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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Case no: 6279/2022

In the matter between

R[...] M[...]

(For and on behalf of 'RD')

APPLICANT

And

**MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH,
FREE STATE**

RESPONDENT

In re:

R[...] M[...]

(For and on behalf of 'RD')

PLAINTIFF

And

**MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH,
FREE STATE**

DEFENDANT

Neutral citation: *RM obo RD v MEC for Health, Free state In Re RM obo RD v MEC for Health, Free State* (6279/2022) [2026] ZAFSHC 324 (8 June 2026)

Coram: OPPERMAN J

Heard: 19 March 2026, 7 April 2026, 30 April 2026, further heads of arguments and submissions dated 5 May 2026 and 11 May 2026.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 8 June 2026.

Summary: Medical negligence – future medical expenses – once-and-for-all rule – defendant's reliance on the availability of treatment in the public healthcare system, unsupported by cogent evidence of equivalent, effective and timeous care, did not displace the ordinary delictual position that future medical expenses are compensable in a lump sum best interests of a child remains paramount – principles restated.

ORDER

1 The late filing of the answering affidavit is condoned.

2 The respondent is ordered to make payment to the applicant, within 30 (thirty) calendar days of the granting of this order, of the sum of R2 810 317.00 (two million eight hundred and ten thousand three hundred and seventeen rand) as an interim payment for the medical costs associated with RD's urgent medical, hospital and related care, in terms of Uniform Rule 34A.

3 The aforesaid sum of R2 810 317.00 is to be paid into the trust account of the applicant's attorneys of record, Joseph's Incorporated, the particulars of which are:

NAME: JOSEPH'S INC, TRUST ACCOUNT
BANK: RMB PRIVATE BANK, JOHANNESBURG
ACCOUNT NO: 5[...]
BRANCH NO: 261-251
REFERENCE: M JOSEPH / A CALITZ / D0000014

4 The respondent is to pay interest on the sum of R2 810 317.00 at the rate of 10.5% per annum, calculated from 30 (thirty) days after the granting of this order to date of payment.

5 Pending the establishment of the *inter vivos* trust, and appointment of professional trustee(s), and the assumption of control of the quantum (net capital amount), which this Court will ultimately make at the trial of the matter:

5.1. The applicant's attorney of record is authorised to invest the net capital amount in an interest-bearing account with a registered banking institution in terms of s 86(4) of the Legal Practice Act 28 of 2014, as amended, for the benefit of RD.

5.2. The applicant's attorney of record is further authorised to utilise such funds as ordered in paragraph 2 of this order to make payment of any urgent and reasonable expenses or disbursements, including, but not limited to expenses relating to treatment,

therapy, care, equipment, or related requirements, as a trustee would be empowered to do pursuant to the objects of the anticipated trust; and

5.3 the applicant's attorney of record must immediately appoint a case manager qualified to manage the specific needs of RD for the term indicated in this application to advise him on what would be 'urgent and reasonable expenses or disbursements' relevant to the care of RD. The case manager to be remunerated from the allocated sum in paragraph 2 above.

6 The applicant's attorneys are directed to account fully to the duly appointed trustee(s) for all costs, fees, expenditure and/or disbursements effected from the interim payment(s), upon registration of the trust and payment over of the balance of the award.

7 The respondent shall pay the applicant's party-and-party costs of this application on Scale B, such costs to include the costs of counsel and the costs of 29 January 2026.

JUDGMENT

Opperman J

Introduction and background

[1] This is an interlocutory application for an interim payment in terms of rule 34A(1)¹ read with rule 34A(4)(b)² of the Uniform Rules of Court. The applicant acts in a

¹ Rule 34A(1):

'In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period for the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his claim for medical costs and loss of income arising from his physical disability or the death of a person.'

² Rule 34A(4)

'If at the hearing of such an application, the court is satisfied that—

(a) the defendant against whom the order is sought has in writing admitted liability for the plaintiff's damages; or

(b) the plaintiff has obtained judgment against the defendant for damages to be determined, the court may if it thinks fit but subject to the provisions of sub-rule (5), order the defendant to make an interim payment of such amount as it thinks just, which amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff taking into account any contributory negligence, set off or counterclaim.

