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**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

Case: 46193/2018

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 29/01/2024

SIGNATURE

In the matter between:

ADV LOUBSER NO obo J O[...]

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

INTRODUCTION

This is an application for default judgement against the Defendant in respect of merits and Quantum. The Quantum aspect extends to loss of earnings/capacity and future medical expenses. The general damages aspect is to be postponed sine die as it has not found jurisdiction in terms of regulation 3 of the Road Accident Fund Act 56 Of 1996. The Defendant's defence was struck out on 26 October 2021. The notice of setdown was duly served on the Defendant on 3 April 2023.

- [1] The Plaintiff seeks an order in respect of Merits and Quantum(Loss of earnings and future medical expenses) arising from delictual damages that he allegedly suffered in a motor vehicle accident in which he was involved on 30 April 2016 at or near Bergen Road, Valhalla, Pretoria, Gauteng Province.

Counsel filed heads of argument and argued for an amount of R9 119 099.00 in respect of loss of earnings based on an actuarial calculation report dated 17 May 2022, and an undertaking in terms of Section 17(4)a of the Road Accident Fund Act 56 of 1996 (“The Act”)

MERITS

- [2] The Plaintiff testified that on 30 April 2016, he was a driver of a motorcycle with registration C[...] 8[...] G[...]. He was travelling straight on 1[...] B[...] Road, Valhalla in Pretoria ,Gauteng Province, when a white Nissan Sentra motor vehicle driven by the insured driver known to him as Blain, suddenly reversed out of the driveway of house 1[...] B[...] Road into the road without making sure that it was safe to do so.
- [3] He stated that he applied brakes and swerved in order to avoid the accident with the insured driver, but he lost control of the motorcycle and overturned. He sustained injuries as a result thereof.
- [4] I pause to state that the evidence led in court does not differ from the affidavit in terms section 19F of the Act deposed to by the Plaintiff.
- [5] Counsel referred the court to the sketch key and pictures of the location of the accident and referred to caselaw. He also referred to the hospital records of Steve Biko hospital that confirm that the Plaintiff was treated following a motor vehicle accident.

[6] The uncontested evidence of the Plaintiff is sufficient and credible. Considering the facts of the case and argument/submissions made by counsel, I find that the Plaintiff has succeeded in proving on the balance of probabilities that the insured driver was negligent and the sole cause of the accident. The insured driver did not have regard for other road users, negligently drove from the yard and entered the road at an inopportune time and caused the collision.

[7] I therefore find that the Defendant is liable 100% for the Plaintiff's proven damages.

QUANTUM

The plaintiff served issued summons on 03 July 2018. In the particulars of claim, he claims an amount of R5 956 426.00 in respect of loss of earnings and future medical expenses. There were attempts made to amend the particulars of claim, served on 06 June 2023 and subsequently, which notices did not comply with the provisions of Rule 28 of the uniform rules of the court.

[8] The Plaintiff has filed uncountered medico-legal reports of experts in support of the claim brought against the Defendant.

The following expert reports were filed: (008: Caseline)

- | | | | |
|-----|------------------------|---|--------------------------|
| 8.1 | Dr HP and Dr TJ Enslin | - | Orthopaedic Surgeons |
| 8.2 | Dr J Naidoo | - | Neurologist |
| 8.3 | Dr JJ Labuschagne | - | Neurosurgeon |
| 8.4 | Mr J Mbele | - | Clinical Psychologist |
| 8.5 | Ns K Havenga | - | Counselling Psychologist |

- 8.6 M Beytell - Industrial Psychologist
- 8.7 Dina Rocha - Occupational Therapist
- 8.9 JJC Sauer - Actuary

[9] **Dr Jason Labuschagne – Neurosurgeon**

[9.1] Having perused the Steve Biko hospital records made available to him, the expert records the following injuries:

- Head abrasions and lacerations;
- CT-scan showed small extradural bleed on the temporal aspect of his brain and multiple contusions, with middle line shift.
- His GCS was 9/15 on neuro-observation.

[9.2] He now experiences the following symptoms:

- Residual memory, concentration disturbances and chronic headaches.
- He struggles with aggression which is both verbal and physical.
- He lacks empathy, is irritable and short tempered.
- He also struggles with mood swings.
- Lacks interest in things he used to enjoy.

