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Road Accident Fund

Pruning the money tree

Medical service providers “suppliers" may submit their accounts to the Road Accident Fund (RAF) directly for payment (s17(5). The question that arises is whether the RAF is liable for any legal costs which may be incurred in the submission of the account for payment.

s17 does not make provision for the payment of legal costs to a supplier. It was not envisaged, nor is it standard legal practice, that costs are charged for the mere submission of an account for payment.

s17(5) of the Road Accident Fund Act, 56 of 1996 provides that:
“Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of (medical services, the supplier of the relevant medical services)... may claim the amount direct from the Fund or an agent on a pre- scribed form, and such claim shall be subject, mutatis mutandis, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could but for this subsection, have recovered."

The intention of the legislature was clearly to allow medical service providers to render their accounts to the RAF directly for payment, as opposed to having to recover from the injured third party.

Over the years, attorneys have claimed millions from the RAF for legal costs of collecting the debt even if the RAF had not defaulted. The system led often to an absurd situation where the legal costs of collecting the debt were significantly higher that the debt itself. Also, the practice was often that several medical service providers would treat a single patient but these so-called “claims" were lodged separately using the services of a single attorney, who would then claim for several legal bills, duplicating the various fee charges and disbursements.

The recent case of Department of Health and Social Development Limpopo vs Road Accident Fund High Court of South Africa. TPD, Case Number 16177/08, dealt with the “Supplier's" right to claim legal costs.
The Department had been paid for an account in terms of s17(5), with no offer towards legal costs. It claimed it was entitled to costs, relying on s17 (2). s17(2) provides that the “upon acceptance of the amount offered as compensation in terms of subsection (1) the third party shall be entitled to the agreed party and party costs in respect of the claim concerned"

The Department's submission was that the provision of “mutatis mutandis" should apply to the s17(2) payment as well, thereby entitling the supplier to pre- summons costs. The RAF argued that s17(2) only allows the third party (injured party and not the medical supplier) to claim agreed or taxed costs. The RAF further argued that the “mutatis mutandis" provision did not render s17(2) applicable to the “supplier" In arriving at his decision, Judge du Plessis cited the case of Road Accident Fund v Abdool Carrim and Others 2008 (3) SA 579 (SCA) and held that the “mutatis mutandis" provision did not apply to s17(2). There was accordingly no entitlement to costs. Though not entitled to “pre-summons" costs, the court did emphasise that a previous agreement to pay costs could be enforced, and that “ordinary rules pertaining to costs orders" would apply if a supplier has to institute action to enforce its claim.

This judgement is landmark in ensuring the sustainability of the Fund, and directing public funds where the legislature intended, namely the victims of road accidents.

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