

SOUTH AFRICA / JUDGMENT

Sibiya v Road Accident Fund (543/2024)
[2025] ZAMPMHC 29 (9 April 2025)
[2025] ZAMPMHC 29

COURT
Middelburg High Court, Mpumalanga

BEFORE
Langa

CASE / FILE NUMBER
543/2024

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IN
THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA
DIVISION (MIDDELBURG LOCAL SEAT)
CASE NO.:
543/2024
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHER JUDGES: YES
(3)
REVISED
DATE
09/04/2025
SIGNATURE
In

the matter between: STANLEY SIYABONGA SIBIYA
 PLAINTIFF
 And
 THE ROAD ACCIDENT FUND
 DEFENDANT

JUDGMENT

Coram: Langa J:

Introduction and Concise Facts

- [1] The Plaintiff in this matter instituted an action against the Road Accident Fund for damages suffered as a result of injuries he sustained in a motor vehicle collision which took place on 9 April 2022 on the R546 road Evander between Embalenhle and Kinross, Mpumalanga Province. The Plaintiff was a driver at the time of the collision. The Plaintiff is Stanley Siyabonga Sibiya a natural person and the Defendant is the Road accident Fund (“the Fund” is a fund created in terms of section 2 of the Road Accident Fund Act 56 of 1996 as amended (“the Act”).
- [2] The issue of the merits for liability were settled on an apportionment of 80%/20% in favour of the Plaintiff. Regarding quantum the loss of earnings, general damages and future medical expenses also all became settled between the parties. The only head of damages remaining for determination is the past medical expenses and the matter is accordingly proceeding only on the past medical expenses.
- [3] The issue in dispute revolves around the Defendant’s assertions that it is not liable to pay past medical expenses where a plaintiff’s medical aid has already settled the medical bill. The legal question for determination before this Court is thus whether the Plaintiff has proved its claim for past medical expenses to the extent claimed in its particulars of claim, and if so, whether the Defendant is liable for such a claim where payments have been made by a medical scheme on behalf of the Plaintiff who its member is. It must at this stage be mentioned that the Plaintiff is suing in his personal capacity and not on behalf of Discovery Medical Aid Scheme which then give rise to the question of unjust enrichment seen in the light that the past medical expenses have already been paid by the medical aid scheme.
- [4] Despite the above, the Defendant nevertheless concedes that in terms of section 17 of the Act, it is liable to compensate claimants for all proven damages, including past medical expenses. The only area of dispute in respect of past medical expenses is the vouchers already paid by the medical scheme. The Defendant questions whether in view of the fact that the vouchers for past medical expenses have already been paid by the medical scheme, it can be said that the Plaintiff substantively suffered damages.

Plaintiff’s contentions

- [5] The Plaintiff first took issue with the fact that the Plaintiff did not plead this defence in his particulars of claim and argues that this debate is therefore around an issue which is not live as it were. He relies in this regard on *Jowell v Bromwell-Jones* 1988 91) SA 836 (W) at 898E- as well as Rule 18(5) of the Uniform Rules. The Plaintiff argues in this regard that the Plaintiff is bound by its plea and cannot be allowed to raise new arguments or issues not raised in the plea.
- [6] Further, the Plaintiff's counsel argues that the legal position at present is that the past medical expenses, which the Plaintiff has received, or will receive, are not deductible in determining his claim for past and future medical expenses. The Plaintiff's argument is based on a number of court decisions which I deal with in the ensuing paragraphs.

The Defendant's Contentions

- [7] The Defendant on the other hand contends that the past medical expenses in the case where the medical aid scheme has settled the bill are deductible in the determination of the claim for past or future loss of earning capacity. The Defendant refers to the judgment of *Discovery Health (Pty) v Road Accident Fund* (2022/01619) [2022] ZAGPPHC in which *Discovery Health (Pty) Limited* sought an order setting aside the Road Accident Fund's directive dated 12 August 2022 directing all the managers of the Defendant to reject all claims of past medical expenses where same were already settled by medical schemes. The Defendant highlights and refers to paragraph 6 of that judgment ("Mbongwe judgment") in which the court per Mbongwe J stated the following:

"The applicant is the administrator of several medical aid schemes which have and continues to settle medical bills on behalf of their clients for services referred to above with a clear understanding or agreement that the expenses incurred are refundable by the claimant to its medical aid scheme. It is on this basis that past medical expenses are included as part of the claim for damages and are payable to the medical scheme by the claimant upon settlement of its claim."

- [8] The Defendant concedes that the Mbongwe J makes it clear that the Defendant is liable to pay a claim for past medical expenses which the claimant has incurred for treatment of injuries arising out of the negligent driving of a motor vehicle even though the medical expenses had already been settled by the medical scheme. The Defendant however argues that this judgment ignores the legal principle laid down by the Supreme Court of Appeal in the matter of *Rudman v Road Accident Fund* *Rudman v Road Accident Fund* (370/01) [2002] ZASCA 129; [2002] 4 All SA 422 (SCA); 2003 (2) SA 234 (SCA) (26 September 2002) as found in the following paragraph.

"[11] In my opinion the learned judge in the Court a quo has not misdirected himself in his understanding of these authorities or in his application of the law to the facts. His judgment correctly emphasizes that where a person's earning capacity has been

compromised, "that incapacity constitutes a loss, if such loss diminishes the estate" (Rumpff CJ in the above quotation from Dippenaar's case) and "he is entitled to be compensated to the extent that his patrimony has been diminished" (Smalberger JA in President Insurance Co Ltd v Mathews). 3 (The underlining is from the trial judge's judgment.) In his view, Rudman's disability giving rise to a diminished earning incapacity

was proved, but the evidence did not go further and prove that his incapacity constituted a loss which diminished his estate."

[9] The Defendant further refers court to the second Discovery case between the same parties namely, Discovery Health (Pty) Ltd v Road Accident Fund and Another (2023/117206) [2024] ZAGPHC1303 (17 December 2024) and argues that the majority judgment in this matter ("the Mlambo judgment") has the effect of reversing the Mbongwe judgment. The Defendant refers to paragraph 45 of the full court's judgment penned by Judge President Mlambo JP stating the following:

"Paragraphs 30-34 of Mbongwe Judgement are no authority for the proposition that medical schemes have a right of recovery from the RAF, though their members, what they have paid in discharge of their statutory obligation to pay PMBs and EMC in full as required by the MSA and its regulations 7 and 8. If anything, these paragraphs demonstrate that the MSA and its regulations carrying the statutory duty placed on schemes to pay PMBs and EMCs in full was not drawn to the attention of Mbongwe J. To suggest otherwise would simply mean that the Court, in dereliction of its duty, failed to uphold the law."

[10] The Defendant argues therefore that the Mlambo judgment does not support the ruling by Mbongwe J and contends that the reasoning is that medical schemes cannot be compensated through their members for what they have paid in discharge of their contractual and statutory obligations. The Defendant argues further that the other reason for the disagreement is that the principle of subrogation does not apply to medical schemes as they are not insurance companies. The Defendant relies on the dictum of Ngeno AJ of the Johannesburg High Court in the unreported case of Ntokozo Francinah Machi v Road Accident Fund case number 2020/12687, delivered on the 03/02/2025 paragraph 9 in which the learned judge criticised the ratio of Mbongwe J and aligned his judgment with the judgment of the full court.

[11] In coming to the conclusion that the Defendant is not bound by the agreement concluded between the medical scheme and its members, the full court further reasoned at paragraph 92 as follows:

"The challenge facing Discovery Health and the medical schemes it represents goes beyond questions of interpretation of its rules. The rules published by the Discovery Medical Scheme are only for its members and the scheme and not third parties like the RAF. The rule dealing with recovering from the RAF what the scheme has paid in discharge of its contractual and statutory obligations is a rule of Discovery Medical Schemes' own making. It cannot bind third parties, including the RAF. The Government Employees Medical Scheme (GEMS), the third largest

scheme in the country, does not oblige members in its rules to claim any past medical expenses from the Fund. Conceivably, GEMS accepts that it cannot recover what it is statutorily required to pay by way of PMB's and EMC's from the RAF."

- [12] The Defendant's counsel accordingly argued that by virtue of the medical scheme having paid the past medical expenses, a benefit had accrued to the Plaintiff. This is tantamount to the situation where a plaintiff also receives some benefit as a result of a damage causing event. If such benefit is taken into account in reducing his or her recoverable damages, it is said that the collateral source rule does not apply. This means that the Defendant's liability to pay damages is accordingly reduced or extinguished.
- [13] He further contends that the ratio of Mbongwe J and the judgments he relies on, is that the settlement of medical expenses by the medical scheme on behalf of its member cannot be taken into account when determining the appropriate amount of compensation relating to past medical expenses. That is to suggest that the premiums that a member pays to a medical scheme entitles that member to certain benefits and those benefits accrue for the benefit of the member alone and not for third parties such as the Defendant.
- [14] It is clear from the above arguments that the quantum of the Plaintiff's claim for past medical expenses is not disputed by the Defendant. What the Defendant takes issue with is the liability of the Defendant to pay same in circumstances where the past medical expenses have been settled with the service provider by the medical aid scheme. In dealing with this issue only one witness was called by the Plaintiff and the Defendant did not call any witness.

Evidence: Mr Tshidi

- [15] Mr Tshidi's evidence was very brief. He testified that he is a claims administrator for Discovery Medical scheme and confirmed that he had personally worked on the Plaintiff's matter. He said after perusing all the medical vouchers and the schedule, which was filed for purposes of litigation, he confirmed that the scheme has paid R131 981.79 for the Plaintiff's past medical expenses and that all of these payments were for treatments related to the accident in question.
- [16] Under cross examination Mr Tshidi's evidence was not per se challenged on the facts. He was asked questions which called for legal opinions and conclusions. Considering that Mr Tshidi is a lay person, his answers to any questions which called for legal conclusions should be regarded as irrelevant and accordingly inadmissible. He was not called as a legal expert nor did he profess to be one. For instance, his evidence with regards to the legal questions of *res inter alios acta* and or unjustified enrichment is irrelevant and accordingly disregarded. His evidence on the facts given in chief is however accepted. Having dealt with his evidence I now turn the debate on the issue of past medical expenses as articulated above.

Discussion and analysis

Did the defendant fail to plead its argument on the past medical

expenses issue

[17] I will first deal with the Plaintiff's contention that the Defendant did not raise the issue of past medical expenses required by Rule 18(4) and

(5) of Rule 18 in the plea. It is necessary to first look at the Plaintiff's particulars of claim where the following is averred: "As a further result of the aforesaid collision, the Plaintiff suffered damages in the sum of R1 731 981.79 which is calculated as follows:

1. Past medical expenses

R131 981.79

(Schedules and vouchers attached, marked

Annexures C)

2. Future medical expenses (Estimated Amount) R350 000.00

(Alternatively, a section 17(4)(a) undertaking)

3. Past loss of earnings/earning capacity

R150 000.00

(estimated amount)

4. Future loss of earnings/earning capacity

R500 000.00

(Estimated amount)

5. General damages

R600 000.00

[18] In the plea the Defendant responds as follows to paragraph 8 and 9 of the Plaintiff's particulars of claim. The "Defendant denies that the Plaintiff has suffered damages in the amount of R1 731 981.19 and puts the Plaintiff to the proof thereof". In the light of this somewhat curt response, the Plaintiff contends that the Defendant has failed to plead its argument on the past medical expenses issue and further that the plea does not comply with the above rules. The Defendant's legal representative however argues that it was not necessary to plead evidence at this stage on each averment as the plea is, in his view, sufficient to raise the dispute in respect of all the heads and amounts claimed.

[19] Rule 18 (4) provide as follows:

18(4)"Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.";

18(5) “When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance”.

[20] The question in this matter is whether the Defendant in denying the allegation of fact made by the Plaintiff answered the point of substance. It is trite that a party is bound by his or her pleadings and will ordinarily, not be allowed to raise a different or fresh case without a due amendment.