- Poor sleep is reported.
- Depression

It is reported that he has lost all his four jobs including the job he was doing at the time of the accident due to aggressive behaviour. He had grade 10, electrical trade and computer certificate.

The symptoms are deferred to a depth assessment by neuro-psychologist and occupational therapist.

[10] **Dr Naidoo – Neurologist:**

10.1 The expert refers to the hospital records as provided and gives a summary of the injuries.

- CT scan showing small extradural bleed on the left temporal aspect of his brain with small contusions;
- It is noted that he was able to maintain his airway and moving limbs but the arms were less mobile than his legs;
- He was admitted and taken care of in the neurosurgery department where he was reportedly aggressive;
- On 05/05/2016 he absconded and was readmitted on 08/05/2016 after his family found him to be confused and aggressive.
- He was discharged on 12/05/2016.

10.2 The claimant reported complains involving:

- Chronic headaches;
- Poor memory, concentration, sleep and depression;
- His personality has changed and has become irritable, short tempered and anger outbursts.
- He has become verbally and physically aggressive towards family and others to an extent that he has lost his marriage, his children are afraid to be around him and has lost jobs due to aggression;
- He reports that strange nocturnal behaviour, burning smell at times and myoclonic jerks of the left arm for which the expert recommends a 24hour EEG to investigate seizure localisation.

10.3 It is the opinion of the expert that he sustained a moderate to severe with neuropsychological and neurocognitive sequelae. He opines that he qualifies for general damages

[11] **Dr Enslin – Orthopaedic Surgeon:**

11.1 On perusal of the EMS and hospital records it is noted that the Plaintiff sustained a head injury with a GCS of 9/15, abrasions, skull fracture and lacerations. He notes a suspicious pelvic X-ray on 01/05/2016. He was aggressive in hospital and absconded on 05/05/2016 and returned on 08/05/2016 and absconded on 10/05/2016. He was admitted based on continued pain on the left hip.

A CT- scan confirmed frontal lobe, temporal lobe contusions and a mild cerebral oedema.

11.2 He was seen by a psychiatrist as he presented with severe depression and identified risk factors of suicidal attempt triggers.

11.3 He now complaints of:

- headaches, backaches, neck pains, right shoulder pain, left hip pain (total hip replacement) done in August 2019, pain in both wrists, right and left elbow.

11.4 On examination, there is tenderness on the back and neck, shoulder, left hip, wrists and elbows.

A scar was also noted over the poster lateral aspect of the left buttock where the operation was done in 2019.

11.5 The expert is of the view that the Plaintiff suffered negative occupational impact in his job which he was employed, Sunstone Logistic System at the time of the accident as he was dismissed three months after he resumed work owing to the aggression and performance taking a down turn. It is reported that he attacked a person with a laptop.

11.6 In short the Plaintiff's work profile is the following:

- He worked for Clakson Power in Nelspruit for 4 years having started in 2001.
- He then was self-employed operating a tyre fitment centre for 5 years until 2003.
- Worked for Netstar as quality inspector for 3 years.

- Worked for Cartrack as quality inspector from 2011 to 2013.
- Between 2013 and 2016 he operated a truck business which he had to sell in order to pay his wife in a divorce settlement.
- At the time of the accident he was employed by Sunstone Logistic System, and was dismissed for aggression when he returned to work after the accident. It is stated that he physically attacked someone with a laptop and was asked to leave.

11.7 The expert opines that the Plaintiff will require future medical treatment and that he qualifies for general damages due to the seriousness of the injuries sustained in the accident under discussion.

[12] **Karin Havenga – Counselling Psychologist**

12.1 The Plaintiff was referred for psychological evaluation to assess the effect of the accident on his personality, emotion, social and occupational functioning, and to report on interventions needed.

Background:

12.2 The Plaintiff narrated that he was married at the time of the accident. Three children were born of the marriage. He was working and earning R38 000 from his job and earning R150 000 – R300 000 per month from his business. He is now divorced and engaged to Ms Coetzee since 2021. He narrates that he has a protection order which was sought by his ex-wife after a physical fight where the wife threw a bag on him and he threw it back at her.

