

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case no: 18884/2021

In the matter between:

DEBRA LEE ROZOWSKY

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: *Debra Lee Rozowsky v Road Accident Fund* (Case no: 18884/2021) [2026] ZAWCHC (7 May 2026)

Coram: LOUW AJ

Heard: 29 April 2026

Delivered: Electronically on 7 May 2026

Summary: The RAF refused to compensate the plaintiff for past hospital and medical expenses incurred in respect of her deceased husband, who died in the accident, on the basis that these had been covered by his medical aid, notwithstanding binding authority from the full court in this Division and confirmation by the SCA of the RAF's liability – The RAF appeared to rely on unlawful, non-retrospective directives and the speculative prospect of a future appeal not yet instituted and requiring condonation – The court rejected this stance and held the RAF liable.

ORDER

- 1 The defendant shall pay to plaintiff's attorneys of record the sum of R 268 850.85 (two hundred and sixty-eight thousand eight hundred and fifty rand and eighty-five cents), which is in respect of the plaintiff's past hospital and medical expenses.
- 2 The capital amount referred to in paragraph 1 above shall be paid to plaintiff's attorneys of record by means of an electronic transfer of funds, which amount is to be paid within 180 (one hundred and eighty) calendar days from the date of this order.
- 3 The defendant shall pay the plaintiff's taxed or agreed costs on the High Court scale as between party and party, including, for the sake of clarity, but not limited to, the costs as set out hereunder.

- 4 The costs shall include the taxed or agreed fees of plaintiff's counsel, including but not limited to her consultations, preparation of written submissions and trial preparation, as well as her day fee in respect of the postponement of trial on 18 March 2026 and the trial on 29 April 2026.
- 5 The plaintiff shall, in the event that the costs are not agreed, serve the notice of taxation on the defendant.
- 6 The payment of the legal costs shall be payable 180 (one hundred and eighty) calendar days following settlement or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.
- 7 Payment of the capital and costs shall be effected directly to the plaintiff's attorneys of record by means of an electronic transfer into the trust account mentioned below.
- 8 The defendant shall be liable for interest on the capital amount at the prescribed rate of interest from 14 (fourteen) days from the date of this order to the date of final payment.
- 9 The defendant shall be liable for interest on the legal costs at the prescribed rate of interest from 14 (fourteen) days following settlement of the costs or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.

10 The plaintiff shall not proceed with a warrant of execution in respect of the capital and costs prior to the expiry of the said 180 calendar days.

11 Plaintiff's attorneys' trust banking account details are as follows:

Bank:	ABSA BANK
Account Holder:	LOWE & PETERSEN
Branch:	Adderley Street, Cape Town
Account Number:	4[...]
Branch Code:	312-109
Ref:	L/ROZ1/0001

JUDGMENT

Louw JA:

Introduction

[1] The plaintiff is the wife of the deceased, Mr Paul Zeev Rozowsky ('the deceased'), who was involved in an accident on 22 January 2021. The defendant is the Road Accident Fund ('RAF'), a juristic person established under the Road Accident Fund Act ('RAF Act'), as amended. In terms of that Act, the RAF serves as the statutory insurer

tasked with compensating persons injured in motor vehicle collisions arising from negligent driving.

- [2] The deceased was a pedestrian when he was struck by a motor vehicle driven by an insured driver. The plaintiff alleges that the collision was caused solely by the insured driver's negligent driving. As a result of the collision, the deceased sustained fatal injuries and passed away on 27 January 2021.
- [3] The plaintiff's summons initially included claims for past medical expenses and funeral costs. The merits were, however, settled in the plaintiff's favour, and the claim for funeral expenses has since been resolved between the parties. The matter accordingly proceeds only on the remaining quantum.
- [4] The plaintiff initially claimed a higher amount for past hospital and medical expenses. The parties have since agreed on the quantum of the plaintiff's loss, leaving only the issue of the RAF's liability. The agreed amount is R 268 850.85, representing hospital and medical expenses paid by Discovery Medical Scheme ('Discovery Health'), the plaintiff's and the deceased's medical aid scheme. The RAF disputes its liability to reimburse this amount on the basis that it has already been paid by the medical aid scheme and the plaintiff not being out of pocket.
- [5] The matter was set down for trial on 18 March 2026, but was later postponed and the trial took place on 29 April 2026.

