

SOUTH AFRICA / JUDGMENT

Mathe v Road Accident Fund (2752/2018)

[2024] ZAMPMHC 68 (19 December 2024)

[2024] ZAMPMHC 68**COURT**

Middelburg High Court, Mpumalanga

BEFORE

Vukeya

CASE / FILE NUMBER

2752/2018

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****MPUMALANGA****DIVISION: MIDDELBURG LOCAL SEAT****CASE NO: 2752/2018**

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED**DATE: 19/12/2024****SIGNATURE**

In the matter between:

NKOSINATHI

MATHE

PLAINTIFF

And

ROAD

ACCIDENT

FUND

DEFENDANT

JUDGMENT

Vukeya J

- [1] Mr Nkosingathi Mathe, (“the Plaintiff”) instituted action against the Road Accident Fund (“The Fund”) for damages suffered as a result of personal injuries sustained from a motor vehicle accident which occurred on 17 July 2016 on the Hendrina to Ermelo, N11 road in the Mpumalanga Province. He was the driver of a motor vehicle with registration numbers and plates: F[...] 8[...] M[...].
- [2] The plaintiff sustained the following injuries as a result of the accident: contusion of the knee, intra-abdominal injury, injured stomach and a head injury. The defendant conceded 90% liability on the merits and these were settled. He claimed for General Damages, Loss of earnings and future medical expenses which were also settled between the parties. He also claimed for past medical expenses, which issue was not settled and thus it became the only issue for determination in the trial.
- [3] The applicant brings the claim and relies on section 17 of the Road Accident Fund Act 56 of 1996 which provides that:
- (1) The Fund or an agent shall-
- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.
- [4] It was agreed at the trial by the parties that the remaining issue for determination be disposed of as a stated case in terms of Rule 33 of the Uniform Rules of Court (“the Rules”). The parties were directed by the court to file their written statements of facts in the form of a stated case for adjudication by the court. It was further agreed that the outstanding issue would be determined on the written submissions without the leading of evidence.

- [5] Both parties filed their written statements and submissions for determination of the stated case on past medical expenses. The parties were in agreement regarding the sustained injuries and the treatment received by the plaintiff, as follows: hospital admission, X-Ray, Ventilation, ECG (Electrocardiogram), Intravenous fluids, Urine Catheter, Blood investigation, Blood transfusion, Wound dressing, Dietician, Neuro observation, Surgery – Laparotomy and drainage of pleural effusion and Physiotherapy.
- [6] The claim for past medical expenses was quantified by the plaintiff in the total sum of R349 583, 51 by the production of medical bills attached to the applicant's papers prepared for the trial. These bills and all medical expenses were settled by the applicant's medical aid insurance, the Government Employees Medical Scheme ("GERMS"). There is no dispute between the parties on the quantified amount, the bone of contention, however, is whether the defendant is liable for these expenses.
- [7] In the plaintiff's written statement of facts, Counsel for the plaintiff contends that the plaintiff is entitled to payment of the past medical expenses incurred as section 17 of the Act imposes an obligation on the fund to pay the plaintiff's proven damages including past medical expenses. On the other hand, it is contended on behalf of the defendant that the Fund is not liable to pay for medical expenses where such expenses have been paid for by a medical aid scheme.
- [8] Counsel further contended on behalf of the defendant that medical aid schemes are obliged by Regulation 8 of the Medical Schemes Act 131 of 1998 to render payment in full, without co-payment and deductibles for Prescribed Minimum benefits and Emergency Medical Conditions as defined in Regulation 7 of the Medical Schemes Act. Counsel submitted that the Fund would only be liable for past medical expenses that the medical aid does not cover, where the claimant had to pay out pocket.
- [9] The defendant therefore disputes that the plaintiff has suffered any past medical expenses as these costs were paid by the medical aid insurance and not by the plaintiff from her own pocket.
- [10] In *Discovery Health (Pty) Limited v Road Accident Fund and Another* (2022/016179) [2022] ZAGPPHC 768 (26 October 2022) the court as per Mbanjwa J decided in favour of Discovery Health that the RAF was not entitled to reject liability for the disputed medical expenses only because the scheme had paid for those expenses. He declared that the directive issued by the Acting Chief Claims Officer on 12 August 2022 was unlawful. He reviewed it and set it aside and then interdicted and restrained the Fund from implementing it.
- [11] This directive was addressed to all regional managers of the Fund and it was termed as follows:

“Dear colleagues

“All Regional Managers must ensure that their teams implement the attached process to assess claims for past medical expenses. All RAF offices are required to assess claims for past medical expenses and reject the medical expenses claimed if the Medical Aid has already paid for the medical expenses. The regions must use the prepared template rejection letter (see attached) to communicate the rejection. The reason to be provided for the repudiation will be that the claimant has sustained no loss or incurred any expenses relating to the past medical expenses claimed. Therefore, there is no duty on the RAF to reimburse the claimant. Also attached is a list of Medical Schemes. Required outcome: immediate implementation of the process and 100% compliance to the process.”

[12] This directive was to the effect that all claims for past medical expenses lodged by claimants whose medical schemes had already settled them, should be rejected on that basis alone. The reasoning behind all this was that those claimants did not suffer any loss, and that the RAF therefore had no duty to reimburse them.

[13] In *Rayi NO v Road Accident Fund* [2010] ZAWCHC 30, the Court stated that:

“The obligation which the undertaking imposes on the plaintiff towards Bonitas does not arise until such time that there is a successful

recovery of the past medical expenses by the plaintiff from the defendant. The defendant primarily remains liable to the plaintiff for the payment of the past medical expenses and the liability of Bonitas to the plaintiff for the past medical expenses

is secondary to that of the defendant. The defendant should pay the past medical expenses to the plaintiff who should upon receipt of payment account to Bonitas in terms of the undertaking.”

[14] In light of the above decisions, which I am in agreement with, I am of the view that the plaintiff is entitled to be compensated for the past medical expenses she incurred which are related to medical services employed as a result of the injuries she sustained in the collision.

[15] In the result, I grant the following order:

15.1. The defendant is liable to pay 90% of the plaintiff’s damages as set out hereunder within ninety (90) days of this order:

15.1.1. R1 000 000, 00 in respect of general damages;

15.1.2. R2 071 135, 00 in respect of loss of earnings;

15.1.3. R314 625, 16 in respect of past medical and related expenses.

15.1.4. Less 10% apportionment: R338 576.00

Total: R3 047 184, 00

15.2. The defendant shall furnish the plaintiff with a 90% undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 as amended, for future medical treatment , boarding at any hospital for the injuries sustained as a result of the accident;

15.3. The defendant is further liable to pay interest per prescribed interest rate should the amount not be paid on the due date.

15.4. The defendant shall pay the plaintiff's taxed or agreed costs, on the High Court Scale as between party and party pertaining to liability, which costs shall include:

15.5. The reasonable costs of the following expert reports:

15.5.1. Vidoh Mashiloane – Clinical Psychologist;

15.5.2. Dr Andrew E. Umeh – An Independent Examiner;

15.5.3. Sagwati Sebapu – Occupational Therapist;

15.5.4. Moipone Kheswa – Industrial Psychologist;

15.5.5. Munroe Actuaries – Actuarial Report.

15.6. Travelling costs of the Plaintiff to attend various medico-legal examinations.

15.7. In the event the defendant fails to pay the Plaintiff within a period mentioned above, the plaintiff shall approach the court to enforce the order and the defendant shall be liable for the costs thereof. The defendant shall pay interest per prescribed interest rates until the date of final payment.

15.8. The defendant shall make payment of the capital amount and costs into the Trust account of the plaintiff's legal

representatives being MTSWENI INC. ATTORNEYS, whose details are as follows:

Account Holder: MTSWENI INC. ATTORNEYS

Bank: FIRST

NATIONAL BANK (FNB)

Account type: Trust Account

Account Number: 6[...]

Branch Code: 2[...]

VUKEYA LD

JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Mr M Mashimbyi

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Prepared on 11 October 2026 · Esheria