12.3 The business assets were sold by his ex-wife and the business had to close. (Note that he stated that the business was in the ex-wife's name and the wife sold it after they divorced).

12.4 He also stated that he was dismissed from his job for factors related to the accident, and was dismissed from four other companies for aggression, poor work performance and at the last company owned by his uncle (Clarkson Power), he was dismissed for physically attacking a worker (7.2).

12.5 The expert notes that at this consultation, the Plaintiff presented with dysphoric mood and labile emotion. He was irritable and aggressive, used vulgar and inappropriate language, poor impulse control, easily offended, fidgety and restless.

12.6 His test results reveal severe levels of depression and suicidal ideation. He presents with severe levels of anxiety and stress as well as symptoms of post-traumatic stress disorder. He is prone to feelings of irritability and agitation, overreaction and impatience, despondency, despair, and hostility.

12.7 The expert opines that the effect of post-traumatic stress disorder can continue for as long as 15 years and that prognosis is better when symptoms start at six months after the incident and not prolonging for more than 6 months after the incident. The best prognosis depends on how soon the symptoms were identified and a well-planned treatment is made.

13. **J Mbhele – Neuropsychologist**

13.1 The expert diagnosed the Plaintiff with major neurocognitive disorder due to traumatic brain injury with behavioural disturbances and major depression disorder.

- 13.2 The Plaintiff is said to be at high risk for suicide as he is at a more vulnerable state than he was prior the accident.
- 13.3 The tests also revealed neuro-cognitive, emotional deficits and physical limitations.
- 13.4 His depressive symptoms have negatively affected his ability to interact with people and according to him irritability and short temper contributed to his divorce.
- 13.5 His major neurocognitive disorder due to the brain injury with behavioural disturbances, combined with major depressive disorder, poor comprehension and insight indicate that Funds should be protected.

[14] **R Biljon – Occupational Therapist**

- 14.1 It is noted that the Plaintiff was working as a Technical Telematics Manager for Sustone Logistic Systems at the time of the accident. He was also deriving income from owning 4 trucks which provided transport services.
- 14.2 He returned to work approximately a month and half after the accident. He reports that his manager was not satisfied with his work. He was required to do internal presentations before the actual presentation with clients. He admits having been aggressive towards the company owner who accused him of low productivity and attitude. He at some point threw a laptop at his manager.
- 14.3 He states that his job was terminated because of mistrust. Mistrust according to him included him allocating data to himself when he was supposed to allocate data to technicians. He states that his manager

insisted on reading his mails before sending to clients and they always found something wrong.

Post-accident work:

- 14.4 He worked for Universal Roofing for 3 weeks and terminated this work because he was accused that his work was substandard, that he was fighting with colleagues and he was told that he was lazy.
- 14.5 He then worked for Bernad Security as a sales representative for 2 weeks. He was “chased away”. He acknowledges that he fought with colleagues, manager and clients. He threw a plate on the business owner seemingly because he accused him of arrogance and not meeting targets.
- 14.6 He worked for Altech Netstar as a technician for 3 months. Here he was also accused of temper problems and low productivity.
- 14.7 He then worked for Auto tracks as a technician for 1½ years. He terminated this contract after he had an argument with the Branch Manager. Note that only 3 payslips were uploaded.
- 14.8 At the time of assessment, he was assisting his uncle in building solar farms. Within a week of supervising the workers, one worker rolled his eyes at him and he responded by picking up a shovel and threatened to kill the worker. His work interaction with the workers was then limited by his uncle.
- 14.9 His response to the above is that people are not prepared to give him an opportunity, everyone is against him, and they can’t handle being wrong.
- 14.10 To this end his family member states that he has not been the same after the accident. He tends to be aggressive / confrontational without

provocation and cannot regulate his emotions. He is now using alcohol a lot more than his aunt and uncle have taken control of his finances. He has written off his parents and wants no interaction with them. The relative also confirms his forgetfulness.

14.11 At the assessment these traits were displayed i.e. underlying anxiety, irritation, frustration and difficulty controlling emotions.

