

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

JUDGMENT

Reportable/Not Reportable

Case No: 7108/2021

In the matter between:

ANDISWA MADINDA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: Adams AJ

Heard: 11 September 2026

Delivered electronically: 14 September 2026

Summary: Personal injury - Road Accident Fund – past medical and hospital expenses – medical scheme payments – collateral benefits – res inter alios acta – RAF liability – internal directives – retrospectivity – RAF v Van Wyk followed - claim upheld

JUDGMENT

ADAMS AJ:

A. Introduction

[1] The plaintiff, Ms Andiswa Madinda, instituted an action against the Road Accident Fund (the RAF) for damages arising from bodily injuries sustained in a motor vehicle collision on 12 August 2019. The parties resolved the plaintiff's claims for loss of earnings, general damages, and future medical and hospital expenses by offer and acceptance. A draft order recording that agreement was presented at the hearing to be made an order of court. The only issue remaining for determination is whether the RAF is liable for the plaintiff's past hospital and medical expenses.

[2] The plaintiff claims payment of the amount of R106 890,42 in respect of those expenses. The quantum is not disputed. Nor is it disputed that the expenses were reasonable, necessary and directly related to the injuries sustained in the collision. The RAF resists liability because Discovery Health Medical Scheme paid R92 216,41 of the claimed expenses on the plaintiff's behalf.

[3] At the commencement of proceedings, and apparently based on a last-minute instruction to counsel, the defendant sought a postponement on two grounds. First, it submitted that general damages still had to be determined by the Health Professions Council of South Africa (HPCSA). Secondly, it submitted that it was

awaiting the outcome of *Discovery Health (Pty) Ltd v Road Accident Fund and Another* 2025 (3) SA 225 (GP) (*Discovery Health 2*). The application for an indefinite postponement pending the outcome of that process was considered together with the parties' arguments on the merits of the remaining issue.

[4] Of direct relevance is paragraph 91 of *Van Wyk*, where the Full Court held:

"In my view the RAF's reliance on subsequent directives is of no moment. The issues raised in the second and third directives fall within the reach of Mbongwe J's order and are thus res judicata. It is simply not open to the RAF to repeat, on a different basis, essentially the same decision, in circumstances where the decision has been finally found to be unlawful. When an issue has been litigated to finality between the parties, it is not permissible for a litigant to seek to obtain a reversal of the decision of the same question by advancing different reasons."

[5] In considering the postponement application, the most pertinent consideration is that, notwithstanding the outcome that is being awaited in respect of *Discovery Health 2*, the very issue on which the defendant relies has since been adjudicated by the Full Court in *Van Wyk*. The reasoning in paragraph 91 directly rejects the RAF's attempt to revive, through the second and third directives, the substance of a decision already found to be unlawful. The mere fact that the outcome application in *Discovery Health 2* is awaited does not, without more, justify postponing this trial for an indefinite period. Proceeding with the matter would not prejudice the parties, and it is not in the public interest to delay the determination of the plaintiff's proven claim in the hope that a higher court might, at some future stage, reach a different conclusion.

[6] The application for a postponement therefore falls to be refused.

B. The evidence

[7] The plaintiff placed before the Court an affidavit by Ms Tanusha Tia Hoosen, a team leader employed by Discovery Health Medical Scheme. Ms Hoosen considered the Discovery Health schedule and the supporting vouchers relating to membership number 6[...]. She confirmed that the claims were submitted by healthcare practitioners and health establishments for treatment necessitated by the collision.

[8] Ms Hoosen confirmed that the schedule reflects a claimed amount of R106 890,42; that Discovery assessed the claims; and that the amount actually paid by the medical scheme was R92 216,41. Having compared the line items in the schedule with the billed and paid amounts recorded in the vouchers, she confirmed that the entries were true and correct and related directly to the accident injuries.

[9] The RAF did not challenge Ms Hoosen's evidence. It called no evidence to dispute the schedule, the vouchers, the necessity or reasonableness of the treatment, or the causal connection between the expenses and the collision. The amount claimed is accordingly proved and common cause.

C. The issue and the RAF's defence

[10] The narrow legal issue is whether payment by the plaintiff's medical scheme relieves the RAF of its statutory obligation to compensate her for the past hospital and medical expenses.

[11] The RAF's defence is that, because the scheme paid the expenses, the plaintiff suffered no loss, and it is therefore not liable to compensate the plaintiff. It also seeks to rely on internal directives concerning medical-scheme payments, prescribed minimum benefits and emergency medical conditions, and reimbursement arrangements between claimants and their schemes.