(5) No order shall be made under sub-rule (4), unless it appears to the court that the defendant is insured in respect of the plaintiff's claim or that he has the means at his disposal to enable him to make such a payment.

representative capacity on behalf of her minor child, RD. The applicant instituted action against the respondent for damages arising from injury sustained by RD due to the negligence of the respondent's employees. RD was born on 3 August 2020 and suffered brain asphyxia and presents with severe spastic cerebral palsy secondary to hypoxic-ischaemic brain injury following cardiac arrest during anaesthetic induction. Liability has been admitted by the respondent on a 100% basis in respect of the applicant's proven or agreed damages on 7 October 2025 and was confirmed in an order of this Court.

[2] The consequences of the injury are severe. This is the position set out in the founding affidavit and confirmed by the applicant's expert reports.

'6.3. Because of the injury, RD has been left with the following permanent and debilitating deficits, *inter alia*:

6.3.1. Severe cognitive, neurological, and intellectual impairments.

6.3.2. Severe visual impairment, including cortical blindness.

6.3.3. Impaired auditory processing.

6.3.4. Epilepsy.

6.3.5. Non-verbal, unable to engage in expressive communication or interactive play.

6.3.6. Dysphagia, persistent drooling, tongue thrust, poor oral hygiene, and resting with her mouth open, all of which severely affects her, *inter alia*, feeding.

6.3.7. Severe peripheral spasticity and quadriparesis affecting all four limbs, with general paucity of movements, bilateral hip dislocation, fixed flexion deformities of both hips and knees, increased muscle tone in the upper limbs, muscle atrophy, and scoliosis.

(6) The amount of any interim payment ordered shall be paid in full to the plaintiff unless the court otherwise orders.

(7) Where an application has been made under sub-rule (1), the court may prescribe the procedure for the further conduct of the action and in particular may order the early trial thereof.

(8) The fact that an order has been made under sub-rule (4) shall not be pleaded and no disclosure of that fact shall be made to the court at the trial or at the hearing of questions or issues as to the quantum of damages until such questions or issues have been determined.

(9) In an action where an interim payment or an order for an interim payment has been made, the action shall not be discontinued or the claim withdrawn without the consent of the court.

(10) If an order for an interim payment has been made or such payment has been made, the court may, in making a final order, or when granting the plaintiff leave to discontinue his action or withdraw the claim under sub-rule (9) or at any stage of the proceedings on the application of any party, make an order with respect to the interim payment which the court may consider just and the court may in particular order that:

(a) the plaintiff repays all or part of the interim payment;

(b) the payment be varied or discharged; or

(c) a payment be made by any other defendant in respect of any part of the interim payment which the defendant, who made it, is entitled to recover by way of contribution or indemnity or in respect of any remedy or relief relating to the plaintiff's claim.

(11) The provisions of this rule shall apply *mutatis mutandis* to any claim in reconvention.'

6.3.8 No trunk control and only limited head control, she is unable to sit stand or walk independently.

6.3.9 Incontinence of both bladder and bowel.

6.3.10. Complete dependence on caregivers for all activities of daily living.’

[3] The applicant is employed on a fixed-term contractual basis as a teacher at a High School, situated in Mokhotlong, Kingdom of Lesotho. Her current contract was due to expire at the end of May 2026. She earns a monthly remuneration in the sum of LSL 2 500.00 (two thousand five hundred Lesotho Loti). The applicant has been unable to secure permanent employment and, consequently, is compelled to travel to various schools where temporary teaching opportunities arise. The applicant further receives a Social Development Childcare Grant from the Government of Lesotho in the amount of LSL 2 400.00 (two thousand four hundred Lesotho Loti), payable at three-monthly intervals. Payments were received in June 2025 and September 2025, and a further instalment was anticipated in December 2025.

[4] RD’s father, Mr T[...] D[...], is likewise employed on a contractual basis as a construction worker in Lesotho. His current contract is expected to expire during or about August to September 2026. His income is variable, depending on the availability and nature of the work he undertakes, and presently ranges between LSL 4 000.00 (four thousand Lesotho Loti) and LSL 5 000.00 (five thousand Lesotho Loti) per month.

