

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

Case Number: **17880/ 2018**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 4 MAY 2023

SIGNATURE:

In the matter between:

RISIMATI FRANK CHAUKE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

[1] The plaintiff, a 68 year old male, claims damages for injuries he sustained in a motor vehicle collision that occurred on 1 October 2016.

[2] Both merits and quantum are in dispute.

MERITS

[3] The accident occurred at approximately 5:00 at or near Savulani Village, Giyani. A certain T Mapengo, the driver of the vehicle in which the plaintiff was a passenger, lost control of the vehicle and the vehicle overturned.

- [4] In view of the aforesaid facts, Mr Shimange, counsel for the defendant, quite correctly conceded that the defendant should be liable for the plaintiff's proven damages.

QUANTUM

- [5] The plaintiff sustained the following injuries in the accident:

- 5.1 pelvis fracture involving both acetabula;
- 5.2 lumbar spine injury with disc lesion; and
- 5.3 rib fractures with the need for a thoracotomy.

- [6] The injuries were diagnosed by Dr Preddy, an orthopaedic surgeon, as traumatic and resulted in the following sequelae:

- 6.1 the plaintiff has excruciating pain in respect of stooping, squatting and in the handling of heavy objects;
- 6.2 the plaintiff further suffers from severe pain in respect of sitting, standing, walking, handling light weights, getting in/out of a vehicle and sleeping;
- 6.3 the following daily activities have become impossible:
bathing/washing, sexual activity, cooking, cleaning and playing sports;
- 6.4 the plaintiff will, furthermore, find it difficult to play with his children/grandchildren, to dress the lower and upper part of his body, to do gardening and shopping.

- [7] Dr Preddy recommended the following future treatment:

- 7.1 conservative treatment and passive joint blocks of the lumbar spine in theatre in respect of the lumbar spine injury;

7.2 conservative treatment and surgical intervention in the form of a bilateral total hip replacement in respect of his pelvis injury.

[8] The occupational therapist, Ms A Ndabambi, reported that the functional evaluation of the plaintiff revealed that the plaintiff presents with certain psychosocial functioning fallouts and reduced/altered concentration span pertaining to his cognitive functioning.

[9] The physical capacity evaluation conducted by Ms Ndabambi revealed that the plaintiff has residual left shoulder joint pain with associated limited range of movement, lower back pain, left sided rib cage pain and pelvic pain with associated bilateral hip pain. The plaintiff also presented with reduced physical endurance.

Claim for past and future medical expenses

[10] The plaintiff's past medical expenses amount to R 367 442, 29.

[11] In respect of his future medical expenses, the defendant tendered a certificate in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.

General damages

[12] The plaintiff, no doubt, suffered immense pain directly after the accident. The sequelae of the injuries as set out aforesaid, causes the plaintiff to suffer chronic pain on a daily basis. The fact that the plaintiff will need further surgical intervention in the future will contribute to his pain and suffering.

[13] The sequelae of the injuries have had a devastating effect on the plaintiff's enjoyment of life. Basic daily activities like bathing, clothing and gardening causes pain. The joy of partaking in sporting activities and more specifically the privilege to be able to play with his grandchildren has summarily been taken away due to the injuries the plaintiff suffered in the accident.

- [14] The plaintiff testified that the impact the injuries has had on his intimate relationship with his wife is devastating.
- [15] The plaintiff is highly educated and had promising career opportunities prior to the accident. All of this has disappeared due to the injuries the plaintiff sustained in the accident. All of the above, understandably, led to a decrease in the plaintiff's self-worth and emotional wellbeing.
- [16] Mr Bouwer, counsel for the plaintiff, with reference to various authorities, submitted that an award of R 700 000, 00 will be fair and just compensation for the pain and suffering the plaintiff endured, still endures, and will endure in future and for the immense loss the plaintiff suffers in respect of the amenities of life.
- [17] I agree and such an award will follow.

Loss of earnings

- [18] As stated aforesaid, the plaintiff has an impressive academic record. The plaintiff achieved a diploma in Public Administration, a BA in Politics and Public Administration, a Post Graduate diploma in Human Resources Management, an Honours degree in Human Resources Development, a Master's degree in Public Administration and a Post Graduate diploma in Executive leadership.
- [19] The plaintiff's employment history reflects his academic achievements and more specifically in the Human Resources field. The plaintiff held the following positions in the Department of Labour:

18.1 Manager: 1997 – 2006

18.2 Acting Executive Manager: May 2006 – October 2006

18.3 Executive Manager: November 2006 – October 2010

18.4 Chief Director for Human Resources: November 2010 to January 2016

- [20] The plaintiff testified that he resigned on 31 January 2016 in order to start his own company and develop his career as a change management consultant. The plaintiff spent six months to establish a proper home environment and commenced in June 2016 to market his business.
- [21] The plaintiff testified that his vast experience and knowledge of change management placed him in an excellent position to present workshops and courses in this field. Although there was a promising prospect of tutoring at the University of Venda, the accident sadly intervened on 1 October 2016 and the plaintiff is no longer in a physical or mental state to pursue his dream.
- [22] It is common cause that the plaintiff's hopes of establishing his own business was destroyed by the accident. The only real issue in dispute is the calculation of the plaintiff's loss in this regard.
- [23] Due to the plaintiff's age, an actuarial calculation for only past loss of earnings was obtained. The calculation postulates a past income of R 802 670, 00. Mr Bouwer, counsel for the plaintiff, submitted that a 25% pre-morbid contingency deduction to provide for any non-accident-related uncertainties, which may have been present in the plaintiff establishing his company to provide change management services, should be applied.
- [24] Mr Shimange, pointed out that, notwithstanding approximately three months of marketing the plaintiff did not succeed in securing a single project. In view of the aforesaid and the high incidence of uncertainty, Mr Shimange submitted that a 50% pre-morbid contingency deduction should be applied.

[24] I have carefully considered all the factors mentioned *supra* and am of the view that a 40% pre-morbid contingency deduction will be just and fair to both parties.

[25] The award for loss of earnings is therefore R 481 602, 00.

ORDER

I grant an order in terms of the draft order attached hereto and marked "x".

**N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DATE HEARD:

11 April 2023

DATE DELIVERED:

4 May 2023

APPEARANCES

For the Plaintiff: Adv APJ Boucher

Instructed by: Gildenhuys Malatji inc

For the Defendant: Mr M Shimange

Instructed by: The State Attorney Pretoria