D. The applicable legal principles

[12] Section 17(1) of the Road Accident Fund Act 56 of 1996 ('the RAF Act') obliges the RAF, subject to the Act, to compensate a third party for loss or damage caused by or arising from the driving of a motor vehicle where the injury is due to the negligence or other wrongful act of the driver or owner. Although the claim is statutory, ordinary delictual principles remain the foundation of liability. The RAF is substituted for the wrongdoer; it is not entitled, by internal administrative instruction, to alter the substantive content of that liability.

[13] Certain benefits received by an injured person from an independent source are disregarded in assessing damages. Payments under insurance for which the injured person has provided consideration are a classic example. The benefit is collateral and is *res inter alios acta* as between the claimant and the wrongdoer.

[14] The same principle applies to medical-scheme payments. In *Bane and Others v D'Ambrosi*¹, the Supreme Court of Appeal recognised medical scheme benefits as a form of insurance benefit. In *Mooideen v Road Accident Fund*², the Court held that a claimant may recover from the RAF as if the medical scheme had

¹ 2010 (2) SA 539 (SCA) para 19

² Unreported WCHC judgment of Davis, J case no 17737/2015, delivered on 11 December 2020 at page 10

not indemnified the claimant; any recovery arrangement between the claimant and the scheme is collateral to the RAF's liability.

[15] The doctrine of subrogation does not extinguish the insured claimant's cause of action. An indemnifying insurer generally enforces its right of recourse in the name of the insured, and the rights and duties between the claimant and the wrongdoer remain unchanged. This accords with *Commercial Union Insurance Co of SA Ltd v Lotter*³, *Rand Mutual Assurance Co Ltd v Road Accident Fund*⁴, and *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd*⁵.

[16] The RAF's reliance on s 19(d)(i) of the RAF Act is misplaced. That provision is directed at agreements under which a person, other than the permitted legal representatives, assists with or finances a claim in exchange for a portion of the compensation. A medical scheme's contractual right to reimbursement is not such an agreement. In *Road Accident Fund v Abdool-Carrim*⁶, the Supreme Court of Appeal considered the purpose and reach of s 19(d). In *Van Tonder v Road Accident Fund*⁷, its reasoning was applied in rejecting the RAF's attempt to invoke s 19(d)(i) against medical-scheme funded expenses.

[17] The Medical Schemes Act 131 of 1998, including the scheme's obligation to fund prescribed minimum benefits, does not transfer the RAF's liability to the medical scheme. The plaintiff's entitlement to medical-scheme benefits arises from membership and contributions. The RAF identified no provision in either statute that excludes from compensation expenses paid by a medical scheme, and it

³ 1999 (2) SA 147 (SCA)

⁴ 2008 (6) SA 511 (SCA)

⁵ (17111/2021) [2025] ZAWCHC 260.

⁶ 2008 (3) SA 579 (SCA)

⁷ (1736/2020; 9773/2021) [2023] ZAWCHC 305

produced no evidence identifying the expenses said to fall within the categories on which it relies.

[18] The RAF also relies on internal directives issued after the plaintiff's cause of action arose on 12 August 2019. Such directives cannot amend the RAF Act, displace established common-law principles, or operate retrospectively to impair an accrued claim. The presumption against retrospectivity was recently reaffirmed in *Road Accident Fund v Mudawo and Others*; *Road Accident Fund v Lyton and Others*⁸. The directives therefore provide no answer to the plaintiff's claim.

[19] I have considered the majority judgment in *Discovery Health* 2⁹. That matter concerned whether the RAF and its chief executive officer were in breach of an earlier interdict and the status of later directives. It did not make an order reversing the settled principle that medical-scheme benefits are collateral when damages are assessed.

E. Application

[20] At issue is the defendant's denial of liability for the plaintiff's past hospital and medical expenses because a portion of those expenses was paid on her behalf by her medical scheme. As far as could be discerned, the RAF's defence is premised on two arguments. First, notwithstanding that the action is brought by the plaintiff, the claim is said not truly to be hers but to be advanced on behalf of the medical scheme, because any amount recovered must be repaid to the scheme under the agreement between them. On this reasoning, the plaintiff suffered no loss.

⁸ (1185/2024; 1468/2024) [2026] ZASCA 54 para 54-55

⁹ 2025 (3) SA 225 (GP)

[21] Secondly, the RAF contends that s 29 of the Medical Schemes Act 131 of 1998, read with reg 8, compels a medical scheme to pay emergency medical expenses as prescribed minimum benefits. Because the scheme was statutorily obliged to pay those expenses, the plaintiff is said to have suffered no loss. The RAF further contends that, even if it compensates the plaintiff, she would not be obliged to claim on behalf of the scheme or to reimburse it.