[5] In relation to caregiving arrangements, RD’s maternal grandmother, Mrs M[...] M[...] (M[...]), serves as her primary caregiver and assumes responsibility for her daily care, supervision, and general welfare. This arrangement arises from the nature of the applicant’s employment, which necessitates travel to distant locations and results in prolonged periods away from home. Consequently, M[...] has assumed primary responsibility for RD’s care and well-being. RD and M[...] reside with the applicant’s cousin in M[...] V[...], Peka, Leribe, Lesotho, while the applicant resides approximately 186 kilometers away, rendering daily supervision impracticable.

[6] Due to the demanding nature of RD’s care needs, the applicant has engaged several unqualified and untrained caregivers to assist M[...]. However, owing to the intensity of RD’s condition, there has been a high turnover of such caregivers.

[7] As regards the applicant's financial commitments and ability to provide for RD, both the applicant and Mr D[...] bear financial responsibility for her maintenance, including day-to-day living expenses, care-related costs, and remuneration payable to caregivers. Their financial resources are extremely limited and already under considerable strain.

[8] RD suffers from permanent and debilitating disabilities and requires ongoing medical, hospital, and related care. She has not had access to adequate or appropriate medical and rehabilitative management and is in urgent need of the therapeutic interventions recommended by the various experts who have assessed her. At present, she is reviewed at six-monthly intervals at Universitas Academic Hospital in the Free State and receives medication every three months from Queen Mamohato Memorial Hospital in Maseru, Lesotho. The applicant is required to save funds on each occasion in order to meet the costs associated with travel to these facilities, which are situated approximately 262 kilometers and 133 kilometers respectively from Peka.

[9] Certain experts, including Dr Campbell (a specialist in rehabilitative care), Dr Janse van Rensburg, and Ms G Hughes (physiotherapist), have commented on the inadequacy of the services currently available to RD. This is compounded by the regrettable failure highlighted by this application in the administration of justice in matters concerning minor children, where the Constitution and the Children's Act 38 of 2005 require that their best interests receive paramount consideration. RD was born in 2020, liability was resolved only in 2025, and the court is only now seized with a rule 34A application. The delay illustrates how the justice system can fail children whose needs are urgent and significant.

Relief Sought

[10] In the rule 34A application the applicant seeks an order directing the respondent to:

- a) Pay the sum of R2 810 317.00 as interim payment in respect of RD's urgent medical, hospital and related expenses.
- b) Pay interest on the aforesaid amount at a rate of 10.5% per annum, calculated 30 days from date of service of the order.

c) Pay the costs of this application, including the costs occasioned by the removal of the matter from the unopposed roll of 29 January 2026, on an attorney-and-client scale.

[11] The claim in the main action is the following:

The applicant's claim, in her personal capacity, is as follows:

a)	Personal loss of income:	R3 240.00
b)	General damages:	R300 000.00
	Total:	R303 240.00

The claim, in the applicant's representative capacity on behalf of RD, is as follows:

a)	Extra caregiving expenses from date of injury up to and including the date of any award.	R300 000.00
b)	Future medical and associated expenses:	R23 000 000.00
c)	Loss of earnings and earning capacity:	R3 503 059.00
d)	General damages:	R2 500 000.00
e)	Fees of a trustee/curator to administer funds:	R2 250 000.00
	Total:	R31 553 059.00

[12] The interim payment sought is confined to a period of one year and ten months. It relates only to immediate and necessary medical and related expenses identified by various medico-legal experts.

Issues for Determination

Parties' Contentions

[13] The *respondent*, in summary, submits that Universitas Hospital is sufficiently equipped to provide RD with the necessary medical care, including multidisciplinary therapy and surgical treatment. It submits that, considering the public healthcare defence, the applicant's claim for future medical expenses will be significantly curtailed. The respondent further contends that the minor's profound cognitive impairments will substantially reduce any award for general damages. On this basis, the respondent submits that the applicant has failed to demonstrate that the amount claimed constitutes a reasonable interim payment and seeks dismissal of the application with costs.