Likewise, a court is bound by those pleadings and may not pronounce upon any claim or defence which was not made in the pleadings by the parties. See *Jowell v Bramwell-Jones* 1998 (1) SA 836 (W) at 898E E-J citing from Jacob and Goldrein on Pleadings: Principles and Practice at 8–9. See also *Minister of Police v Gqamane* (226/2022) [2023] ZASCA 64; 2023 (2) SACR 427 (SCA) (3 May 2023) at paragraph 13 where this principle was confirmed.

[21] A response such as for example a simple “no” or “I deny” without providing any further details or explanations may amount to a bare denial. A bare denial without any explanation in the context of the pleadings may be regarded as insufficient. It is generally accepted that a proper plea is one in which the defendant denies and clearly states the material facts upon which they rely for their defence so the plaintiff can be able to reply thereto. A denial that the plaintiff suffered any damages would in my view be sufficient to enable the plaintiff to know the case it is to meet.

[22] In the present case the Defendant has pleaded that it denies that the Plaintiff has suffered any damages including the past medical loss. This in my view does not amount to a bare denial for the purposes of the plea, I accordingly do not agree with the Plaintiff’s contention that it is. Even though not specific, the plea is not evasive and clearly puts inter alia the issue of past medical expenses in issue. I therefore find that the Defendant was entitled to raise this issue and that it was not a new issue as alleged by the Plaintiff. The court is accordingly also entitled to entertain this argument. I will now turn to the main issue of the past medical expenses.

The Past Medical Expenses Claim

[23] It is trite that in terms of section 17 of the Act, the Defendant is liable to compensate claimants for all proven damages including past medical expenses. It is well known that lately a controversy arose around the question whether the Defendant is liable to pay the past medical expenses in cases where same were covered and paid by a medical aid scheme. This controversy was triggered by the internal directive of 12 August 2022 issued by the Defendant in which all the managers of the Defendant are directed to reject all claims for past medical expenses where same had already been settled by medical schemes. Not surprisingly this directive gave rise to litigation as the interested parties, in particular the medical aid schemes, were not happy with the state of affairs.

[24] It is necessary in dealing with this issue to examine some of the pertinent decided cases dealing with the matter relied on by the parties. In an earlier case of *D'Ambrosi v Bane* 2006 (5) SA 121 (C) relied on by the Plaintiff which pre-dates the 2022 RAF directive, the Western Cape High Court (per Van Zyl J) concluded that 'the medical aid scheme benefits which the plaintiff has received, or will in future receive, are not deductible in determining his claim for past and future hospital and medical expenses.' This decision was taken on appeal to the Supreme Court of Appeal where the latter court in *Bane and Others v D'Ambrosi* (279/08) [2009] 1 All SA (SCA) 98 in confirming this principle stated the following at para 19:

"Counsel's submission is that the claim for future medical expenses should be restricted to the additional premiums which the respondent will have to pay to his medical aid scheme because he is now classified as a chronic sufferer. Their argument was rejected by Van Zyl J when he ruled on the second issue in the stated case, as to the counsel's attempt to equate the statutory obligation upon medical aid societies to accept all applicant as members to some sort of 'national health scheme' or social insurance benefit. Van Zyl J pointed out that payments which the medical aid was and is obliged to make to the respondent constitute the discharge by the medical aid of contractual obligations flowing from the contract concluded between it and the respondent. As such they constitute re inter alios acta and the appellants cannot claim the benefit of them.' I fully agree with the learned judge's approach on this issue".

