

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	CASE NO: 51420/2008
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
DATE: <u>25/03/2011</u>	SIGNATURE 

25/3/2011

In the matter between:

MASHAPA DAMNIEL LEBEPE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE J

[1] On 24 March 2004 and along the Kgopane – Duiwelskloof road, Limpopo, a collision occurred between a Nissan truck bearing registration number BDV 652 N, a Volkswagen Polo bearing registration number NLP 801 GP and a Toyota bakkie with registration number DSR 658 N.

[2] Plaintiff was a passenger in the back of the Nissan truck and alleged that the collision was caused by negligence of either one or both insured drivers. He claimed compensation from the Road Accident Fund (hereinafter referred as "the defendant") in the sum of R705 000.00 made up as follows:

(a)	Past medical expenses	:	R120.00
(b)	Future medical expenses	:	R105 000.00
(c)	General damages	:	R600 000.00
	Total	:	R705 120.00

[3] The defendant conceded the merits. At the commencement of the trial I was informed that the general damages have been fixed at R80 000.00 and with regard to the claim for future medical expenses the defendant undertook to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[4] The issue that remained in dispute was the claim for future loss of income and or loss of earning capacity.

[5] At the trial plaintiff adduced evidence. Defendant closed its case without tendering any evidence on its behalf. The defendant made the following admissions:

- (a) That the report of the orthopaedic surgeon, Dr Deodat Maré dated 25 October 2005 can be handed in without the necessity of having to call him as a witness and that the defendant accepts the correctness of the contents of his report.
- (b) that the actuarial calculations of the actuary Mr HLM du Plessis as set out in his report dated 16 March 2011 are correct. The defendant however, did not accept the correctness of the information furnished to Mr du Plessis in compiling his report.

[6] The plaintiff, Mr Lebepe testified that he was born on 16 June 1968. He is a farm labourer with no formal education. At the time of the accident he was employed by a certain Dennis Duvenage as a labourer on his farm. He left his work and stayed at home as a result of the pain he was experiencing in his lower back.

[7] He is presently employed on temporary basis at another farm where he cannot complete a full day's work. He needs to work, stop and take a rest to allow the pain to subside. He earns R1 400.00 per month. Sometimes there is no work and he has to go home. Under cross examination he could not tell how much he earned before the accident because he used to take food on credit from his employer and his salary would fluctuate.

[8] At present the plaintiff suffers pain daily. His future as a farm labourer is precarious. He won't be able to find permanent employment. According to the medico-legal report the plaintiff suffered the following injuries:

"2.2.1 Paravertebrale gewriggies

- a) Beskadiging van die ligamentjies wat onstabiliteit tot gevolg het.
- b) Beskadiging van die gewrigsvlak kraakbeen oppervlak.

Beide hierdie sal dan tot gevolg hê dat die gewrig degenerer en mettertyd die totale werweloorgang meganisme laat degenerer met gevolglik pynlike post traumatiese degeneratiewe spondilose. Vroeë en erger sekondêre veranderinge word dus ook paravertebraal gesien.

2.2.2 Die Diski

Beskadig van die diski behels krake in die eindplaat en/of riptuur van die annulus fibrosis.

Die beskadiging van die eindplaat en/of annulus lei tot verlies aan die nucleus material. Die diski vernou, die vlak kry geringe onstabiliteit en post traumatiese degeneratiewe spondilose volg.

Die diskus vernou met vroeë onstabiliteit en later osteofiete en uitgesproke degeneratiewe veranderinge in die diski."

[9] The defendant contends that plaintiff has failed to prove his loss of earning, he argued that the plaintiff's pre and post earnings should be considered to be the same as plaintiff could not prove how much he earned before the collision.

[10] It is trite that a court has a wide discretion in assessing quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. In *Southern Insurance Association v Bailey* NO 1984(1) All SA 98 at 113 (G) NICHOLAS JA held:

"Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate of the present value of loss"

[11] In Dr Maré's calculations, the actuary assumed the plaintiff's pre-injury earnings to be R1 726 per month and multiplied that amount by 12 to arrive at R20 712 per annum and assumed inflationary adjustments until retirement at 65. The method of calculation is not disputed by the defendant. The defendant, if I understand his argument correctly, disputes the pre-injury earnings of R1 726 per month.

[12] In my view, a salary of R1 726 per month for a farm labourer cannot be said to be out of the ordinary especially if regard is had to a discount to be made for contingencies. The rate of the discount is largely arbitrary and must depend upon the judge's impression of the case (see *Southern Insurance Association v Bailey supra* at 116 par H). It has to be borne in mind that the court has to look at the current age of the plaintiff for purposes of the assessment. The plaintiff is 43 years old, his condition is not going to improve but will decline further. I cannot find any fault with the assumptions made by the actuary and consider a contingency deduction of 5percent pre-injury and 10 percent post injury to be fair in all the circumstances.

[13] In the result, the plaintiff is entitled to an award of damages in the sum of R233 297.00 made up as follows:

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|----|---|---|-------------|
| 1. | General damages | : | R80 000.00 |
| 2. | Future loss of income and/or earning capacity | : | R148 297.00 |
| 3. | Future medical expenses | : | Certificate |

[14] In the result the following order is made:

1. The defendant is ordered to pay the plaintiff the sum of R228 297.00.
2. The defendant is directed to furnish an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996.
3. The defendant is ordered to pay the costs of suit as taxed or agreed, on a party and party scale, such costs are to include the costs of all experts as well as qualifying expenses, if any.
4. The plaintiff is declared a necessary witness.



MATOJANE, J