[14] The totality of the evidence for the respondent is the opposing affidavit of a

Legal Administration Officer in the Department of Health, Free State (the Department) that opposes the plaintiff's application without specificity. The deponent confirms authority to act on behalf of the MEC for Health and states that she has personal knowledge of the relevant facts. The Department acknowledges the severe and permanent disabilities suffered by the minor child, RD, but contends that the extent of her future needs and the reasonableness of the amounts claimed remain to be independently assessed. The deponent recognised that the Department has already conceded 100% liability and the total claim is approximately R31.5 million, of which R23 million relates to future medical expenses.

[15] Although the plaintiff's medico-legal reports were obtained before liability was conceded, the Department argues that it has not yet had a fair opportunity to appoint its own experts to assess: the nature and extent of the child's injuries and *sequelae*; the reasonableness of the future medical costs claimed; and the viability of the Department's public healthcare defence. No request for a postponement was proffered to this Court to do so.

[16] The Department maintains that Universitas Hospital can provide the majority of the medical and therapeutic services required by the child, including: paediatric care; neurology; ophthalmology; orthopaedics; urology; physiotherapy; occupational therapy; speech therapy; orthotics; dietary services; and dental treatment. The allegations by the plaintiff's experts that Universitas Hospital lacks the necessary resources are strongly disputed. The Department offers to facilitate consultations and treatment at Universitas Hospital and undertakes to provide wheelchairs, orthotic devices and related equipment where necessary.

[17] The Department contends that the plaintiff overstates the likely value of the claim. It argues that recent appellate authority has reduced awards in cases involving profound cognitive impairment. Reliance is placed on expert reports indicating that: the child is largely unaware of her condition; she has profound cognitive deficits; she is non-verbal and cortically blind; and she lacks meaningful awareness of her environment. It is argued that these factors may substantially reduce any award for general damages.

[18] The Department notes that the child's mother is not permanently employed and

contends that she could act as the child's caregiver. The child already receives treatment through public healthcare systems in both South Africa and Lesotho. The costs claimed for various specialists and therapists is opposed, contending that equivalent services are available in the public sector. While opposing the application, the Department indicates that it is seeking a mandate to offer an interim payment of R1 500 000.00. This amount is proposed as a temporary measure to facilitate the child's access to treatment pending determination of the public healthcare defence.

[19] The Department asks the Court to:

- a) Find that the plaintiff has failed to establish that the claimed interim payment is reasonable under rule 34A.
- b) Dismiss the application for interim payment.
- c) Alternatively, consider a reduced interim payment of R1 500 000.00 pending final determination of the public healthcare defence.
- d) Award costs against the plaintiff.

[20] The *applicant* contends that the respondent has failed to adduce any evidence of a sufficiently cogent nature to rebut the prima facie case established. The respondent's reliance on a public healthcare defence, without evidentiary support, is misplaced. The applicant submits that the medico-legal reports filed constitute adequate prima facie proof and satisfy the requirements of rule 34A(2). It is further contended that Universitas Hospital is unable to provide the specialised and timeous treatment required by the minor. The amount sought, it is submitted, does not exceed a reasonable portion of the damages likely to be recovered. The applicant characterises the respondent's opposition as unsubstantiated and inconsistent with its constitutional obligations toward a vulnerable minor child. Ancillary to this are the issues of costs, including the costs occasioned by the removal of the matter from the unopposed motion court roll, and the appropriate scale thereof.

Applicable Legal Principles³

[21] Rule 34A provides a mechanism by which a plaintiff in an action for damages arising from personal injury may obtain an interim payment, provided that:

³ D Harms, *Civil Procedure in the Superior Courts*, Part B High Court, RULE 34A INTERIM PAYMENTS, Last Updated: February 2026 - SI 83.

