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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO: 2241/ 2023

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~

(3) REVISED: YES/NO

DATE 28/07/2026

SIGNATURE

In the matter between

K[...] G[...] OBO MINOR

PLAINTIFF

and

THE ROAD ACCIDENT FUND.

DEFENDANT

*This judgment was handed down electronically by circulation to the parties' representatives by email.
The date and time for the hand-down of the judgment is deemed to be 28 July 2026 at 15H30*

JUDGMENT

MONENE AJ

Introduction

- [1] The plaintiff instituted action proceedings on behalf of her minor child against the defendant for damages arising from a motor vehicle accident which occurred on 27 March 2022 wherein the minor child was a passenger.
- [2] Merits or liability has already been settled 100 percent in the plaintiff's favour and the parties are in agreement that this court's jurisdiction on the determination of general damages has, for the time being, been ousted by the defendant's failure to make an election regarding whether the injuries sustained by the plaintiff are of a serious nature or not. Quantum is still to be determined.
- [3] The defendant raised a lodgment-stage based special plea of non-compliance with section 24 of the Road Accident Fund Act 56 of

1996("The Act") contesting the legal availability of the plaintiff's claim for loss of earnings and future medical care on the basis that the plaintiff's RAF 1 form had listed only general damages as a claim. This special plea was the only aspect of this matter, which was argued before this court. Heads of argument by both counsel were also only submitted in relation only to this special plea.

- [4] I proceed then to first determine the special plea, the one live issue before me, the result of which will dictate whether the loss of earnings and future medical care aspects are to be enrolled and entertained in the future possibly with general damages or not.

The defendant's special plea: Non-compliance with section 24 of Act 56 of 1996

- [5] Pithily, the defendant's gripe is that because the plaintiff's RAF 1 form submitted when lodging the claim only mentioned a claim of general damages, all the other claims spoken to in the particulars of claim are unenforceable for want of compliance with section 24 of the Act.
- [6] The plaintiff contests the defendant's special plea relying, in the main, on the "once and for all rule", a principle of our law of damages recently re-

affirmed by the Supreme Court of Appeal in **TN obo BN v The Member of the Executive Council for Health of the Eastern Cape Government and Others (383/23) [2026] ZASCA 14**. That rule or principle provides that all damages must be claimed in single proceedings and essentially be treated as an indivisible lump sum.

[7] Having given ear to the parties' counsel making submissions before me and perused their subsequently filed heads of argument on the issue, I have no hesitation in dismissing the special plea on account of the following considerations:

7.1 My reading of the purpose for which the RAF 1 form is to be submitted in lodgment by a plaintiff is that it is meant, in the main, to give the Road Accident Fund adequate facts to investigate a road accident pursuant to settling or litigating. It is not a form aimed at educating the Fund, the main organ versed with and charged with executing the Act, about what claims are available in law on a given set of facts at all such that if a particular head of damages is not listed in the form then it curiously ceases to exist as part of a plaintiff's claim. To argue context-divorced strict compliance and raise points in limine of the kind raised in this matter and claim that the peremptory tone of section 24 means that, regardless of germaneness and peripherality, all t's must be crossed and all i's dotted in the RAF 1 form if a claim is to begin to hold, is to

completely misunderstand the purpose of the Act and consequently miscarry justice. Such pedantic, obstructionist and vexatious legal gymnastics are, in my view, constitutionally vulgar and generally inconsistent with principles of fairness and justice in the context of an Act whose mandate is social security in favour of and not against vulnerable members of our society, particularly the indigent, the elderly and the young. When the question is asked what prejudice is suffered by the Fund if a form is incomplete on account of some peripheral detail, there is always no satisfactory answer forthcoming from this defendant which, it is my firm view, often misconprehends its mandate as one which must lean more in favour of miserly paying or not paying victims at all as opposed to being a social security agent which is supposed to be no self-serving ordinary litigant. Courts must never be derailed by vexatious legal gymnastics and peripheral immaterial compliance side-shows from interpreting the RAF Act as a social security legislation aimed, as stated in **Pithey v Road Accident Fund (319/13) [2014] ZASCA 55 at para 18**, *“at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle. It must be interpreted purposively, and technical defects should not defeat substantive rights. What is required is substantial compliance not perfection”*.

7.2 The rationale of the once and for all principle, which has been applied in different contexts relating to non-compliance with section 24 or alleged prescription of parts of a plaintiffs' claims, is, in my view, applicable in this matter. In pith that rationale, as it informs my decision, can be gleaned from the following strands of reasoning from a few authorities:

7.2.1 In **Evins v Shield Insurance 1980(2) SA 814(A)** Corbett JA expressed the law as follows:

"A plaintiff who suffers bodily injury will at common law and under legislation have a single cause of action in respect of damages claimable by him whether such damages relate to patrimonial loss or constitute a solatium for pain and suffering, disfigurement, disability, etc."

7.2.2 In **Nonkwali v RAF (105/2007) [2008] ZASCA 3(6 March 2008)** at **para 8** Maya J A (as she then was) captured the trite rationale as follows:

"...Authorities are legion to the effect that a plaintiff who claimed for damages sustained as a result of wrongful and negligent driving under the Act's predecessors had but a single, indivisible cause of action and

that the various items constituting the claim were thus not separate claims or separate causes of action...”

7.2.3 Close to home both factually and geographically, in **Mthimkhulu v Road Accident Fund (2608/2024) [2026] ZAMPMBHC 27(11 March 2026)** (“**Mthimkhulu**”) at paras 11 and 13, Mangena A J counselled as follows:

“[11] The test in assessing whether a claim complies substantially with the prescribed requirements is an objective one. The prescribed form must be examined to see whether or not on all information it contains, a reasonable insurer would have been prevented by any omission or inaccuracy therein from properly investigating the claim and determining its attitude towards it...”

“ [13] As I see it, failure by the claimant to indicate an amount for a particular head of damage in the RAF 1 claim form cannot be a basis for the fund to refuse to assess the claim for additional head of damages submitted later through another RAF claim form or directly in the summons when that claim arises from the same cause of action. This is so because a delictual claim is based on a cause of action and not head of damages...”

7.2.4 In the same **Mthimkhulu at para 17**, Mangena AJ dealt with the unavailable refuge which the defendant seeks from the contextually distinguishable **RAF v Busuku 2023(4) SA 507(SCA)(1 December 2020)** and **Zitha v RAF (228/2024) [2026] ZAMPMBHC 7(30 January 2026)** in the following words with which I align myself completely:

“ As I see it, Zitha does not introduce a new approach to the interpretation of the provision of section 24 of the RAF Act. It confirms the correctness of all the previous judgements on this issue including RAF v Busuku. The findings it makes in relation to the RAF claim form was case specific and it is no authority for the proposition by the RAF that a claimant cannot enforce a claim for heads of damages not previously mentioned in the RAF claim form nor does it say that there can be no instance where a claimant can submit an additional RAF claim form. All what it says is that if this were to happen, the claimant should be able to provide an explanation if required to.”

7.3 Section 24(5) of the Act provides that if the Fund does not, within sixty days post lodgment of a claim, object to the validity of a claim then the claim shall be deemed to be valid in all respects. I find that this deeming provision applies in favour of the plaintiff on the following basis:

7.3.1 In this matter there is on file a letter from the defendant dated 18 April 2023 and stamped 2 May 2023. This was in the backdrop of a lodgment dated 18 April 2023. The content of the letter raises the same issues as contained in the special plea, albeit, not as an objection per se but a forewarning that such an objection may arise if further heads of damages are claimed. However, nowhere does it appear on file when it was, if ever, that the letter was served on the plaintiff or that the mooted objection to the validity of the claim ever came to the plaintiff's attention prior to surfacing as part of the special plea two weeks before the trial date. I am thus, absent proof of when it was that the plaintiff was served with the alleged letter of objection, not persuaded that an objection can be said to have been timeously raised within the requisite 60 days. Thus a deeming of validity is called for.

7.3.2 Even if I be wrong in finding as above on the deeming provision timeframes, I would still have declined to go along with the defendant's reasoning of invalidity of a claim premised solely on an omission of claims which are clearly naturally and logically available in law to claimants, more so to a minor passenger claimant. As already alluded to above, I do not, for even a second, buy into the notion that the defendant, the whole mighty Road Accident Fund, is a legal ignoramus who needs to be advised in a RAF 1 about which particular heads of damages are available in law on a set of facts and that the Fund is

somehow prejudiced in its determination of a matter by an omission in that regard. Such legalistic pretense or litigation subterfuge or burying one's head in the sand should, in my view, not even remotely wash it with our courts in this constitutional era.

7.3.3 This court will always generally be loathe to being party to a highly technical strict compliance approach the result of which would be to shut access to justice to a child claimant in arrogant defiance to its constitutional obligation to be an upper guardian of children. It would rather defer to counsel from Murphy J in **Center for Child Law and Others v MEC for Education, Gauteng, and Others [2008] 1 SA 223(T)** which was couched, in a different but relevant context, in the following words:

“As a society we wish to be judged by the humane and caring manner in which we treat our children. Our constitution imposes a duty upon us to aim for the highest standard and not shirk from our responsibility.”

[8] Finding thus that the omissions in the RAF 1 did not and could not deter the Fund's pre-litigation investigation of the cause of action *in casu* and that the defendant was in no way prejudiced thereby and further that the best interest of the minor claimant cannot be sacrificed on the altar of

needless, pedantic compliance, I determine there to be no merit in the defendant's special plea and am inclined to dismiss it.

[9] Beyond the issue of the special plea I would have, on the facts, and given the general lethargic and *laissez-faire* way the defendant has conducted itself in its prosecution of its defence in this matter, preferred to have gone on to determine the loss of earnings and future medical expenses right away. As I have previously reasoned in other matters of a similar matter such as **Ramulongo v Road Accident Fund (46/2017)[2024] ZALMPHC 18 (6 February 2024) at para 1**, I see no reason why claims which ought to have been routinely settled without litigation are delayed for years on end based on unconscionable stratagems and general intransigence on the part of the RAF. However, that is not before me to determine conclusively as I was, despite the practice notes and pre-trial minutes, seized and addressed only regarding the special plea as evidenced also by the heads of argument filed post oral arguments in court. There are also some questions regarding the rule 38(2) application expert affidavits on file which, absent being addressed thereon by the plaintiff's counsel, may probably have been detrimental to the minor child's quantum claim if this court had gone on to be adventurous nonetheless regarding quantum determination.

[10] Similarly, the established practice in terms of the regulations, which ousts our courts' jurisdiction on general damages on the strength of a delaying whim on the part of a litigant, the Fund, continues to sit distastefully in this court's mouth. I continue to fail to see how constitutionally palatable it is for

a litigant to have as much a power as to determine what a court should hear and decide or not. Courts are not, in my view, lacking in capacity to determine any issue including whether an injury is serious for as long as evidence is capable of being adduced before it. But then I digress as that was not an issue before me for determination and because I remain a captive of precedence and owe fidelity to established law and practices.

Costs

[11] The summons in this matter having been issued on 19 May 2023, it boggles

this court's mind why the special plea was only raised at the trial court's door in April 2026. I frown at that, rather sternly.

[12] The law on the once and for all rule and substantial compliance over and above strict compliance nit-picking is established. The special plea

appears to me like a last-minute delaying tactic or stratagem whose failure

ought to reasonably have been foreseeable to the defendant.

[13] All these, in my view, raises the spectra of a costs order against the defendant with a measure of punishment to reflect the court's displeasure with approaches of this manner.

Order

[14] In all the premises above, I order as follows:

14.1. The defendant's special plea of non-compliance with section 24 of Act 56 of 1996 is dismissed with costs.

14.2 The defendant is ordered to pay to the plaintiff's costs attendant to defending the special plea on an attorney and client scale including counsel's costs on scale C.

Malose Monene
ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)

APPEARANCES

Heard on : 28 April 2026

Judgment delivered on : 28 July 2026

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