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

Not reportable

Case no: 2022-2625

In the matter between:

T J SANTI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Santi v RAF* (2022-2625) [2026] ZAFSHC 305 (28 May 2026)

Coram: CRONJÉ AJ

Heard: 17 APRIL 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 9h30 on 28 May 2026.

Summary: Road accident claim – amendment of amount claimed not following the prescripts of rule 28 of the rules of court – heads of argument not requested by court – costs prayed for in applications not foreshadowing any scale of fees other than on party and party scale – amendment of rule 67A on the scale of costs not retrospective – value, importance, and complexity of claim not justifying scale B or C – Fund conceding scale B – discretion exercised to allow scale B for date of trial.

ORDER

1 The defendant is 100% liable for the damages suffered by the plaintiff.

2 The defendant will furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 for payment of 100% of the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supply of goods to the plaintiff arising out of the injuries that he sustained in the motor vehicle collision which occurred on 2 May 2021 and the *sequelae* thereof, after such costs have been incurred and upon proof thereof.

3 The defendant is ordered to pay the plaintiff R1,852,876.90 (one million eight hundred and fifty-two thousand eight hundred and seventy-six rand and ninety cents) for past and future loss of income/earning capacity and general damages within 180 days of delivery of this order.

4 Payment will be made directly into the trust account of the plaintiffs' attorneys, the details of which are:

Holder: VZLR INC
Name of bank: ABSA Business Bank Hillcrest
Account number: 3[...]
Branch Code: 632005

5 Interest shall be paid on R1,852,876.90 *a tempore morae* calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with s 17(3)(a) of the Road Accident Fund Act 56 of 1996 after 180 days, as per the Road Accident Fund Act, until date of payment.

6 Defendant pays reasonable qualifying and reservation fees, where applicable of the plaintiff's experts whose reports were furnished to the defendant, namely:

- (a) Dr JP Marin – orthopaedic surgeon;
- (b) Ms Claire Hearne – clinical psychologist;

- (c) Mr Uwe Wiele – orthotist/prosthetist;
- (d) Ms Grethe Jordaan/Rita van Biljon – occupational therapists;
- (e) Ms K Kotzé – industrial psychologist; and
- (f) Mr J Sauer – actuary.

7 Defendant pays the plaintiff's taxed or agreed party and party costs. In respect of the fees of counsel for 17 April 2026, the defendant pays the plaintiff's costs, counsel's fees to be taxed on scale B.

8 In the event of default on payment of the taxed or agreed costs, interest shall accrue on the outstanding amount at the prescribed statutory rate from 14 days after allocatur or agreement to date of payment.

JUDGMENT

Cronjé AJ

[1] The plaintiff instituted an action in 2022 against the defendant (the Fund) arising from a motor vehicle accident on 2 May 2021 on the R730 road between Welkom and Virginia. The plaintiff was a passenger in one of the vehicles. The plaintiff claimed a global sum of R3,663,386 (initially R1,8 million) for past medical and hospital expenses, estimated future medical treatment, past loss of income, estimated future loss of income, and general damages; the Fund denied liability for the claim. I pause to note that the R3,663,386 was included in an intention to amend the claim, which format did not comply with rule 28 of the court's rules on amendments. The notice of intention to amend was served on the Fund on 27 March 2026 and filed with the court on 30 March 2026. The Fund's defence had not been struck. It was, however, included in a bundle of documents containing 94 pages, purporting to have been done in accordance with the rules on amendments. I tried in vain to find a document that shows that the rule was complied with and the absence thereof was disconcerting.

[2] The plaintiff provided the Fund with a serious injury assessment report (RAF.4)

(the assessment report) on or about 17 August 2023. On 10 October 2025 the expert notices of Dr. U Wiele, Dr J.P. Martin and Ms Rita van Biljon was filed at court. On 10 April 2026 further expert notices in respect of Claire Hearne, Kotze Blake, and Johan Sauer were filed at court. On 16 October 2025, Molitsoane J, granted an order against the Fund to either accept or reject, with reasons, the plaintiff's assessment report and if the Fund fails to comply with the order, the plaintiff is authorised to approach the court to have the defence struck out and the plaintiff be permitted to refer the issue of general damages to the HPCSA for consideration. The plaintiff asked for costs on attorney and client scale, but the court granted cost on party and party scale.

[3] On 24 March 2026, the plaintiff issued an application for default judgment for an order that, *inter alia*, the Fund be ordered to pay 100% of the plaintiff's proven or agreed damages, to issue a certificate in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, to pay R1 118 196 for past and future loss of earnings, that the claim for general damages be referred to the HPCSA, and to pay the plaintiff's costs of suit on a party and party scale to date and the application.

[4] On 2 April 2026, the plaintiff filed an amended notice of motion seeking an order, *inter alia*, to strike out the Fund's plea and defence, an increased payment of R1 158 386, a s 17(4)(a) undertaking, cost of suit, interest on the prescribed rate from 14 days after date of judgment, and that the plaintiff's claim for general damages stand over for determination. Then, on 6 April 2026, the plaintiff filed an application in terms of rule 38(2) to have the experts' affidavits be admitted as evidence and costs to be costs in the cause, alternatively, costs on a scale that the court deems fit.

[5] Mr Marx, on behalf of the plaintiff, filed heads of argument on 16 April 2026; they were not requested by the court.

[6] In respect of costs of the action, he submits that the plaintiff seeks the cost of the application and action on the appropriate scale, including the qualifying, reservation,¹ preparation, travelling and attendance fees of the expert witnesses,² where applicable, and the costs attendant upon the rule 38(2) application.

¹ No proof of reservation was proffered, and if reserved, the experts should, in my view, be present.

² No experts were in attendance.

[7] He presented a draft order that essentially aligns with the order granted on the merits and quantum in this judgment. The only disputes between the plaintiff and the Fund were that Mr Marx argued for counsel's fees to be taxed on scale C,³ and payment to be made within 14 days of the judgment, whereafter the prescribed statutory rate commences.

[8] In respect of costs, Mr Marx argued that if the Fund cooperated, the cost orders as set out in the applications would have been sought. However, should the court disapprove of the request for counsel's fees on scale C, it has to be contemplated that the plaintiff could have asked for costs on attorney-client scale. One has to look at the process that evolved since the summons was issued. The plaintiff, *inter alia*, had to file a notice of bar and then obtain an order before Molitsoane J. The Fund failed to comply with the order, necessitating a further application.

[9] He argued that the matter is complex and that one has to consider counsel's approach. He referred to *Road Accident Fund v Van Wyk (Appeal)*⁴ (*Van Wyk*). The facts in that case differ markedly from what was before me. In the matter before me, the issues regarding the Fund's directives and other courts' judgments thereon were not present. The Fund did nothing to infringe on the dignity and authority of the court. Reference was also made to *Road Accident Fund v Legal Practice Council and Others*⁵ (*LPC*). That case, too, differs considerably from what is before me.

[10] He submitted that the Fund cannot follow its own processes and cannot oppose the relief by merely appearing in court on the date of trial without filing any papers in opposition to the applications. The plaintiff suffered an amputation as a result of the accident, and it has been six years since the accident.⁶ The intention of the draft order submitted is to bring finality to the matter. I pause to note that I could not find an order where the defence was struck, and the Fund was therefore entitled to appear. There are duplicate files, and I could not find the date on which the matter was certified as trial ready. The reason for the duplicate files is not apparent as the documents in both files

³ The heads of argument did not foreshadow a scale of costs, and this submission was startling.

⁴ *Road Accident Fund v Van Wyk (Appeal)* [2026] ZAWCHC 39.

⁵ *Road Accident Fund v Legal Practice Council and Others* [2025] ZAGPPHC 189.

⁶ This is incorrect. The accident took place in 2021, the summons issued in 2022, and a South African Social Security Agency (SASSA) document was provided to the defendant only in July 2025.

carry red ink stamps of the registrar's office. The Fund, in fact, obviated further proceedings by also making an offer on general damages.

[11] In respect of the payment of interest, he argued that the Act is clear on the computation of interest 14 days after judgment or allocatur. The 180-day grace period in terms of practice cannot override the provisions of the Act.

[12] Ms Banda, appearing for the Fund, submitted that there is no complex issue raised but admitted that an offer to settle was not made earlier. The court should consider the dates when all the reports were filed and, in the absence of an offer on general damages, the finalisation of the matter would have been held in abeyance. The plaintiff served reports in May 2025 and July 2025.⁷ It is a run-of-the-mill matter, as nothing is complex, and the merits were settled in March 2026. She submits that an order of costs on scale B would be appropriate. She submitted that it is practise in the Free State Division that the Fund be granted 180 days to pay, after which interest starts to run. The Fund is not in a financial position to make payment within 14 days.

[13] In respect of costs, she referred to *Mashavha v Enaex Africa (Pty) Ltd*⁸ (*Mashavha*) where the court *inter alia* held that the approach to setting a scale of costs under rule 67A(3) should be, first, to identify the appropriate scale in light of the importance, value and complexity of the case, and then consider whether, because of inartful or unethical conduct of the nature identified in rule 67A(2), that scale should be reduced, such that the successful party should not be able to recover counsel's costs to the extent that they would otherwise have been entitled. Importantly, the court held:

'12 It seems to me that the 12 April 2024 amendments can only apply prospectively. This means that a costs order under Rule 67A (3) should be made on cases instituted before 12 April 2024 but heard thereafter. The scale nominated in the order will only apply to work done on the matter after 12 April 2024. Take, for example, a motion instituted in 2023, in which written argument was filed in January 2024, and in which oral argument was presented on 15 April 2024. A party and party costs order on the "C" scale is made on 15 April 2024. The "C" scale will only apply to counsel's preparation and attendances (if they are otherwise recoverable) after 12 April 2024, to the appearance itself, and to any recoverable post-hearing attendances. Fees for work done before 12 April 2024 will be recoverable under the rules applicable to the taxation of

⁷ A SASSA document.

⁸ *Mashavha v Enaex Africa (Pty) Ltd* [2024] ZAGPJHC 387; 2025 (1) SA 466 (GJ).

counsel's costs as they were then.

