

SOUTH AFRICA / JUDGMENT

Grimbreek N.O MJ Shai v Road Accident Fund (506/2017) [2023] ZAFSHC 124 (20 April 2023)

[2023] ZAFSHC 124

COURT

Free State High Court, Bloemfontein

BEFORE

T Ramdeyal

CASE / FILE NUMBER

506/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

no 506/2017

In

the matter between:

AA

GRIMBREEK N.O MJ SHAI

Plaintiff

and

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

BY: T RAMDEYAL AJ

HEARD ON: 12 APRIL 2023

DELIVERED ON: 20 APRIL 2023

JUDGMENT

- [1] The court is called upon to determine the aspect of costs in this matter.
- [2] On the 17th of December 2015 a motor vehicle collision occurred whereby the plaintiff, who is now the late Mohau John Shai, instituted action proceedings against the defendant, Road Accident Fund having claimed damages to the amount of R1 050 000.00 for past medical and hospital expenses, estimated future medical treatment, past loss of income, estimated future loss of income and general damages.
- [3] Merits of this matter were settled and the quantum aspect postponed. The plaintiff subsequently passed away. At all relevant times the matter was before the High Court, proceedings having been instituted in the High Court due to the amount exceeding the magistrate court and regional court jurisdiction.
- [4] The parties agreed to this matter being heard in the High Court and agreed that it not be transferred to another court. The contention now arises from the defendant that upon settlement of the quantum in the amount of R150 000, that the court should order costs on a Magistrate Court Scale.
- [5] The defendant submits that after the death of the late Mr Shai that the claim for future loss of earnings fell away and the quantum of the claim effectively fell within the jurisdiction of the Magistrate Court and therefore the costs order should be based on the Magistrate Court Scale and not that of the High Court.
- [6] Rule 39(22) of the Uniform Rules of Court provides as follows:
- ‘By consent the parties to a trial shall be entitled, at any time, before trial, on written application to a judge through the registrar, to have the cause transferred to the magistrate’s court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.’
- [7] This was not done by either party. The plaintiff instituted proceedings in the High Court, there was no contention to this. It is only at the very end of the proceedings having further agreed to settlement of the quantum that the defendant submits that the claim for future loss of earnings falls away and the quantum of the claim having fallen within the jurisdiction of the Magistrate’s Court; that the costs order be granted in line with same. Whilst it can be argued that counsel for the plaintiff was aware of the expected reduced amount of the claim appropriate to the magistrate court jurisdiction, the defendant too was

aware of the plaintiff's death and the possibility of settlement in this matter on an amount appropriate for the lower court. The defendant too was entitled to apply to transfer the matter to a lower court and to investigate the case properly. This too can be a factor for the court to consider in exercising its discretion. Road Accident Fund v Isaacs [1]

Counsel for the plaintiff submitted that he only became aware of the dispute of costs in the late afternoon of the 11th of April 2023.

- [8] This is not a case of a litigant having instituted proceedings in the High Court when he should have proceeded in the lower court. In such a case a litigant will be mulcted in costs and awarded costs in the forum he ought to have chosen.[2]
- [9] However, if a plaintiff can justify his recourse to the High Court the question that arises as to whether High Court costs or Magistrate's Courts costs are to be awarded is a matter within the discretion of the trial judge, to be exercised judicially upon a consideration of all the facts. Ramsusran and Another v Yorkshire Insurance Co Ltd[3]
- [10] The costs order stands to be determined. In Rafiek Williams v Road Accident Fund Western Cape High Court:[4]

"In considering the exercise of its discretion whether to award costs on the high court or magistrate's court scale where the eventual judgment is within the magistrates' courts' jurisdiction the court will have regard to whether it was reasonable, as seen from the plaintiff's perspective when proceedings were launched, to proceed in the high court. Regard may also be had to the subsequent developments in the case that ought to cause the plaintiff to revise his previous estimate of the importance of the case, and to explore the possibility of having the case transferred to the magistrates court."