[22] This is an old argument dressed in new clothes, and it has been rejected by our courts on numerous occasions. Section 17(1) of the Road Accident Fund Act 56 of 1996 requires the RAF to compensate third parties, including the plaintiff, for loss or damage caused by the negligent or unlawful driving of a motor vehicle. Ordinary delictual principles govern the calculation of patrimonial damages for which the RAF is liable, subject to express statutory exclusions and limitations that are not pertinent here. Certain benefits received by a plaintiff must, however, be left out of account because they are entirely collateral. In *Zysset and Others v Santam Ltd*¹⁰, the Court identified the classic examples as benefits received under ordinary contracts of insurance for which the plaintiff paid the premiums, and money or other benefits received through the benevolence of third parties motivated by sympathy.

[23] The decision in *Road Accident Fund v Abdool-Carrim*¹¹ was also considered by Cloete J in *Van Tonder*¹². Notwithstanding those judgments, the defendant persists in submitting that s 19(d)(i) of the RAF Act applies to the plaintiff's claim.

¹⁰ 1996 (1) SA 273 (C) page 278 B-D

¹¹ 2008 (3) SA 579 (SCA)

¹² (1736/2020; 9773/2021) [2023] ZAWCHC 305 para 10 -12

Although this matter does not concern a supplier's claim per se, the reasoning of the Supreme Court of Appeal in paragraphs 11 and 12 of *Abdool-Carrim* applies equally here. In summary, the Court held that a supplier's right to claim from the RAF was conditional upon the plaintiff having a valid and enforceable claim. The supplier's claim was not unenforceable against the RAF merely because of an agreement concluded with someone other than an attorney of the kind referred to in s 19 of the RAF Act.

[24] In *Van Tonder*, Cloete J held that the reasoning in *Abdool-Carrim* applied equally to an agreement between a claimant and a medical scheme, and accordingly rejected the RAF's reliance on s 19(d)(i). I respectfully agree. Section 19(d) of the RAF Act does not apply to the agreement between the plaintiff and her medical scheme. To hold otherwise would also conflict with the principle recognised in *Zysset* and *Discovery Health*: a benefit received by a plaintiff under an insurance arrangement does not absolve the RAF from discharging its statutory obligation to compensate her.

[25] The issue was conclusively determined in *Van Wyk*, a unanimous Full Court decision of this Division. *Van Wyk* has since been followed in recent decisions of this Court.¹³

[26] Ms Goosen, who appeared for the defendant, acknowledged the prevailing law in this Division concerning past hospital and medical expenses. She was fully aware of the Full Court decision in *Van Wyk*, accepted that it was binding, and confirmed that she had advised the defendant accordingly. She further conceded

¹³ See *Colin Hamish Wylie v Road Accident Fund* (Case No 13359/2021) [2026] ZAWCHC (11 August 2026) ; and *Upton v Road Accident Fund* (Case No 11906/2023), delivered on 21 August 2026

that she could advance no argument or cogent reason why *Van Wyk* should not be followed in this matter.

[27] Ms Goosen merely restated her instruction that past hospital and medical expenses paid by a medical scheme do not constitute a loss for which the RAF is liable. Ms Goosen explained that the instruction emanated from the RAF's head office and had been disseminated to all provinces. Notwithstanding the Full Court decision binding in this Division, the RAF's position remained that it could not make an offer on the plaintiff's claim, as substantiated by the vouchers and confirmed in Ms Hoosen's affidavit. If the Court nevertheless found for the plaintiff, Ms Goosen indicated that the defendant would abide the Court's determination of the amount payable.

[28] The RAF relied on three directives. The first, issued on 12 August 2022 excluded claims for medical expenses paid by a medical scheme. The second, issued on 13 April 2023 provided that prescribed minimum benefits and emergency medical conditions were payable by the scheme and were not recoverable from the RAF. The third directive of 2 November 2023 treated an agreement by a plaintiff to reimburse a medical scheme as falling within the exclusion in s 19(d)(i) of the RAF Act. Even if the directives had merit, the principle against their retrospective operation, repeatedly affirmed by our courts, militates against applying them here. The plaintiff's cause of action arose on 12 August 2019, before any of the directives was issued.

[29] The principles referred to earlier in this judgment have formed part of our law for many years and bear the weight of precedent. Our courts have recognised

that medical-scheme benefits are a form of indemnity insurance and should therefore be disregarded in the assessment of damages under the principle of *res inter alios acta*. The fact that a medical scheme provides a prescribed minimum benefit to its members is inconsequential to the RAF's liability.

[30] Access to that benefit remains contingent upon membership of the scheme. The benefit is available in exchange for contributions and protects the member against injury or loss. As the Court observed in *Zysset*, the law does not allow a wrongdoer to benefit from the injured person's prudence in obtaining insurance or from the benevolence or compassion of a third party who comes to the injured person's assistance.