- a) The defendant has admitted liability; and
- b) The amount sought does not exceed a reasonable portion of the damages likely to be recovered.
- c) The evidentiary threshold is not one of final proof, but rather prima facie proof.
- d) It is well established that medico-legal reports may constitute sufficient documentary proof for purposes of rule 34A, even though their correctness will ultimately be tested at trial.
- e) A plaintiff is, prima facie, entitled to be compensated on the basis that future medical treatment will be obtained in the private healthcare sector.
- f) The defendant bears the onus to adduce cogent evidence to demonstrate that equivalent treatment will be available in the public healthcare system at a lesser or no cost.
- g) Courts have cautioned against reliance on speculative or unenforceable undertakings relating to future public healthcare. Orders must be based on evidence and must be effective and enforceable.
- h) In matters involving minor children, the Court is enjoined to give paramount consideration to the best interests of the child, as entrenched in s 28 of the Constitution and the Children's Act 38 of 2005.

Evaluation

[22] The jurisdictional requirements of rule 34A are clearly satisfied. Liability has been admitted, and the respondent is a public authority with the means to comply with an order for interim payment.

[23] An issue is whether the amount sought exceeds a reasonable portion of the damages likely to be recovered. The applicant has placed before this Court a comprehensive suite of medico-legal reports from a wide range of experts. These reports detail the nature and extent of the minor's injuries and the urgent interventions required as well as the financial implications. At this interlocutory stage, such reports constitute prima facie proof and provide a sufficient factual foundation for the exercise of this Court's discretion.

[24] The respondent, by contrast, has failed to place before this Court any expert evidence to support its contentions. Its reliance on the availability of public healthcare is

not supported by any detailed or cogent evidence demonstrating that equivalent treatment will, in fact, be available to the minor in a timely and effective manner. The submission that Universitas Hospital can provide the required care remains a bare assertion. It does not engage with the specific and complex needs identified in the applicant's expert reports, nor does it address issues of accessibility, timing, or adequacy of such care.

[25] The respondent's reliance on a potential reduction in general damages is misplaced. Interim payments under rule 34A are concerned with medical costs and related expenses, not general damages. Similarly, the contention that the public healthcare defence may reduce the ultimate award does not, without more, justify refusing interim relief. The defence must be supported by evidence of a sufficiently cogent nature, which is absent in this case.

[26] The amount claimed, R2 810 317.00, is modest when viewed against the total damages claimed, which exceed R31 million. It is confined to a limited period and to urgent and necessary expenses. In these circumstances, I am satisfied that the amount sought does not exceed a reasonable portion of the damages likely to be recovered.

[27] The urgency of the minor's condition, coupled with the applicant's limited financial means, underscores the need for immediate intervention. In matters concerning children, the Court must adopt an approach that best serves their interests. To refuse interim payment in the absence of convincing opposing evidence would, in effect, prejudice a profoundly vulnerable child and undermine those interests. The focus is placed on expenses that are both urgent and necessary, with the applicant and her legal representatives being expressly required to exercise maximum restraint and careful consideration when utilizing these funds.

[28] The position is now authoritatively settled by the recent judgment of the Supreme Court of Appeal (SCA), delivered in February 2026. It overturned an Eastern Cape High Court decision that had permitted the Department to provide public healthcare services in place of lump-sum damages. The SCA reaffirmed the once-and-for-all rule: Damages, including future medical expenses, must generally be awarded as

a lump sum. In this case, *T N obo B N v Member of the Executive Council for Health*,⁴ the Supreme Court of Appeal considered whether a provincial health department, found liable for medical negligence, may satisfy a proven claim for future medical expenses by tendering to provide treatment within the public healthcare system, rather than paying a lump sum in damages.

a) The court reaffirmed that, under South African law, damages in delict are governed by the once-and-for-all rule, which requires that a plaintiff's entire loss, past and prospective, be assessed and compensated in a single award. A claim for future medical expenses constitutes patrimonial loss, ordinarily to be compensated by a monetary award enabling the plaintiff to secure appropriate treatment.

b) The SCA held that a court does not possess a general discretion to substitute a lump sum award with an order compelling the plaintiff to accept medical services in kind from the State. Such an approach undermines the once-and-for-all rule, introduces uncertainty, and risks impairing the plaintiff's right to proper compensation. It further raises practical concerns regarding enforcement, adequacy, and continuity of care within an already burdened public healthcare system.

c) The court rejected the contention that considerations of public finance or systemic strain on provincial health resources justify a departure from established principles of the law of damages. To permit such a deviation would impermissibly shift the burden of the State's resource constraints onto individual plaintiffs and would trench upon the separation of powers by effectively sanctioning an alternative compensation regime not recognised in law.

d) Accordingly, the SCA upheld the principle that proven future medical expenses must, in the ordinary course, be compensated by a lump-sum monetary award, and set aside the order of the court *a quo* to the extent that it permitted the defendant to discharge its liability by providing healthcare services *in lieu* of damages.

e) Lump sum damages are the default, and should any reform take place, such reform must be championed by Parliament.