[25] In 2010 in *Ray N.O. v Road Accident Fund* (9343/2000) 2010 ZAWCHC 30 (22 February 2010) the Western Cape High Court held that the "Payment by Bonitas of the Plaintiff's past medical expenses does not relieve the defendant of its obligation to compensate the plaintiff for past medical expenses." Furthermore, in 2023 post the 2022 Directive, the Western Cape High Court in *Dame van Tonder v Road Accident Fund* (1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023) made the following pertinent statement in paragraphs 29 and 30:

"It is apparent from the above statements of the legal position that the first respondent is not entitled to seek to free itself of the obligation to pay full compensation to victims of motor vehicle accidents. Thus, the directive challenged in the present proceedings is outside the authority given by the relevant statute. More specifically the directive is inconsistent with express provisions of section 17 and is consequently unlawful. The social security protection the RAF Act provides is in no way intended to impoverish medical schemes who with the directive to stand would face a one direction downward business trajectory as a result of their members becoming victims of motor vehicle accidents. The levy paid on fuel provides the funds for payment of compensation to motor vehicle accident victims and nothing in the law obliges medical aid schemes to contribute towards such compensation by the payment from the time of hospitalisation and treatment of a motor vehicle accident victim of medical expenses without a reasonable expectation of reimbursement upon settlement of the plaintiffs claim in terms of the RAF Act".

- [26] It is common cause that in 2022 in the case of *Discovery Health(Pty) Ltd v Road Accident Fund and Another* (2022/016179 [2022] ZAGPPHC, the applicant, (Discovery Health), approached court on an urgent basis seeking an order reviewing and setting aside the 12 August 2022 Directive issued by the RAF which effectively stated that RAF is not obliged to pay the past medical expenses where a medical aid is involved. Discovery's contention was that the directives were not only unlawful but that they were also inconsistent with section 17 of the Act. The court per Mbongwe J found in favour of the Discovery Health and held that the payments by a medical aid schemes are not deductible in the determination of the past medical expenses. The court further refused the applicant leave to appeal.
- [27] Not satisfied with the Mbongwe judgment, the RAF approached the Supreme Court of Appeal which also refused leave to appeal. The matter did not end there as the RAF approached the Constitutional Court but the latter also dismissed the application for leave appeal. Despite these decisions the Defendant has nevertheless persisted in refusing to pay claimants their past medical expenses and issued two similar directives.
- [28] In 2024 in a subsequent case between the same parties (*Discovery Health (Pty) Ltd, supra, v Road Accident Fund and Another* (2023/117206) [2024] ZAGPHC1303 (17 December 2024), Discovery Health approached the court for declaratory relief of contempt of court against the RAF as well as a declarator that the RAF is in breach of the Mbongwe judgment. The majority judgment per Mlambo JP (Mlambo judgment) dismissed Discovery's application on the basis that the RAF's second and third directives issued by RAF are different from the first Directive which the Mbongwe J judgment dealt with and, that it could therefore not find that the RAF breached the Mbongwe judgment. The Mlambo judgment found that as the issues raised in the second and third directives were not covered by the Mbongwe judgment and they therefore did not fall under the *res judicata* doctrine.
- [29] However in the minority judgment Opperman J disagreed and concluded that the RAF's second and third directives are precluded by the *res judicata* principles and that the RAF cannot therefore continue to raise new justifications for rejecting the claims on what was essentially the same grounds couched in different words. She concluded that the second and third directives were merely subsets of the first directive dealt with by the Mbongwe judgment and that these later directives had no legal consequence except to support the allegation that they are in breach of the Mbongwe judgment.
- [30] The Defendant in essence relies on the Mlambo judgment and argues that the full court ruled that the Mbongwe judgment was wrongly decided. However, as stated in paragraph 27 above, although the full court discussed the matter at length, it however did not make an order that changed the status quo as correctly observed by the Western Cape Hough Court recently in *Esack N.O v Road Accident Fund* (12926/2017) [2025] ZAWCHC 27 (4 February 2025). In this matter the court in dealing with a similar question, discussed and analysed in some detail the Mlambo judgment and made *inter alia* the following relevant observations which I align myself with:

"In my view Discovery Health has not changed the legal landscape for the reasons that follow. The first problem is that the majority

judgment

would fall foul of the doctrine of stare decisis, a fundamental principle of our law that requires High Courts to follow decisions of the Supreme Court of Appeal and the Constitutional Court. The issue of deductibility of medical-aid scheme benefits was dealt with by the Supreme Court of Appeal in Bane which concluded that "the Medical Schemes Act did not have the effect of depriving plaintiffs of their claims for hospital and medical expenses in delictual actions "

"The other difficulty with the majority judgment in Discovery Health is that the court was not required and in fact did not decide the issue of deductibility of payments made by medical aid schemes from compensation to be paid to road accident victims.

