

SOUTH AFRICA / JUDGMENT

Moss v Road Accident Fund (18326/2019) [2025] ZAWCHC 110 (17 March 2025)

[2025] ZAWCHC 110

COURT

Western Cape High Court, Cape Town

BEFORE

Bhoopchand

CASE / FILE NUMBER

18326/2019

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 18326/2019

In the matter between

JOHN MOSS

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Date of hearing: 12 March 2025

Date of judgment: 17 March 2025

BHOOPCHAND AJ:

1. The Plaintiff, a 77-year-old male, was involved in an accident on 28 September 2017. He lodged a claim against the Defendant, the statutory body established under the Road Accident Fund Act, 56 of 1996 ('the RAF Act'), to pay compensation for loss or damages wrongfully caused by driving motor vehicles. The Plaintiff was cycling when he was struck by a car.
2. The Plaintiff sustained a vertebral artery dissection and cerebellar infarction, which manifested later, but was attributed to the

accident.[1] There was no diffuse or focal brain injury in the immediate aftermath of the accident. Sequelae from the vertebral artery dissection have settled. The Plaintiff has experienced mild post-traumatic stress disorder. The Plaintiff also sustained fractures to his right outer clavicle and right fourth rib and abrasions to the thigh, knee, and ankle. The parties agreed that the claim for general damages should be settled at R650 000. The Defendant has agreed to provide the Plaintiff with a section 17(4)(a) undertaking to cover future medical and related expenses. The Defendant's attorney, however, did not have instructions to settle the claim piecemeal.

3. The only outstanding head of damages that could not be resolved was that of past medical expenses. The Plaintiff claimed R34 286.59. He paid R4 173.80 of this amount directly to the service providers, and his medical aid settled the balance of R30 112.79. The Plaintiff provided the necessary vouchers to support these expenses. Defendant belatedly indicated its intention to oppose at least a part of Plaintiff's claim under this head of damages. The Defendant allegedly issued a notice of intention to amend its plea and indicated that it would seek a postponement of the matter at the hearing scheduled to commence on 12 March 2025. None of those papers were filed or placed before the Court, not that the Court would have allowed them at this late stage of the proceedings.
4. The Defendant has recently taken to challenging claims for past medical expenses made by claimants who are members of medical schemes.[2] The Defendant issued a directive on 12 August 2022 instructing its employees to reject past medical expenses presented by claimants

whose medical aid schemes had already paid for them. The basis for the directive was that this group of claimants suffered no loss, and the Defendant was not statutorily obliged to refund them. The Defendant issued a second directive on 13 April 2023 to exclude refunds for prescribed minimum benefits and emergency medical conditions. The third directive issued on 2 November 2023 sought to enforce the Defendant's interpretation of section 19(d)(i) of the RAF Act relating to third-party payments.

5. It suffices to say that these directives raise numerous issues of common and statutory law, champertous transactions, subrogation, insurance and medical schemes law. The Court has no intention to deal with them further, except to say that the Defendant's attempt to introduce them in such a haphazard manner is not only ill-conceived but also deserves deprecation. The defendant's attorney denied that the relatively small amount claimed for

past medical expenses justified the costs-to-compensation ratio involved in this matter. The Defendant's stance meant that the 77-year-old Plaintiff would have had to await settlement of his claim whilst the Defendant exhausted litigation challenging past medical expenses already paid by medical aid schemes. Defendant had not conceptualised a defence nor prepared to raise these defences in this matter timeously.

6. The Defendant has drastically reduced its reliance on Counsel to defend its cases, choosing to overburden a select number of attorneys employed in the offices of the State Attorney to shoulder its litigation obligations in this division. Previously disadvantaged Counsel who relied upon this source of work are no longer briefed, and the goals of transformation of the profession suffer. Ill-prepared attorneys often scurry between courts, appearing in more than one case per day. The Court is not directing any criticism towards them, for they are overburdened with the Defendant's

work. The Defendant has little consideration for the inconvenience this causes to the Court and the prejudice its multipronged attack on settling claims has for claimants who must endure further delays as they await finalisation of their matters.

