



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 34199/2011

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
<u>10/02/2020</u> DATE	 SIGNATURE

In the matter between:

HERBERT MPHAHLA MANTSIE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

YACOOB J:

1. The plaintiff was a passenger in a motor vehicle which was involved in a collision on 08 November 2009, and was injured. He lodged a claim against the defendant for damages resulting from his injuries.

2. The defendant conceded the merits of the plaintiff's claim in 2012, and the claims for past and future medical and hospital expenses in 2014. The parties agreed that the issue of general damages should be postponed *sine die*, since it has been rejected by the defendant and must still be considered by the HPCSA.
3. The matter is then only before me to determine loss of income.
4. The question is whether the injuries suffered by the plaintiff have resulted in past and or future diminution of his earning capacity, and if so, what the appropriate contingency to be applied.
5. The plaintiff was, at the time of the collision, 37 years old, and a teacher. He was hospitalized for 14 days after the collision. He suffered a chest injury, with a rib fracture and lung contusion, liver contusion, face and head lacerations and neck and back injuries. His initial Glasgow Coma Scale score was 14/15, where the best response is 15.
6. There is a dispute about whether the plaintiff suffered a compression fracture on his T11 and L1 vertebrae, and any brain injury. The remainder of the plaintiff's injuries are common cause.
7. Also in dispute is whether the plaintiff's ability to progress in or maintain his career was compromised as a result of the collision, and whether his depression and post-traumatic stress disorder was caused and/or exacerbated by the collision or existed before the collision occurred.

8. The joint minutes of the various experts were admitted. The plaintiff called an orthopaedic surgeon and a neurosurgeon as witnesses, and gave evidence himself. The defendant did not call any witnesses.
9. The orthopaedic surgeon called by the plaintiff, Dr Liebenberg, testified that he had examined the plaintiff three times, in 2013, 2017 and 2019, and had had X-rays on each occasion.
10. When the plaintiff was initially admitted to hospital no X-rays of the spine were done, so there was no diagnosis of fractures of the vertebrae. The compression fractures of the vertebrae were, for the first time, diagnosed by Dr Liebenberg.
11. Dr Liebenberg suggested that a reason why no X-rays of the spine were done was that the pain from the chest injuries, including the lung and broken ribs, eclipsed that of the spine and it was possible that the spine injuries were not picked up. He stated that the pain from the fractures would not have been felt while the plaintiff was lying on his back with drainage for the chest injuries, but only once he started moving around.
12. There was no evidence adduced from the defendant's side regarding these injuries. Dr Liebenberg said that it appeared that the fractures were caused by the collision but obviously there was no proof that they did not occur at some other time.
13. The plaintiff's second witness was Dr Steyn, a neurosurgeon. Dr Steyn testified that the plaintiff currently exhibits symptoms of both cognitive and personality issues. He reported headaches and back pain that is exacerbated by movement. His planning ability was compromised. He was unable to stand for long periods.

14. Dr Steyn testified that the symptoms exhibited by the plaintiff, including those recorded in the minutes of experts who did not testify, including post-traumatic amnesia and neurocognitive decline, indicated a brain injury. The plaintiff did not perform as well on tests as a person of his educational level would be expected to. The plaintiff's cognitive function deteriorated even between 2014 and 2019.
15. The plaintiff himself was the last witness. He testified that he had been a teacher at Parktown Primary School. HE started teaching there in 2002. He taught Grade 7, and he had been a class teacher rather than a subject teacher, teaching all learning areas. He had also coached badminton and soccer and had been a union representative.
16. The plaintiff has a senior primary teachers' diploma, a BA Honours degree and has completed the coursework component of a Masters degree.
17. After the collision he was not able to return to work for three months after his discharge from hospital.
18. After the plaintiff returned to work the timetable was changed to accommodate him. He had subject teaching rather than class teaching, and he had assistance from learners. He also needed time to go for follow ups to hospital and so on.
19. The plaintiff had pain from his back, in his chest, and head. He cannot concentrate for long due to the headaches. He also could not write on the board as he used to. The change was noticed by the school management. He had to sit down more. He then resigned because he was not able to fulfil the standards and parents were complaining.

20. The plaintiff then resigned in April 2013.

21. The plaintiff's wife and unborn child died, which contributed to his decline. There was a dispute regarding whether they died before he resigned or after. The parties produced information from the plaintiff's sister that the plaintiff's wife died before he resigned. However later the birth certificate was produced showing that the death occurred in May 2013.