The severity of the neurocognitive and neurobehavioral difficulties by far surpass the physical difficulties and the expert argues that on these alone, his opinion and recommendation can be concluded.

14.12 The expert concludes that he is unemployable and urged to seek intervention that should be managed by a case manager to be assigned to him.

Overall, the Patient's profile as diagnosed by various experts seems to have been significantly altered. The injuries have altered him and rendered him unable meaningfully to hold on to a job. He has been to not hold on to jobs mainly because of the sequelae of the injuries and some unexplained dishonesty.

[15] **M Beytell – Industrial Psychologist**

15.1 The expert investigates the effects of the accident and sequelae regarding the Plaintiff's earning capacity, employability, and residual work capacity considering the disregarding and regarding of the accident.

15.2 The expert was placed in possession of the primary expert's reports containing their opinions, findings, and recommendations.

- 15.3 The Plaintiff is said to have passed matric and obtained N1, N2 and N3 qualifications, learnership at Centurion College. He further finished his N+ and A+ Diplomas at Nelspruit College where he also completed a learnership, Mr O[...] further reported.

Work history:

- 15.4 The Plaintiff started his career in 2001 holding various positions at different companies. In 2008 he became a business owner, One Call Transport. He also in 2008 to 2011 worked for Altec Netstar as a fitment quality inspector earning R25 000.00 per month.

In 2011 to 2013, he worked for CarTrack as a senior quality inspector earning R32 000 per month while continuing with the business he started in 2008 (no proof provided, but it was alleged he was making R60 000 – R100 000.00 per month). The business was apparently registered in his former wife's name, together with the house, to whom he was married out of community of property. His ex-wife later sold the house and trucks registered in her name.

- 15.5 At the time of the accident he was working for Sunstone Logistic Systems earning R38 000. A payslip uploaded does confirm income of R38 340 per month, and does not reflect any pension fund, nor medical aid and vehicle benefits as alluded to the expert.
- 15.6 He apparently returned to Sunstone Logistics Systems (Pty) Ltd after two months and was asked to leave due to accident-related difficulties.
- 15.7 He became unemployed in 2016 for an uncertain period, worked for Benner Security as a sales representative for 2 weeks where he was asked to leave.

15.8 He also worked for Nestar Clakson Power as a technician (uncertain – month) and was fired for his violent nature. Payslips provided to the court show that he worked for Altron TMT in December 2016 (not clear for how long he worked for this company).

15.9 There are 3 payslips for Auto track SA provided, one with a basic of R16 940 and two for R22 000.00. It is also not clear as to how long he worked for Auto Track SA. These are for May, June, and July 2017.

Current complaints:

15.10 The claimant complaints of painful neck, lower back, left shoulder, left leg and general body pain.

He no longer can run, stand or walk for long and tires easily.

He complaints of being short tempered, irritable and angered which was visible to the expert in the assessment.

His memory and concentration have been affected and has become forgetful.

He now experiences dizzy spells and shivers for no reason which causes him to lie down for a while.

He has road rage and his fiancé does not let him drive since he bumps the car while parking it and makes turns too soon.

15.11 At paragraph 8, the expert analysis the primary expert report as already discussed.

Residual work and earning capacity:

15.12 Having analysed the expert reports, the expert is of the opinion that although the Plaintiff may be able to secure employment from a physical point, the expert opines that he will not be able to keep that employment due to his moderate to severe traumatic brain injury and its sequelae i.e personality changes, neuropsychological pathology diagnosis. This is confirmed by the three secured employment following the accident and lost. It remains evident that he will struggle to remain employed for long periods of time. It is opined that he will remain unemployed for the remainder of his life considering the confirmed challenges and behaviour confirmed by his ex-wife, fiancé and other relatives. He therefore urgently requires the suggested treatment to prevent harm to himself and others. Note that his ex-wife has a restraining order against him for violence displayed. He has become psychologically, emotionally and behaviourally an uncompetitive candidate to his uninjured peers.

Pre-accident earnings:

15.13 The expert advises that for calculation purpose the income of the Plaintiff, though could not be confirmed, payslips provided confirmed employment and income. Any other benefits would be added upon receipt of confirmation. The manually calculated income of R38 840 per month comes to R4 66 080 per annum.