Costs

[29] RD was born in 2020. The litigation concerning the child has been pending since 2022. Matters involving young children demand urgent and diligent attention from all concerned, including legal practitioners. The interests and welfare of the child remain

⁴ *T N obo B N v Member of the Executive Council for Health of the Eastern Cape Government and Others* (383/23) [2026] ZASCA 14; [2026] 1 All SA 500 (SCA) (11 February 2026).

paramount, and prolonged delays in the finalisation of such disputes are inimical to those interests. Where a child is subjected to uncertainty and the attendant consequences of protracted litigation, the prejudice suffered may be significant. Courts cannot countenance unnecessary delays in matters of this nature.

[30] In the circumstances, the respondent must bear the costs occasioned by the delay attributable to 29 January 2026. Furthermore, there is no reason why costs should not follow the result. The respondent shall accordingly also be liable for the costs of this application.

Order

[31] In the result, the following order is made:

1 The late filing of the answering affidavit is condoned.

2 The respondent is ordered to make payment to the applicant, within 30 (thirty) calendar days of the granting of this order, of the sum of R2 810 317.00 (two million eight hundred and ten thousand three hundred and seventeen rand) as an interim payment for the medical costs associated with RD's urgent medical, hospital and related care, in terms of Uniform Rule 34A.

3 The aforesaid sum of R2 810 317.00 is to be paid into the trust account of the applicant's attorneys of record, Joseph's Incorporated, the particulars of which are:

NAME:	JOSEPH'S INC, TRUST ACCOUNT
BANK:	RMB PRIVATE BANK, JOHANNESBURG
ACCOUNT NO:	5[...]
BRANCH NO:	261-251
REFERENCE:	M JOSEPH / A CALITZ / D0000014

4 The respondent is to pay interest on the sum of R2 810 317.00 at the rate of 10.5% per annum, calculated from 30 (thirty) days after the granting of this order to date of payment.

5 Pending the establishment of the *inter vivos* trust, and appointment of professional trustee(s), and the assumption of control of the quantum (net capital amount), which this Court will ultimately make at the trial of the matter:

5.1. The applicant's attorney of record is authorised to invest the net capital amount in an interest-bearing account with a registered banking institution in terms of s 86(4) of the Legal Practice Act 28 of 2014, as amended, for the benefit of RD.

5.2. The applicant's attorney of record is further authorised to utilise such funds as ordered in paragraph 2 of this order to make payment of any urgent and reasonable expenses or disbursements, including, but not limited to expenses relating to treatment, therapy, care, equipment, or related requirements, as a trustee would be empowered to do pursuant to the objects of the anticipated trust; and

5.3 the applicant's attorney of record must immediately appoint a case manager qualified to manage the specific needs of RD for the term indicated in this application to advise him on what would be 'urgent and reasonable expenses or disbursements' relevant to the care of RD. The case manager to be remunerated from the allocated sum in paragraph 2 above.

6 The applicant's attorneys are directed to account fully to the duly appointed trustee(s) for all costs, fees, expenditure and/or disbursements effected from the interim payment(s), upon registration of the trust and payment over of the balance of the award.

7 The respondent shall pay the applicant's party-and-party costs of this application on scale B, such costs to include the costs of counsel and the costs of 29 January 2026.

M OPPERMAN
JUDGE OF THE HIGH COURT

Appearances

For the applicant: L Matsiela

Instructed by: Joseph's Inc.
Dunkeld West

Johannesburg
c/o Honey Inc.
Bloemfontein

For the respondent:

M Salie SC

Instructed by:

State Attorney
Bloemfontein