Factual background

- [6] In the past, the RAF compensated claimants for proven past hospital and medical expenses, irrespective of whether such expenses had been paid by their medical aid schemes. It subsequently adopted the position that it was not liable where those expenses had been settled by medical aid schemes. This shift gave rise to the first directive, issued on 12 August 2022, which was reviewed and set aside in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*¹ (*‘Discovery Health 1’*) by Mbongwe J in October 2022. The court held that the RAF Act does not exclude benefits received from private medical schemes and interdicted the implementation of the directive. Applications for leave to appeal were refused by both the Supreme Court of Appeal and the Constitutional Court.
- [7] Notwithstanding this, the RAF issued two further directives. The second, dated 13 April 2023, required the exclusion of expenses classified as Prescribed Minimum Benefits or Emergency Medical Conditions. The third, dated 2 November 2023, excluded claims where claimants had undertaken to reimburse their medical schemes.
- [8] These directives culminated in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*² (*‘Discovery Health 2’*), which served before a full court of the Gauteng High Court. The majority held that the subsequent directives were distinguishable and did not contravene the order of Mbongwe J. The minority disagreed, finding them to be

¹ 2023 (2) SA 212 (GP).

² 2025 (3) SA 225 (GP).

in direct conflict with that order and reaffirming that it is unlawful to reject claims solely because a medical aid scheme has paid the expenses. It is common cause that leave to appeal against the majority judgment was granted to Discovery Health, and that appeal remains pending.

- [9] The full court of this Division in *Road Accident Fund v Van Wyk* (*‘Van Wyk’*)³ confirmed that the RAF remains liable for past hospital and medical expenses, notwithstanding payment by a claimant’s medical scheme. Applying the doctrine of *res inter alios acta*, the court held that such payments arise from a private arrangement and do not affect the RAF’s statutory obligations. The *Van Wyk* and *Discovery Health* decisions are accordingly relevant as background to the present matter.

Issue for determination

- [10] The question before this court is whether the RAF remains liable to compensate the plaintiff for past medical expenses notwithstanding their payment by Discovery Health. Put differently, the issue is whether the RAF is liable for medical costs already covered by the medical aid scheme.

Arguments before court

³ (1169/2020; A186/2025) [2026] ZAWCHC 39 (9 February 2026).

- [11] Given that there was consensus on the day of the trial regarding the quantum, and that the only issue for the court was to decide on the liability, no witnesses were called as initially planned.
- [12] Counsel for the plaintiff, Ms Slingers, submits that the RAF has failed to provide any particulars to justify the position it has adopted. The RAF's plea amounts to a bare denial: it places the plaintiff to the proof of the allegations, avers a lack of knowledge, reserves the right to adduce rebutting evidence, and asserts that its refusal to compensate is justified. Counsel contends that, in these circumstances, it is unclear on what legislative provision, RAF directive, or other legal basis the RAF denies liability.
- [13] Plaintiff's counsel also submitted written submissions to the court. Counsel relies on the full court judgment in this Division in *Van Wyk*, which settled the question of whether the RAF is liable for past hospital and medical expenses paid by a claimant's medical scheme. In that matter, the RAF contended that its liability should be reduced because the claimant's medical insurance had already covered the costs. The full court rejected this argument. Applying the doctrine of *res inter alios acta*, it held that the insurance contract is a private arrangement between the claimant and the insurer and does not affect the RAF's statutory obligations. The RAF accordingly remains liable for the full amount of past medical expenses, irrespective of who paid them.

[14] Counsel for the plaintiff further pointed out that the RAF's applications for leave to appeal to the Supreme Court of Appeal ('SCA') and the Constitutional Court in *Discovery Health 2* were unsuccessful. Counsel also emphasised that the full court in *Discovery Health 2* was divided: the majority held that the later RAF directives were distinguishable and did not breach the order of Mbongwe J, whereas the minority found them to be in direct conflict with that order and reaffirmed that it is unlawful to reject claims solely because a medical scheme has paid the expenses. In support of this latter position, the court was also referred to *Basson v Road Accident Fund*,⁴ *Jaffer v Road Accident Fund*⁵ and *Esack v Road Accident Fund*,⁶ all decisions of this Division in which the majority approach in *Discovery Health 2* was not followed.