This, the majority acknowledged when it stated that 'We raise the following considerations without answering the question.' That said, it must follow that Discovery Health lends no support to the defendant's argument that it is not liable to compensate the plaintiff in respect of past hospital and medical expenses that have been paid by the deceased's medical-aid scheme as part of the PMB's or EMC's".

"Lastly, accepting for a moment that the deductibility of collaterals is a matter that should be determined with regard to public policy consideration, fairness, equity and reasonableness no such considerations were brought to the court's attention. All that the defendant's legal representative did was to restate the principles discussed in Discovery Health without presenting any evidence in support of the proposition that the public policy considerations, fairness, equity and reasonableness dictate that the defendant should not be held liable to compensate a road accident victim in respect of past medical and hospital expenses which have been paid by the victim's medical-aid scheme as part of its obligation to pay for FMB's and EMC's".

"To conclude on the issue, the deceased incurred past medical and hospital expenses. These were paid by the deceased's medical-aid

scheme, and I have been asked to assume, only for the purpose of deciding the issue in this matter, that the past hospital and medical expenses paid by the deceased's medical aid scheme relate to PMB's. On the application of the common law principle of res inter alios acta, the defendant is liable to compensate the plaintiff as such payment is a matter between the deceased and his medical aid-scheme. Having regard to all of the above, I am satisfied that the plaintiffs claim for past hospital and medical expenses must succeed".

[31] I am in agreement with the submissions made by the Plaintiff's counsel in the present matter that the Mlambo judgment has not changed the legal position as confirmed by the Mbongwe judgment. As stated in Esack, the Mlambo judgment did not decide the issue of deductibility of payments made by medical aid schemes from compensation to be paid to road accident victims. However, even if it did, it would have contradicted the decisions of

the Supreme Court of Appeal and the Constitutional Court which essentially approved the Mbongwe judgment by refusing leave to appeal that judgment.

- [32] In closing it must be pointed out that in the unreported case of Ntokozo Francinah Machi v Road Accident Fund referred to in paragraph 10 above, the court appears to have aligned itself with the Mlambo judgment mainly because of the stare decisis principle. The reliance on precedence in this instance loses sight of the fact that other decisions relied on by Mbongwe J such as for instance Bane was upheld on appeal by the Supreme Court of Appeal. In addition, the application for leave to appeal the Mbongwe judgment itself was refused by both the Supreme Court of Appeal and the Constitutional Court. This means that the Mbongwe judgment stands on the question whether the payments made by medical aid schemes are deductible from compensation to be paid to road accident victims. Finally, if one considers the re inter alios acta principle as lucidly articulated in Bane, I tend to disagree with the Machi matter which seems to have been decided on wrong grounds. As the matter is between the parties the benefit cannot accrue to a third party.

Conclusion

- [33] In conclusion I find that the medical aid scheme benefits in this context are not deductible in determining his claim for past and future hospital and medical expenses. I am accordingly in agreement with the Esack judgment which in my view reflects the correct legal position that the RAF is responsible for the payment of past medical expenses. The Plaintiff therefore succeeds with the claim for past medical expenses in the amount of R131 981,79 with costs, and I intend making an order to that.

Order

- [34] In the result I make the following order:

1. The Defendant is ordered to pay the Plaintiff in the amount of R131 981,79 constituting past medical costs resulting from the treatment for injuries sustained in the motor vehicle accident on 9 April 2022;
2. The Defendant is further ordered to pay the party and party costs on Scale B in terms of Rule 67A(3) read with Rule 69(7).

MBG LANGA

JUDGE OF THE HIGH COURT

MIDDELBURG LOCAL SEAT

Appearances:

For the Plaintiff: Advocate JBW Mouton For the Defendant: Mr NB Mhlanga Date of hearing: 20 March 2025 Date of delivery: 09 April 2025

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