- [11] In this matter had the plaintiff not passed away then the claim for damages would have been in excess of R1 000 000 for general damages, loss of income and future medical expenses, as a result of the plaintiff's death the executor can only proceed on a claim for general damages and past loss of income. The situation changed after proceedings were already instituted in the High Court. Reports of expert witnesses to be called by the plaintiff were compiled whilst the matter was enrolled in the High Court, unfortunately Mr John Shai passed away thereafter on the 3rd of February 2018. It was agreed at the pre-trial conference held on 19 August 2022 that the matter should not be transferred, and a trial date was obtained and agreed upon for the 11th and 12th of April 2023 in the High Court. Counsel was instructed for the plaintiff. It is not the contention of the defendant that it was unaware of the passing of the plaintiff.
- [12] Plaintiff's perspective to proceed in the High Court when proceedings were instituted is correct and to continue with the matter in the High Court even after plaintiff's death is reasonable in the circumstances especially in light of the fact that it was agreed by both parties that the matter not be transferred to another court.

[13] With that agreement in mind, preparation for trial and the instruction of counsel in the High Court the plaintiff should not be mulcted in costs. It is apparent that there was no agreement that should the matter continue in the High Court, a lower court cost order will be requested and awarded.

[14] I am aware that case law submitted by the defendant leans towards granting lower court cost orders when matters are in the high court but the amount ordered or settled falls within the jurisdiction of the lower court, but the circumstances of this matter differ. In *International Exports (Pty)Ltd v Fowles*:^[5]

“The Court’s discretion is a wide, unfettered and equitable one. It is a facet of the Court’s control over the proceedings before it. It is to be exercised judicially with due regard to all relevant considerations...”

[15] Two draft orders have been handed to court by both the plaintiff and the defendant which are both in agreement that the defendant shall pay the plaintiff the amount of R150 000 in respects of general damages.

[16] In the circumstances of this matter I award costs to be paid by the defendant to the plaintiff on a High Court Scale and make the order of court as per the draft order submitted by the plaintiff and marked with “X”.

ORDER

1.

1.1 The defendant shall, by agreement between the parties, pay the plaintiff the sum of R150 000.00 (One Hundred and Fifty Thousand Rand) in respect of general damages.

1.2 The defendant shall pay the abovementioned amount into the plaintiff’s attorneys trust account.

The plaintiff’s attorney’s trust account details are as follows:

ACCOUNT HOLDER: VZLR INC

BRANCH: ABSA

BUSINESS BANK HILLCREST

BRANCH CODE: 632005

TYPE OF ACCOUNT: TRUST ACCOUNT

ACCOUNT NUMBER: [...]

REFERENCE: MAT92950

1.3 In the event that the defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the defendant will be liable for payment of interest on such amount at 11.25% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.

2.

2.1 The defendant to pay the plaintiff's taxed or agreed party and party costs, up to and including the date, when the order is made an order of court.

2.2 The reasonable qualification fees of all the plaintiff's experts of whose reports had been furnished to the defendant and/or its experts:

2.2.1 Dr LF Oelofse - Orthopaedic Surgeon

2.2.2 Ms R van Biljon - Occupational

Therapist

2.2.3 Mr B Moodie - Industrial

Psychologist

2.2.4 Mr J Sauer - Actuary

2.3 The costs of Counsel

2.4 In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory more rate on the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

T RAMDEYAL AJ

On behalf of the Plaintiff: Adv JC Van Eeden

Instructed by: Du

Plooy Attorneys

BLOEMFONTEIN

On behalf of the Defendant: Mrs C Bornman

Instructed by: Road

Accident Fund

[1] Full Bench Appeal in the High Court of SA Northern Cape Division, Kimberley, Case no. JA 78P10 judgment delivered on 11 May 2018).

[2] LAWSA Vol 3 Part 2 Second Edition para 299.

- [3] 1965
- (2) SA (D) at 264 G - 265A.
- [4] Case No 13312/2006 delivered on 26 February 2010.
- [5] 1999(2) SA 1045 at 1055 f – i.
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Prepared on 10 October 2026 · Esheria