[15] Counsel for the plaintiff further submitted that this Division has settled the issue in *Van Wyk*, and referred me to the following passage: 'In summary, a settlement by a medical scheme of a claimant's past medical expenses does not relieve the RAF of its legal obligation to compensate the claimant for those expenses.'⁷

[16] Plaintiff's counsel further submitted that *Discovery Health 2* is of no assistance to the RAF and does not constitute authority for the present matter. While counsel for the RAF noted that leave to appeal had been granted to Discovery in *Discovery Health 2* and that the matter was

⁴ (5213/2021) [2025] ZAWCHC 229 (30 May 2025).

⁵ (8418/2020; 4092/2021) [2025] ZAWCHC 136 (20 March 2025)

⁶ [2025] ZAWCHC 27; 2025 (4) SA 201 (WCC) (4 February 2025).

⁷ *Van Wyk* fn 3 above at para 78.

supposedly argued before the SCA in February 2026, counsel for the plaintiff submitted that the outcome of that appeal would, in any event, be of limited relevance. This is so because all three RAF directives relied upon were issued after the accident on 22 January 2021, and the principle against retrospectivity precludes reliance on them.

- [17] No written submissions were filed on behalf of the RAF. Counsel nevertheless submitted, on instructions, that the RAF denies liability for the medical expenses paid by Discovery Health. It was, however, made clear that the RAF does not dispute that the amount of R 268 850.85 is injury-related and was paid by the medical scheme; its dispute is confined to whether it is liable to reimburse that amount. The precise basis of the defence is difficult to discern. It appears to rest largely on a proposed appeal against the full court judgment in *Van Wyk*, on which considerable reliance was placed, as well as on the suggestion that the outcome of the appeal in *Discovery Health 2* may be of assistance to the RAF's case. RAF's counsel indicated that instructions to pursue an appeal in *Van Wyk* have been received, although no papers have yet been prepared. No such appeal has been instituted and, in any event, it would be out of time and require condonation.

Applicable legal principles and discussion

[18] It is evident that the RAF does not dispute that the past hospital and medical expenses of R 268 850.85 arose from the accident, but only denies liability to pay them.

[19] Counsel for the plaintiff submitted that the RAF's denial of liability for the medical expenses paid by Discovery Health is unsustainable. I agree. It remains unclear whether the denial is founded on the RAF's directives, the prospect of a future appeal in *Van Wyk*, or the anticipated outcome of the appeal in *Discovery Health 2*. On any view, the defence appears to rest on the speculative possibility of such appeals. Such reliance is misplaced and does not constitute a valid basis to resist liability in the present matter, and must accordingly fail. The suggestion that liability may be avoided through a prospective appeal in *Van Wyk*, which has not been instituted and would in any event require condonation, does not constitute a defence. Courts determine matters on the law as it stands at the time of hearing, not on speculative prospects of success in future proceedings. This accords with the submission advanced by counsel for the plaintiff. It is also aligned with the view in *Van Wyk*.⁸

[20] I am bound by the decision of the full court in this Division in *Van Wyk* and, in any event, I am in full agreement with it. It is settled law in this Division that the RAF may not refuse claims for past medical expenses on the basis that they were paid by a claimant's medical

⁸ *Van Wyk* fn 3 above at para 56 and *Franko Maphosa v RAF* (1093/2022) [2024] ZAGPJHC 263 (7 March 2024) para 55.

scheme.⁹ That issue has been finally determined, and the RAF has established no proper basis to avoid liability. The lawfulness of the RAF's refusal to pay past medical expenses on the basis that they were covered by a medical scheme has already been finally determined in *Van Wyk* and cannot be revisited through the issuance of new directives, as the issue is *res judicata*.¹⁰

[21] I agree with the plaintiff that, as in *Van Wyk*, the directives are of no relevance. The principle against retrospectivity applies, and the RAF cannot invoke directives to regulate a cause of action that arose before their issuance. This accords with *Van Wyk*¹¹ and is supported by the SCA in *Road Accident Fund v Mudawo and Others* and *Road Accident Fund v Lyton and Others*,¹² which emphasise that such measures cannot operate retrospectively or undermine established legal principles.

[22] I find that the plaintiff has discharged the onus of proving that the RAF is liable for the full amount of R 268 850.85 in respect of past hospital and medical expenses. It is common cause that this amount was paid by Discovery Health. The RAF is accordingly liable for payment of the full amount.