[31] The fact that the plaintiff's medical scheme has already paid part of her past medical expenses does not affect the RAF's liability. The principle of *res inter alios acta* prevents the RAF from deducting the sums paid by the scheme from the amount otherwise payable to the plaintiff for past hospital and medical expenses.

[32] The RAF's defence is the same proposition that has repeatedly been rejected: that the plaintiff suffered no compensable loss because her medical scheme met part of the expense. It overlooks the collateral-source rule. The plaintiff acquired medical-scheme cover independently of the RAF. The RAF may not appropriate that benefit and thereby reduce the compensation that would otherwise be payable under s 17(1).

[33] In *Discovery Health (Pty) Ltd v Road Accident Fund and Another*¹⁴ (Discovery Health 1), Mbongwe J held that the RAF's refusal to pay past medical expenses on the basis contemplated in the first directive was unlawful and interdicted its implementation. The RAF's applications for leave to appeal to both the Supreme Court of Appeal and the Constitutional Court were unsuccessful.

[34] The RAF thereafter issued the second and third directives. In *Discovery Health (Pty) Ltd v Road Accident Fund and Another*¹⁵ (Discovery Health 2), Discovery Health urgently sought a declaration that the RAF and its CEO were in breach of the order in Discovery Health 1. The majority held that there was no breach because the earlier order concerned only the first directive, while the subsequent directives had not been set aside. The minority disagreed.

[35] In *Road Accident Fund v Nicolaas Van Wyk*¹⁶, the RAF similarly contended that the subsequent directives did not contravene the order setting aside the first directive. Lekhuleni J, writing for a unanimous Full Court, endorsed the minority reasoning in Discovery Health 2. The Court held that the central principle in Discovery Health 1, consistent with *Bane and Others v D'Ambrosi*, was that a claimant's right to recover past medical expenses from the RAF is unaffected by payment of those expenses by a medical scheme. Accordingly, the RAF may not reject such a claim merely because a medical scheme has already paid the expenses.

[36] Counsel for the plaintiff referred the court to recent decisions of this division that correctly endorsed the approach adopted in *Van Wyk*. These include Colin

¹⁴ 2023 (2) SA 212 (GP)

¹⁵ 2025 (3) SA 225 (GP)

¹⁶ [2026] ZAWCHC (26 February 2026)

Hamish Wylie v Road Accident Fund (Case No 13359/2021) [2026] ZAWCHC (11 August 2026), per Mayosi J, and Upton v Road Accident Fund (Case No 11906/2023), delivered on 21 August 2026 per Peters, AJ.

[37] On the unchallenged evidence, the plaintiff proved past hospital and medical expenses of R106 890,42. Discovery's payment of R92 216,41 does not extinguish or reduce the RAF's liability. Any obligation resting on the plaintiff to account to or reimburse Discovery is a matter between them and does not concern the RAF. In the circumstances, the plaintiff's claim must succeed.

F. Costs

[38] The plaintiff initially sought a punitive costs order on the attorney-and-client scale. During argument, however, I was informed that the parties had agreed that the costs of counsel may be allowed on scale C. Although the RAF's persistence with an unsuccessful defence is regrettable, punitive costs remain exceptional. In the exercise of my discretion, the ordinary rule that costs follow the result is sufficient. The plaintiff is therefore entitled to her costs on the party-and-party scale, including the costs of counsel on scale C.

G. Order

[39] The following order is made:

1. The Defendant shall pay to Plaintiff's attorneys of record the sum of R 106 216.41 (One Hundred and Six Thousand Two Hundred and Sixteen Rand and Forty-One 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 date of this Order.
3. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs in respect of her claim for past hospital and medical expenses, which shall include the taxed or agreed fees of Plaintiff's Counsel on Scale C, including but not limited to preparation of written submissions and trial preparation, as well as his day fee in respect of the trial on 11 September 2026.
4. The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant.
5. 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.
6. Payment of the capital amount and the legal costs shall be effected directly to Plaintiff's attorneys of record by means of an electronic transfer into the trust account mentioned below.
7. The Defendant shall be liable for interest on the capital amount at the prescribed rate of interest from 14 (fourteen) days from date of this Order to date of final payment.
8. 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.

9. Plaintiff shall not proceed with a warrant of execution in respect of the capital amounts and legal costs prior to the expiry of the said 180 calendar days.

10. Plaintiffs attorneys' trust banking account details are as follows:-

NAME OF BANK : NEDBANK LIMITED
BRANCH : S[...] P[...]
NAME OF ACCOUNT : S[...] A[...] W[...] T[...] A[...]
ACCOUNT NO. : 1[...]
BRANCH CODE NO. : 1[...]

M F ADAMS

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For Plaintiff: Adv WS Coughlan

Instructed by: Sohn and Wood Attorneys

For Defendant: Ms F Goosen

State Attorney, Cape Town