13 To hold otherwise would either fail to give effect to the rule, or retrospectively revalue legal services purchased under a different dispensation and structure of expectations. Neither of these alternatives is desirable.

...

16 Likewise, the default position set under the rule is that, in the absence of contrary indication, counsel's costs will be recovered on scale "A". Scale "A", it seems to me, is the appropriate scale on which to make an award unless the application of a higher scale has been justified by careful reference to clearly identified features of the case that mark it out as unusually complex, important or valuable. Run-of-the-mill cases, which must be the vast majority of cases in the High Court, should not attract an order on the B or C scales.

...

19 The mere fact that punitive costs were sought by the successful party does not mean that a larger scale of counsel's costs ought to be awarded on the party and party scale. The focus of Rule 67A is not on the conduct of the losing party. It is primarily on the nature of the case, and, secondarily, on the way that the successful party presented it. The misconduct of the unsuccessful party, if any, is irrelevant once a court has declined to award a punitive costs order against them.' (Own emphasis.)

Conclusion

[14] It cannot be doubted that the plaintiff suffered a severe loss when his leg was amputated. He suffered past and future income losses. The Fund conceded the merits in 2026, approximately 9 months after the plaintiff submitted the last documents. The Fund shortened the proceedings by obviating the need for a determination by the Health Professions Council of South Africa.

[15] Section 17(3)(a) of the Act provides that no interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order. The question is why the legislature chose to include the word '*relevant*' in the section and did not merely use the word '*judgment*'. If the intention was to simply make the judgment immediately payable, the inclusion of the word would be nonsensical. My view is that the section applies to an amount awarded. The Fund cannot, in the absence of an agreement, postpone the payment of interest after 14 days. A practice developed in this court to order the Fund to make payment within 180 days,

whereafter interest commences to run in accordance with s 17(3)(a). I am mindful of the judgment in *Jacobs N.O v Road Accident Fund*⁹ where the court held that mora interest arises *ex lege* and not *ex re* between the parties. The court noted that the parties did not agree to exclude liability for mora interest which would or could arise in terms of section 17(3)(a) of the RAF Act, and that the Fund's contention that the court has jurisdiction to grant a reprieve for payment within 180 days is untenable. The court further stated that the Fund in the LPC case sought the court's intervention solely to stay the execution of the court orders and settlement agreements already concluded and not the extension of payment or mora interest, which is regulated by section 17(3)(a) of the Act. The legislature was alive to the administrative challenges that could impact on the prompt payment of the orders and deliberately deferred the running of mora interest by 14 days from the date of the court order. The court concluded that there is no authority for the proposition that the court has the power to disallow mora interest once the debtor's liability for the payment of interest has arisen. The question of discretion or the making of an equitable judgment does not arise.

[16] My interpretation of the wording of the section does not militate against the legislature's intention. I am of the view that the order can be couched in a *relevant* fashion that does not detract from the clear provisions of the section, that considers the reality of the well-known financial difficulties that the Fund faces, and that interest still runs from 14 days after 180 days.

[17] Following *Mashavha* and noting that, to date, there are no judgments differing from its reasoning, taxation of the work performed before the rule came into effect will be dealt with on the basis as before the amendment. This means that scales A, B and C are not applicable. In the applications of 24 March 2026, 2 April 2026 and 6 April 2026, the plaintiff asked for costs on the ordinary scale with no reference to the scales in rule 67A. Those applications were not complex and do not deserve to be taxed on a higher scale than scale A. In respect of the balance of the work performed after the rule came into effect, prior to 17 April 2026, costs on scale A will be fair and reasonable. All litigation is important for litigants; there is, in my view, no distinguishable factors that make this case more important than others. The matter is not complex. The quantum

⁹ *Jacobs N.O v Road Accident Fund* [2024] ZAGPJHC 21.

(value of the claim) was settled approximately R1.7 million lower.¹⁰ The only reason why a higher scale should be considered for the appearance on 17 April 2026 is based on Mrs Banda's concession that scale B may be appropriate. To ensure that there is no doubt about the costs, they will be specified in the order.

Order

[18] In line with practise, the following order is made:

- 1 The defendant is 100% liable for the damages suffered by the plaintiff.
- 2 The defendant will furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 for payment of 100% of the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supply of goods to the plaintiff arising out of the injuries that he sustained in the motor vehicle collision which occurred on 2 May 2021 and the *sequelae* thereof, after such costs have been incurred and upon proof thereof.
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¹⁰ Calculated on the amounts pleaded.

the Road Accident Fund Act 56 of 1996 after 180 days, as per the Road Accident Fund Act, until date of payment.

6 Defendant pays reasonable qualifying and reservation fees, where applicable of the plaintiff's experts whose reports were furnished to the defendant, namely:

- (g) Dr JP Marin – orthopaedic surgeon;
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PR CRONJÉ
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

D Marx

Instructed by:

VZLR Inc., Pretoria

Du Plooy Attorneys, Bloemfontein

For the defendant:

P Banda

Instructed by:

State Attorney, Bloemfontein