15.14 The expert also notes that when it relates to the alleged truck business income of R960 000.00 (R60 000 – R80 000p/m), proof was requested and never received and will be added in an addendum when same comes fourth. Note is made to the fact that in the Occupational Therapist's report, the truck business is said to have been making R150 000- R300 000). Proof was also not provided in this regard.

Post-accident earnings:

15.15 Two payslips representing income post-accident were presented to the expert being income earned 31 May 2016 and 31 July 2016.

Noted is that a payslip with earning's in June 2016 was uploaded confirms that payment was received in that month.

Furthermore, there are payslips uploaded for Auto Track SA for 31 May 2017, 31 June 2017 and 31 July 2017.

In addition, a payslip for Altron TMT dated 31 December 2016 with earnings of R14 725 was also uploaded.

The additional payslips were not presented to the expert hence not accounted for in the report.

15.16 Upon return to his job post-accident, he was fired for stealing money from his employer and the expert opines that this would have been a reason good enough to be fired.

15.17 The truck business is however rejected for amongst other reasons:

- There seems to have been an unnamed company in existence, no proof was provided. If it did exist, it is said to have been a company owned by his wife to whom he was married out of community of property at the time of the accident.
- There is no proof before the experts then, and now before court that there is or there was such a company.
- There is no proof as to what income the Plaintiff was deriving nor in what capacity the company paid him.

- There are no audited financial statements, bank statements, business contracts nor tax returns relating to the company.

15.18 The Plaintiff has thus failed to factually prove the income alleged.

LOSS OF EARNINGS

16.1 The Plaintiff claims in his particulars of claim, an amount of R5 956 426.

16.2 As stated at the beginning of this judgement an notice amendment in terms of Rule 28 attempting to amend the particulars of claim to R26 000 000.00 which amendment falls very short of the provisions of Rule 28 of the uniform rules. The court was not addressed on this aspect.

16.3 In a revised actuarial calculation as requested by the court and prepared on 26 October 2023 which calculation negates the claimed and not proven income which is claimed to flow from a transport business.

16.4 The loss of earnings as calculated and based on the proven facts yield the following :

Past loss of earnings: R2670 608

Capped: R1 809 226

Future loss of earning: R6 785 019

Capped: R5658 051

Total loss: R7 467 277.00

16.5 The above figures were subjected to a slightly higher than normal contingency of 10% in the past loss reflective of the combination of the accident proven problems and the unexplained dishonesty, and a 20% in the future loss of earnings. It is noted throughout the Plaintiff 's profile that there are substantial career altering sequelae flowing from the accident and the dishonesty element did accelerate his overwhelming problems.

ORDER

17.1 The Defendant is liable 100% to pay the Plaintiff's damages.

17.2 Accordingly I grant judgment in favour of the Plaintiff as follows:

17.2.1 The defendant is ordered to pay the capital amount of R5 956 426 in respect of loss of earnings by electronic transfer into the Plaintiff's attorneys Trust account details below:

Account holder:Slabbert Attorneys Inc

Bank:FNB

Branch code:2[...]

Account:6[...]

Reference:T[...]

17.2.2 The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)a of Act 56 of 1996 for the future medical expenses relating to the injuries sustained in the motor vehicle accident that occurred on 30 April 2016.

17.2.3 The attorneys of record shall attend to a creation of a Trust in order to protect the funds for the exclusive benefit of Mr J O[...] as contained in the curator *ad litem*'s report received on 28 November 2023.

17.2.4 The Attorneys are authorised to make payments for the reasonable and necessary expenses that are needed pending the establishment of the Trust.

17.2.5 The cost of suit, inclusive of the costs of the curator *ad litem*, Costs of Counsel, and the costs related to the trust.

17.2.6 Should payment not be made timeously, the Plaintiff shall be entitled to recover interest at the applicable rate.

17.2.7 In respect of general damages aspect, the matter is postponed sine die.

P SEKHUKHUNE
ACTING JUDGE OF THE HIGH COURT

Heard :	19 June 2023
Judgement:	29 January 2024
Counsel for the Plaintiff :	Adv G Lubbe
Instructed by :	Slabbert & Slabbert Attorneys