22. The plaintiff then tried to start a business which did not work, and bought a vehicle to run an airport transfer business. However he could not do the driving himself due to his injuries and the drivers he hired were not sufficiently disciplined so that failed to. He then stayed at home in Limpopo until he got an opportunity at a school in Mpumalanga. He is still teaching there, in a temporary position.

23. The plaintiff still has pain and gets tired more quickly, and cannot concentrate or teach for a long time.

24. In 2018 he taught Sepedi, Social Science and English, and in 2019 only English and Social Science because it was too much for him. He also has many free periods to rest or mark. According to the plaintiff he has an extremely reduced workload.

25. The reports by the experts of what the plaintiff's current and former school heads were put to him as contradictory. He was able to explain apparent contradicts. No witnesses testified regarding the plaintiff's teaching either before or after the collision.

26. To the extent that the defendant wished to rely on what the plaintiff's employer and former employer had to say, those people ought to have been called as witnesses. The reports by experts of what they have said are in essence third hand and cannot be probed or tested. The plaintiff's version is therefore the only real version before me of his work difficulties.
27. The plaintiff also showed signs of distress in court while giving evidence, of confusion and headaches. At one point his eyes even became red. This could not have been falsified.
28. As far as the issue of the spinal compression fractures are concerned, Dr Liebenberg was the only witness, together with the plaintiff's own description of his back pain. I found Dr Liebenberg's description of why the injury was not picked up at the hospital to be sufficient. There is no X-ray of the area taken at the hospital which could show that there was no fracture at the time.
29. I therefore find that the compression fractures resulted from the collision, and that the pain resulting from them is part of the *sequelae* of the collision.
30. The plaintiff amended his claim at the last minute to include that he has suffered a brain injury and cognitive decline. The defendant contended that any cognitive and emotional decline is due primarily to the plaintiff's loss of his wife and child, and that he showed problems at work before the collision.
31. However, there is no reliable evidence of problems at work before the collision since there was no witness who could be interrogated. The plaintiff suggested

that the report was mistaken and insisted there were only problems after the collision.

32. According to the occupational therapists' joint report the plaintiff can do sedentary to light work, which is how his occupation is classified. However he would need to apply pain management principles in the workplace.

33. In my view the fact that the plaintiff's occupation is classified as the kind of work he is able to do according to the occupational therapists does not mean that he does not actually have difficulties arising from his injuries.

34. The industrial psychologists' joint minute suggests that the plaintiff would have been promoted had he not resigned, and would have carried on until the normal retirement age of 65 had he not been injured. The plaintiff is earning less now than he would otherwise have been and therefore suffers a loss of income.

35. However the plaintiff would still be likely to work until age 65. The plaintiff suggested that a significant contingency spread was appropriate to account for the plaintiff's significant cognitive decline.

36. In my view the plaintiff has proved sufficiently that his ability to earn has been impacted by his injuries, as he will earn a lower amount until retirement. He has not simply shown a loss of capacity but an actual lowering of his earnings. His patrimony has been diminished. This is consistent with the test set out by the SCA in *Rudman v Road Accident Fund* 2003 (2) SA 234 (SCA)

37. The plaintiff's counsel suggested that the appropriate contingency to be applied to the past loss of earnings is 5%. For the plaintiff's future earnings, it was

suggested that that the appropriate contingency to apply to the plaintiff's uninjured earnings is 15% and to his injured earnings is 30%. This results in a spread of 15%, which is a large spread but not excessively so. I agree with the plaintiff's submissions regarding the appropriate contingency deductions.

38. The plaintiff submitted an actuary's calculations based on these deductions, which I accept.

39. The plaintiff submitted a draft order annexed to his heads of argument as annexure "C", which I have amended appropriately and annex to this judgment as the order marked "X".

40. I therefore order:

40.1. The plaintiff's claim for general damages is postponed *sine die*;

40.2. The remainder of the relief is as set out in the order annexed hereto marked "X".


S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Plaintiff: Mr N.C Maritz
Instructing Attorneys: MacRoberts Inc

Counsel for the Defendant: Ms M Putuka

Instructing Attorneys:

Maluleke Msimang & Associates

Date of hearing:

10 June 2019

Date of judgment:

10 February 2020