Costs

⁹ See also *Bane and Others v D' Ambrosi* 2010 (2) SA 539 (SCA), where the SCA confirmed that the Medical Schemes Act 113 of 1998 does not extinguish a plaintiff's delictual claim, and that a claimant may recover medical expenses even if they were paid by a medical scheme.

¹⁰ *Van Wyk* fn 3 above at para 89.

¹¹ See *Van Wyk* fn 3 above paras 103-105.

¹² [2026] ZASCA 54 (16 April 2026).

[23] Counsel for the plaintiff submitted that, should judgment be granted in the plaintiff's favour, costs ought to follow the result. Counsel argued for costs on a party-and-party basis.

[24] As an observation, although a punitive costs order was not sought, this is a matter in which such an order would likely have been warranted. The RAF's continued disregard of settled law, the insubstantial nature of its defence, and its persistence in litigating an issue already finally determined have resulted in an unnecessary waste of legal costs, judicial time, and have contributed to delays affecting litigants. While this court retains a discretion to grant a punitive order *mero motu*,¹³ it would not be fair to do so without having afforded the RAF an opportunity to address the Court on that issue. Therefore, no such order will be made.

Order

[25] The following order is made:

- 1 The defendant shall pay to the plaintiff's attorneys of record the sum of

R 268 850.85 (two hundred and sixty-eight thousand eight hundred

¹³ See section 173 of the Constitution. Punitive costs are awarded to mark a court's displeasure at a litigant's conduct and are reserved for truly exceptional cases. As held in *Plastic Converters Association of South Africa (PCASA) v National Union of Mineworkers Union of South Africa and Others* (2016) 37 ILJ 2815 (LAC) para 46, an attorney-and-client costs order is an extraordinary measure, justified only where a party's conduct is clearly vexatious and reprehensible, and intended to express strong judicial censure. This approach is reinforced in *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) where the Constitutional Court held that punitive costs are appropriate only where conduct is plainly scandalous or objectionable (para 9), and may be granted to signify the court's disapproval even absent a specific request (para 97).

- and fifty rand and eighty-five cents), which is in respect of the plaintiff's past hospital and medical expenses.
- 2 The capital amount referred to in paragraph 1 above shall be paid to plaintiff's attorneys of record by means of an electronic transfer of funds, which amount is to be paid within 180 (one hundred and eighty) calendar days from the date of this order.
 - 3 The defendant shall pay the plaintiff's taxed or agreed costs on the High Court scale as between party and party, including, for the sake of clarity, but not limited to, the costs as set out hereunder.
 - 4 The costs shall include the taxed or agreed fees of plaintiff's counsel, including but not limited to her consultations, preparation of written submissions and trial preparation, as well as her day fee in respect of the postponement of trial on 18 March 2026 and the trial on 29 April 2026.
 - 5 The plaintiff shall, in the event that the costs are not agreed, serve the notice of taxation on the defendant.
 - 6 The payment of the legal costs shall be payable 180 (one hundred and eighty) calendar days following settlement or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.
 - 7 Payment of the capital and costs shall be effected directly to the plaintiff's attorneys of record by means of an electronic transfer into the trust account mentioned below.
 - 8 The defendant shall be liable for interest on the capital amount at the prescribed rate of interest from 14 (fourteen) days from the date of this order to the date of final payment.

- 9 The defendant shall be liable for interest on the legal costs at the prescribed rate of interest from 14 (fourteen) days following settlement of the costs or the taxing master's allocator, in the event of taxing the bill of costs, whichever is applicable.
- 10 The plaintiff shall not proceed with a warrant of execution in respect of the capital and costs prior to the expiry of the said 180 calendar days.
- 11 Plaintiff's attorneys' trust banking account details are as follows:

Bank:	ABSA BANK
Account Holder:	LOWE & PETERSEN
Branch:	Adderley Street, Cape Town
Account Number:	4[...]
Branch Code:	312-109
Ref:	L/ROZ1/0001

M LOUW
ACTING JUDGE OF THE HIGH COURT

Appearances

For plaintiff: Adv G Slingers

Instructed by: Lowe & Petersen Attorneys, Town

For defendant: C Hindley

Instructed by: State Attorney, Cape Town.