7. The Defendant opposed the admission of the Plaintiff's affidavit submitted under Rule 38(2) instead of the Plaintiff testifying. No cogent reason was provided for the opposition to the admission of Plaintiff's affidavit, especially on whether Defendant intended to cross-examine Plaintiff on its content. As Plaintiff was present, the Court heard his testimony on the narrow issue of past medical expenses. He confirmed the value of the vouchers contained in the bundle of documents and that they concerned expenses directly related to his accident injuries and their sequelae. The futility of Defendant's stance was that Plaintiff was not cross-examined at all. The Defendant was less prepared to raise any defence against the claim for past medical expenses than it was in the Van Tonder matter heard in this division.[3]
8. The Court has no reason to deny any part of the Plaintiff's

claim for past medical expenses. Costs are within the Court's prerogative and shall be reflected in the following order. There is no reason for awarding an adverse costs order in this matter as it proceeded to a hearing as scheduled, and the Applicant did not have to deal with the belated defence to his claim. The Court has not endorsed all aspects of the draft order submitted by the Plaintiff.

ORDER

1. The Defendant shall pay to the Plaintiff's attorneys the sum of R684 286.59 (six hundred and eighty-four thousand two hundred and eighty six rand and fifty nine cents only) ("the capital"), by way of an electronic transfer into the attorneys Trust Account, within 180 days of this order, the details whereof are set out below.

2. Interest on the capital shall operate from fourteen days of this order to the payment date. The Plaintiff shall not issue a writ of execution against the Defendant before the expiry of 180 days of this order. The Plaintiff shall be entitled to the costs attendant upon obtaining payment of the capital.
3. Defendant shall provide an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the undertaking"), to compensate the Plaintiff for 100% of the costs relating to the

future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff after the costs have been incurred and on proof thereof and arising from the motor vehicle collision which occurred on 28 September 2017.

4. The Defendant shall pay the Plaintiff's party and party costs. The Defendant shall pay Counsel's taxed or agreed fees

on Scale B.

5. The Defendant shall pay the costs of the Plaintiff-appointed expert witnesses reflected below within 180 days of being taxed or agreed upon. The costs shall include the expert's qualifying expenses, reservation fees and all costs attached to the procurement of medico-legal reports, including addendum reports where relevant, as

well as x-rays and any other related costs. The latter costs shall also include attendance at Plaintiff's and Defendant's

medico-legal examinations.

5.1 The experts are:

5.1.1 Dr Rael Jaffe (Orthopaedic Surgeon);

5.1.2 Dr P Mukheiber (Kingsbury Radiology);

5.1.3 Dr Zayne Domingo (Neurosurgeon);

5.1.4 Dr Rosa Bredenkamp (Counselling Psychologist).

6. If costs are not agreed upon, Plaintiff shall serve the Notice of Taxation on Defendant's attorney of record.
7. It is recorded that there is a valid Contingency Fees Agreement in place herein between the Plaintiff and DSC Attorneys, and there has been full compliance with all relevant provisions of the Contingency Fees Act 66 of 1997.
8. The Plaintiff's attorneys' trust banking account details are as follows:

Name of account holder: DSC Attorneys

Name of Bank:

First National Bank

Branch:

Greenpoint

Account number:

6[...]

Branch code

210651

Bhoopchand AJ

Judgment was handed down and delivered to the parties by e-mail on 17 March 2025

Plaintiff's Counsel: I Ferreira

Instructed by: DSC Attorneys

Defendant's Attorney: G Cerfontyne

Instructed by the State Attorney

[1] The vertebral artery supplies blood to the brain and spinal cord. It runs along the posterior aspect of the neck. The cerebellum is the part of the brain that controls balance, coordination, and movement. A dissection of an artery occurs when an inner layer tears and can occur in trauma, among other causes. An infarction occurs when tissues suffer a lack of blood supply.

[2] See e.g., *Machi v Road Accident Fund* (2020-12687) [2025] ZAGPJHC 78 (3 February 2025), *Discovery Health (Pty) Limited v Road Accident Fund and Another* (2022/016179)

[2022] ZAGPPHC 768 (26 October 2022), *Discovery Health (Pty) Ltd v Road Accident Fund and Another* (2023/117206) [2024] ZAGPPHC 1303 (17 December 2024), *Van Tonder v Road Accident Fund* (1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023) ('Van tonder')

[3] *Van Tonder supra*

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