

SOUTH AFRICA / JUDGMENT

Van Sensie v Road Accident Fund (2533/2019) [2025]

ZAECQBHC 17 (13 May 2025)

[2025] ZAECQBHC 17

COURT

Eastern Cape High Court, Gqeberha

BEFORE

Tilana-Mabece

CASE / FILE NUMBER

2533/2019

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE
DIVISION, GQEBERHA)
Case No: 2533/2019
Reportable: YES/NO

In the matter between:

DESIRE
VAN SENSIE
PLAINTIFF
and
ROAD
ACCIDENT FUND
DEFENDANT

JUDGMENT

TILANA-MABECE AJ

- [1] The plaintiff instituted an action for damages against the defendant for damages suffered in a motor vehicle collision that occurred on 18 January 2016 in Uitenhage, Eastern Cape. At the commencement of the proceedings, the parties advised the court that most of the heads of damages have been finalised save for the claim in respect of past hospital and medical expenses.

[2] The matter came before me as a stated case in terms of Rule 33 (1) of the Uniform Rules.
Below I set out the stated case as placed before me:

‘The following facts are common cause

2.1 Plaintiff was involved in a motor vehicle accident on 18 January 2016 at the corner of Union Avenue and Van der Stel Avenue, Uitenhage, Eastern Cape.

2.2 On 4 November 2022 an order was granted by the above Honourable court that, inter alia, defendant is liable to pay to Plaintiff 100% of her damages arising from the bodily injuries which she sustained in the motor vehicle accident which occurred on 18 January 2016.

2.3 Defendant admits that as a result of the collision Plaintiff sustained severe bodily injuries, inter alia:

2.3.1 A neck shoulder and back injury

2.3.2 A head injury

2.3.3 Various bruises and abrasions of the head

2.4 As a result of her injuries, Plaintiff:

2.4.1 She immediately lost consciousness after the impact.

2.4.2 Plaintiff received treatment at the scene of the collision by ambulance staff and was transported from the scene of the collision by ambulance to Cuyler Hospital in Uitenhage where she was stabilized and referred for x-ray and received a drip and medication and was admitted as an in-patient. (sic)

2.4.3 Plaintiff was initially seen by a general practitioner and later transferred to an Orthopaedic Surgeon for further care and treatment.

2.4.4 As an in-patient, Plaintiff received various medication in the form of analgesics and anti-inflammatories and was contentiously referred for x-rays and CT scans

2.4.5 A neck brace was placed on Plaintiff’s neck to stabilize it.

2.4.6 Plaintiff received physiotherapy and on-going in-patient treatment until her discharge on 25 January 2017.

2.4.7 Plaintiff received medical treatment by various medical providers.

(The aforesaid medical treatment received by Plaintiff as a consequence of the injuries she sustained in the collision are hereinafter collectively referred to as “the medical treatment”).

2.5 In terms of the Discovery Rules:

2.5.1 Discovery Health was obliged to pay the hospital and medical expenses in respect of the medical treatment which Plaintiff received as a consequence of the injuries that she sustained in the motor vehicle collision on 18 January 2016.

2.5.2 By virtue of Plaintiff's membership of the Discovery Health, she is bound by the Discovery Health Rules.

2.5.3 Plaintiff was obliged to lodge a claim with the Defendant.

2.5.4 Plaintiff is obliged to reimburse the Discovery Health, any amounts recovered from Defendant which were paid by the Discovery Health

2.6 Plaintiff received medical treatment and incurred medical expenses ("the medical expenses arising from the injuries sustained in the collision on 18 January 2016.

2.7 A schedule of the medical expenses claimed in the sum of R37 792.83 (showing the service providers, the account numbers, the dates that the services were provided, the amounts claimed and the amounts paid by Plaintiff and Discovery Health) is attached hereto and marked "A".

2.8 Plaintiff, at the time of the collision and when receiving the aforesaid medical treatment, was a member of the Discovery Health Medical Scheme ("Discovery") with membership number 5636890.

2.9 Discovery paid the costs incurred in respect of the medical expenses in the sum of R34 534.27 to the relevant service providers.

2.10 Discovery paid the aforesaid medical expenses pursuant to Plaintiff's membership of Discovery and by virtue of the contractual arrangement between itself and Plaintiff as well as owing to its statutory obligation in terms of the Medical Schemes Act No. 131 of 19198 and the Regulations thereto, and as further set out in Plaintiff's Medical Benefit Plan and in accordance with the Rules of the Discovery health Medical Scheme registered under the Medical Schemes Act No.131 of 1998, which were registered with the Registrar of Medical Societies on 19 November 2010 ("the Scheme Rules")

2.11 Defendant admits that past medical and hospital expenses in the sum of R34 534.27 were paid in respect of Plaintiff's medical treatment by Discovery to service providers.

2.12 Defendant admits that past medical and hospital expenses in the sum of R3 258.56 were paid over by Plaintiff personally to service providers.

2.13 Defendant admits that the medical treatment paid by Plaintiff personally and by Discovery to service providers was reasonable and necessarily incurred in respect of plaintiff's injuries.

2.14 Defendant admits being liable to pay to Plaintiff the sum of R3 258.56 in respect of Plaintiff's claim for past hospital and medical expenses which were paid by Plaintiff personally to service providers.

SUBMISSIONS

3. Plaintiff contends that by virtue of the provisions of Section 17 of the Road Accident Fund Act, 56 of 1996 as amended:

3.1 Defendant is liable to compensate all victims of motor vehicle accidents when injuries have been sustained as a result of the negligent driving of a motor vehicle, that this includes past hospital and medical expenses.

3.2 Plaintiff contends that the benefits that she received from her private medical aid scheme, Discovery, in respect of her past medical and hospital expenses do not exclude Defendant's liability to compensate a third party in terms of the Road Accident Fund Act.

3.3 Defendant contends that the Discovery Health Scheme was obliged in terms of Regulation 8 of the Medical Schemes Act, 131 of 1998 to render full payment, without deductible in respect of all prescribed minimum benefits and all emergency medical services as defined in Regulation 7 of the Medical Schemes Act.

[1] (2023/117206) [2024] ZAGPHC1303 (17 December 2024).

[2] Mighty Solutions t/a Orlando Service Station v Engen Petroleum Ltd [2015] ZACC 34; 2016 (1) SA 621 (CC).

[3] 1927 CPD 130 at 130.

[4] Trans-African Insurance Co Ltd v Maluleka 1956 (2) ALL SA 382 A.

[5] Section 34 of the Constitution.

[6] Union Government v Warneke 1911 AD 657 at 662 and 665-667.

[7] 1996 (1) SA 273 (C) at 277.

[8] (126/2020) [2022] ZAECQBHC 50 (1 December 2022).

[9] (2675/2022) [2024] ZAECQBHC 18 (27 February 2024).

[10] Footnote 1.

[11] Discovery, fn 1, para 46.

[12] Paragraph 92 discovery judgment.

[13]

[2014] ZACC 24.

[14] 1979 4 SA 208 (ZR) 215.

[15] 1979 3 SA 1092 (T) 1101.

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