

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

CASE NO: 36739/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 31 MARCH 2023

SIGNATURE:

In the matter between:

MAGAGULA MDUDUZI NICKY

1st Appellant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

KILIAN AJ

1. This is an application for default judgment launched by the plaintiff who was involved in a motor vehicle collision where he was a passenger in a vehicle that overturned on a national road. As a direct result of the collision, the plaintiff suffered severe injuries to which I will refer to later, that prompted him to launch a claim against the RAF. I have seen the RAF1 form; it complies with the act. The plaintiff then applied for a default judgment in terms of rule 31.

2. I am satisfied that the plaintiff followed the correct procedure. Due notice was given to the defendant of today's hearing, following obviously the proper service of the claim form, proper service of the summons, proper service of the application for default judgment. When the matter was called by counsel for the plaintiff Ms Haskins, there was no appearance for the defendant.
3. I am accordingly satisfied that this matter is properly before me on a default basis and that I can entertain the claim by the plaintiff. Counsel requested me in terms of 38 (2) of the uniform rules of court to have regard to the affidavits filed on record as the evidence that I need to consider to establish the quantum of the plaintiff's claim and the issue of liability and I have granted that order. In my view this is an appropriate case where I can have regard to unopposed expert witnesses and unopposed affidavits on the merits to determine this matter.
4. Dealing firstly with the issue of liability. Even though the plaintiff was a passenger he still needs to demonstrate some form of negligence on the part of the wrongdoer which we call the insured driver. I have had regard to the affidavits prepared by the police services in the docket, following the investigation, as well as the affidavit filed by the plaintiff in terms of section 19(f) of the RAF Act, and I am satisfied that the plaintiff established negligence on the part of the insured driver.
5. It goes without saying that when a driver loses control of a vehicle to the extent that it overturns there must be some form of negligence in the absence of an explanation by the driver. I accordingly find that the defendant based on the negligence of the insured driver is 100% liable for the plaintiff's damages to which I will refer to.
6. The claim for general damages will have to be separated and postponed, alternatively referred to the Health Profession's Council; and I say so for the

following reasons. The plaintiff duly established that he qualifies for general damages by the filing of RAF4 forms which qualifies him not only on a narrative test but also on the whole person impairment and I am satisfied that he has complied with regulation 3 of the RAF Act to put that before the court.

7. However, it is for the defendant to decide, administratively, if the plaintiff qualifies for general damages and it has been decided by the Supreme Court of Appeal previously that until such time as the defendant has elected what to do with the claim for general damages, this court cannot determine the issue.
8. I am informed by counsel for the plaintiff, that the defendant has said nothing regarding the plaintiff's claim for general damages; either they accept or reject the RAF4's and they failed to do so. Unfortunate but my hands are tied and I need to postpone that claim for general damages. Regarding the injuries, I have regard to the medical legal reports prepared by the various experts and I have regard and have been guided by the compressive heads prepared by Ms Haskins for which I am grateful.
9. I am not going to repeat all the injuries, safe to say that they vary from a head injury to orthopaedic injuries to neuropsychological sequelae, all of which has a severe and detrimental impact on the plaintiff's daily life and his ability to earn a living. When one considers the nature and the extent of the injuries it goes without saying, and it follows, that the plaintiff will require future medical treatment and for that purpose counsel for the plaintiff asked me to grant an order in terms of section 17 of the RAF Act to Directive Fund to provide a certificate so that the plaintiff may undergo and receive medical treatment.
10. And I will grant that order, a case is made out for it. The injuries all culminated directly from the collision and the consequences of the injured emanate all directly from the injuries themselves. I am satisfied that the plaintiff established due causation between the collision, the injuries and the consequences. What

now for the plaintiff when it comes to his loss of earnings? The industrial physiologist, read with the report by the occupational therapist clearly says that the plaintiff is now a compromised individual. He will no longer be the same person as before. There is a clear departure from his pre-injury earnings and his post-injury earnings. He is now sympathetically employed. He is a vulnerable employee. If he loses his job he will probably be unemployable for longer periods if not permanently.

11. I am satisfied that a proper case has been made out for the claim for loss of earnings. I am also grateful for the plaintiff's counsel who readily conceded that she applied conservative contingencies and I agree with her. There is nothing to change or to alter as to the proposed contingencies as provided for by Ms Haskins in argument and in the premises I am satisfied that a proper case is made out for loss of earnings in the amount as set out in the draft order which is R 924 385-00. There is no contingency plea agreement in this matter, not that it really matters because there is the settlement but it will be recorded so in the draft order.

12. It is therefore ordered that:

12.1 The defendant is liable for 100% of the plaintiff's proven or agreed damages.

12.2 The Defendant will provide the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, and based on the expert reports on behalf of the Plaintiff, wherein the Defendant undertakes to pay 100% of the Plaintiff's costs in respect of for future accommodation of the Plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or supplying of goods to the Plaintiff arising out of the injuries sustained in the motor vehicle collision that occurred on 3 October 2018, after such costs have been incurred and upon proof thereof.

12.3 The Defendant is ordered to pay the Plaintiff the sum of R 924 385.00 (Nine Hundred and Twenty-Four Thousand and Three Hundred and Eighty-Five Rand only) in full settlement of the plaintiff's claim, which is totalled as loss of earnings.

12.4 The Defendant shall pay the total Judgment amount within 14 (fourteen) days from the date of this judgement.

12.5 Interest shall be charged on the Judgment amount at the current prescribed rate per annum calculated 14 (fourteen) days from date of Judgment to date of payment.

12.6 The above amount shall be payable into the Attorney's Trust Account.

12.7 Subject to the taxing master's discretion, the Defendant shall pay the Plaintiff taxed, or agreed party and party costs, as well as, actual travelling costs incurred in the prosecution of this matter, cost of consultation with the below mentioned experts, preparation and research, which shall include attending court up to and including 23 March 2023, the following:

12.7.1 The costs of Counsel.

12.7.2 The actual costs of obtaining medico-legal reports, which include the travelling, accommodation and substance fees as well as for the reservation, qualifying fees and court attendance fees, if any, for the following experts that the Plaintiff has attended to and the actual costs of the experts and witnesses, which include the travelling, accommodation and substance fees, interpreter's fees, if any:

12.7.2.1 Dr Bogatsu – Orthopaedic Surgeon

12.7.2.2 Dr Mazwi – Neurosurgeon

12.7.2.3 Dr Mqhayi – Clinical Psychologist

12.7.2.4 Dr Tshifularo – Ear Nose and Throat Specialist

12.7.2.5 Dr du Plooy – Audiologist

12.7.2.6 Success Moagi – Occupational Therapist

12.7.2.7 Moipone Kheswa – Industrial Psychologist

12.7.2.8 Wim Loots – Actuarial Consulting

12.8 The Plaintiff shall serve the notice of taxation on the Defendant's attorneys of record.

12.9 The Plaintiff shall allow the Defendant 14 (fourteen) Court days to make payment of the taxed costs.

12.10 There is no contingency fee agreement signed between the Plaintiff and his Attorney.

J M KILIAN

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv L Haskins

Attorney for applicant: Ms T Dlamini

Counsel for respondents: unknown

Attorney for respondents: unknown

Date heard: 23 March 2023

Date of Judgment: 31 March 2023