

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

CASE NUMBER: 56804/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 31/3/2023

SIGNATURE

In the matter between:

M E MOJELA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

ERASMUS, AJ

1. The Plaintiff claims damages from the Defendant for injuries arising from an accident that the Plaintiff was involved in on 15th June 2020. Plaintiff was a passenger in motor vehicle C[...] 2[...]. The accident occurred at or near S[...] road, Montclair, Michell's Plain, Cape Town when an unknown motor vehicle struck the motor vehicle conveying the Plaintiff.
2. The Defendant has not made an election in respect of general damages and the matter cannot proceed on this head.
3. Plaintiff brought two applications, which were granted. The first, in terms of Uniform Rule 38(2), for the admission of her affidavits regarding the facts

surrounding the accident, the officer's accident report and the medico-legal reports (supported by affidavits by the experts). The second for the admission of hearsay evidence in terms of section 3 of Act 44 of 1988. The hearsay in question was the contents of the officer's accident report and collateral evidence provided to the various experts.

4. From the affidavits and accident reports it is clear that the vehicle in which the Plaintiff was a passenger was struck by an unknown vehicle that failed to stop at a T-junction. Clearly, the driver of the vehicle that failed to stop was negligent and the Plaintiff, who was a passenger, could not have contributed to the accident.
5. Plaintiff relied on the reports of various experts who, in summary, found the following:
 - 5.1 Dr S.K Mafelane (orthopaedic surgeon) found that Plaintiff suffered pain in her left shoulder pain and interscapular pain since the accident. X-rays were done and revealed a slight scoliosis convex to the left in the upper dorsal spine with a lateral compression fracture of T5 vertebral body. She presented with difficulty performing overhead activities, carrying and lifting heavy objects and difficulty with bending.
 - 5.2 Riska Le Roux (occupational therapist) stated that Plaintiff has a Grade 12 level of education and B.com degree post matric qualification. At the time of the accident she was working as a Recruitment Specialist at PRASA. She still works as a Recruitment Specialist post-accident. Occupational examination describes her job as light work. Post-accident she is only physically suited for sedentary and light occupations. She is expected to struggle with jobs with prolonged periods of standing and walking as well as prolonged static postures required when performing computer-based work. Her back pain and left arm pain will be exacerbated by the body postures required for tasks. Accident injuries will have a negative impact affecting her productivity and efficiency which will lead to vulnerability in the

workplace.

- 5.3 Ms Le Roux also pointed out that Plaintiff will need breaks while working and will need to apply alleviating strategies. She will always need to be accommodated and her current employer is already applying a degree of sympathetic accommodation and that is highly unlikely with another employer. She is an unequal competitor in an open labour market. Her work options have been narrowed by the injuries of the accident in question.
- 5.4 Talifhani Ntsieni (industrial psychologist) noted that Plaintiff had a Grade 12 level of education and, post matric, has a B.com degree, Code 10 driver's license, Financial Management Certificate and Payroll Diploma. Her employment history is that in 2005 (6 months) she worked as a data capturer, between 2005-2013 she worked at Standard Bank and in 2013 to date she works as a Recruitment Specialist for PRASA. She is earning a total package of +- R400 000 per annum.
- 5.5 The expert believed that the accident injuries have compromised Plaintiff's health therefore affecting her physiological and occupational abilities. She is an unequal competitor in the open labour market compared to her healthier peers. She has suffered a justifiable loss of work capacity. She has complained of a lot of pains which she experiences post-accident.
- 5.6 Plaintiff's earning, supported by payslips, were analysed by the expert and I this as enumerated by the expert.
- 5.7 Probably the most important and the only controversial aspect of the industrial psychologist's report is the repetition, without context or amplification, that Plaintiff was "eligible for promotion to the position of recruitment manager". This is an important allegation as the Plaintiff's calculation assumes that, had the accident not occurred, Plaintiff would

have been promoted to this position. This assumption makes a difference of several millions of rand to the Plaintiff's loss.

6. Fortunately, the Plaintiff gave evidence and was able to provide detail regarding her possible promotion. Plaintiff said that her manager had resigned in early 2023 and that her employer had asked her to fill the position on an interim basis until the position could be properly advertised. Clearly, Plaintiff was a strong contender to eventually fill the position or, if unsuccessful, a similar one in time.

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7. Plaintiff attempted to fill the position and found that she was physically unable to perform as required and she withdrew. She also did not apply to permanently fill the post.
8. Plaintiff was a credible and believable witness and I am convinced that, on the probabilities, she would have been promoted to recruitment manager had she not been injured.
9. I am also convinced that the injuries enumerated by the various experts were sustained by the Plaintiff in the accident concerned and that there is a causal relationship between the injuries and the damages suffered by the Plaintiff.
10. In summary, the information provided indicates that the Plaintiff is currently earning a basic of R33 806 per month plus a provident contribution equal to 17.16% of basic salary (tax-free up to threshold) and a funeral fund fringe benefit of R60 per month.
11. The expert reports also set out the future medical treatment required by the Plaintiff.
12. The information provided indicates that, had the accident not occurred, the Plaintiff's career and earnings would have progressed, in a straight line from

the date of accident to Paterson D1/D2 at R 1 160 000 per year March 2033 (age 50).

13. The information further provides that, since the accident, the Plaintiff's career and earnings have and will progress in a straight line from date of accident to R33 806 per month plus a provident contribution equal to 17.16% of basic salary and funeral fund fringe benefit of R60 per month.
14. This basis of calculation is uncontroversial except for the fact that the Plaintiff applied the contingencies of 5% to the past loss, 15% to the uninjured future loss and 25% to the injured future loss.
15. In my view, the above contingencies do not properly reflect the uncertainties in the evidence, for example, the Plaintiff's pre-existing vulnerabilities. Consequently, I instructed that a new calculation be performed with the following contingencies being applicable: 5% to the past loss, 30% to the uninjured future loss and 35% to the injured future loss.
16. The upshot of this calculation is that Plaintiff suffered a loss of earnings (past and future) of R4 847 125.00.
17. Accordingly, I make the following order:
 - (i) The Defendant is liable for **100%** of the Plaintiff's damages.
 - (ii) The Defendant shall pay to the Plaintiff the capital amount of R4 847 125.00 (four million eight hundred and forty seven thousand one hundred and twenty five rand and nil cents) together with interest in accordance with the Prescribed Rate of Interest Act 55 of 1975.
 - (iii) The Defendant is ordered, in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to reimburse the Plaintiff for 100% of the costs of any future accommodation of the her in a hospital or nursing

home, or treatment or rendering of services or supplying of goods arising out of injuries sustained by her in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.

- (iv) The Defendant is to pay the Plaintiff's agreed or taxed High Court costs as between party and party, all costs are subject to the discretion of the taxing master. Such cost are to include the cost of counsel and the Plaintiff's medico-legal experts.
- (v) The remaining heads of damage are postponed sine dies.

D J ERASMUS AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA