*... to exercise the knowledge, skill and diligence to be expected of an average practicing attorney ...*".[2]

[75] It is quite clear from the evidence that the defendant has breached the terms of the abovementioned agreement and negligently discharged his obligations as an attorney, in the following respects:

75.1 he failed to properly consult with the plaintiff and his father;

75.2 he failed to properly exercise care over the secretarial and administrative staff dealing with the claim;

75.3 he failed to properly lodge a claim reflecting the plaintiff's injuries (and not that of his brother);

75.4 he failed to properly pursue a claim for the recovery of the plaintiff's loss when instituting action in the Magistrates Court. He incorrectly reflected the plaintiff's injuries in the particulars of claim;

75.5 he clearly relied on these incorrect facts when considering the offer made by the RAF, resulting in an under-settlement of the claim;

75.6 he failed to obtain a power of attorney from the plaintiff who had attained age of majority prior to the purported settlement which fact was or must have been known to the defendant.

[76] Even if the version of the defendant and that of Ms Theron were to be accepted, they erroneously relied on the telephonic acceptance of the offer by

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[2] See: *Mazibuko v Singer* 1979 (3) SA 258 W at 261C with reference to *Mouton v Die Mynwerkers Unie* 1977 (1) SA 119 A at 142 to 143.

the plaintiff's father, who only did so by relying on the erroneously based advice given by the defendant.

[77] The ineluctable conclusion is that the plaintiff has established that the defendant has acted negligently and has breached his obligations. On all probabilities, the indications are that the actual amount of damages suffered by the plaintiff in the motor vehicle accident exceed the amount of the purported settlement. The defendant should be liable for the difference.

[78] The defendant cannot rely on the alleged consent given by the plaintiff's father at the time when the father was no longer entitled to do so. There was no evidence of any authority given by the plaintiff to his father after he had attained the age of majority to still represent him in the claim. The fact that the defendant had accepted this to be the position, is evinced by his lodging of a second claim form with the RAF wherein he reflected the plaintiff, as a major in his own right, as the claimant. The claim for an indemnity against the third party is therefore unsustainable. The defendant has not, as initially pleaded in his third-party notice, provided any evidence that the mandate or power of attorney obtained from the plaintiff's father, was anything else than the written power of attorney. The notice, insofar as it alleged a partly oral mandate, was not therefore supported by any evidence and cannot be upheld.

Costs

[79] In the particulars of claim, the plaintiff simply claimed costs of suit. By default, this would mean on a party and party scale. In the plaintiff's futher plea to the third-party notice, the dismissal of the claim against him was also claimed simply with reference to costs (being party and party costs). In the heads of argument submitted on behalf of the plaintiff, however, the argument was made out that both these sets of costs should be on the scale as between attorney and

client. For this reliance was placed on *SA Druggists v Beecham Group (Pty) Ltd*[3].

[80] Punitive costs may be warranted when a party's conduct in respect of the claim itself and "throughout the proceedings" justify the award of such costs or where it is awarded to display the disapproval of a court.

[81] It is clear that the defendant has manifestly and at various times and in various instances failed to uphold the honour and dignity of the attorneys' profession to always diligently and scrupulously discharge a duty to a client. In my view and in the exercise of the court's discretion, such conduct justifies the expression of a court's disapproval by way of a punitive costs order.

[82] The same applies to the defendant's attempt to hold the plaintiff's father liable in the same circumstances. Whilst it is correct that the power of attorney authorized the defendant to settle the case "in his own discretion" (and without even going into the issue of whether such a clause is morally justifiable or *contra bonos mores)*, it cannot be gainsaid that such a discretion could only properly have been exercised upon true and correct facts, diligently established. The defendant has not done so. In fact, up to the point of delivery of closing submissions, the defendant still maintained that he was *"... mandated to accept the offer without prior approval ...*". In my view this conduct also justifies the reflection of disapproval by way of a punitive cost order.

Orders

[81] In the premises the following orders are made:

1. The defendant is declared to be liable for the difference between whatever loss the plaintiff may prove to have suffered in respect of a

[3] 1987 (4) SA 876 T.

claim against the Road Accident Fund pursuant to a motor vehicle accident which had occurred on 30 May 2007, and the amount of R30 000.00.

2. The determination of the quantum of the above loss is postponed *sine die*.

3. The defendant's claim against the third party is dismissed.

4. The defendant is ordered to pay the costs of the plaintiff and the Third Party on the scale as between attorney and client. Counsel's fees shall be taxable at scale B.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 17, 18 and 19 November 2025

Judgment delivered: 7 April 2026

APPEARANCES:

For the Plaintiff:	Adv G Jacobs
Attorney for the Plaintiff:	Campbell Attorneys, Pretoria
For the Defendant:	Adv L Segeels-Ncube
Attorney for the Respondents:	Eversheds Sutherland South-Africa Inc., Johannesburg

c/o Pretoria

For the Third party:	Adv H R du Toit
Attorney for the Third party:	Van den Berg Attorneys, Pretoria