

REPUBLIC OF SOUTH AFRICA



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

DELETE WHICHEVER IS NOT APPLICABLE:

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED:

8 March 2024

DATE:

SIGNATURE:

CASE NR: 90314/19

In the matter between:

MARIA MATHILDA MITCHELL

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to

the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 March 2024

JUDGMENT

MARUMOAGAE AJ

- [1] The plaintiff instituted a delictual claim against the defendant because of the injuries sustained in a motor vehicle collision that took place on 19 January 2018. The collision was between the motor vehicle that was driven by the plaintiff and a motorcycle ridden by an unknown person (or a truck driven by an insured driver).

- [2] The plaintiff seeks damages for past medical expenses, loss of earnings and general damages. The plaintiff also claimed damages for future medical expenses in her particulars of claim, but did not persist with this claim in the heads of arguments. The court is called upon to determine whether the plaintiff is entitled to be compensated for any or all of these claims.

- [3] The defendant did not admit liability. This means that the merits were not settled. The defendant was not represented on the date of trial and the attempt to settle the matter yielded no results. The plaintiff's counsel asked that the matter proceed on default and called the plaintiff to provide oral evidence in court.

- [4] The plaintiff testified that on the morning of the date of the accident, she was driving her own car with her three children, and her neighbour's child as passengers in the car. She was driving behind a truck. She indicated and proceeded to overtake. While she was overtaking, the driver of the truck swerved towards her direction to the right and collided with her car. The collision caused her car to roll. The accident was caused by the negligent driving of the

truck driver. This is the version that also appears in the heads of argument that were submitted in support of the plaintiff's claim.

- [5] This testimony appears to be totally different from the version that appears on the plaintiff's particulars of claim. In her particulars of claim, it is pleaded that the accident was between a motorcycle ridden by an unknown person and the vehicle driven by the plaintiff.
- [6] It is alleged further that the unknown person was an insured driver whose negligence included failure to: avoid the collision; drive with due skill, diligence and caution; apply brakes timeously; and keep a proper lookout. Most significantly, it was stated that the unknown person changed lanes when it was dangerous and inopportune to do so. There is nothing said in the particulars of the claim about the plaintiff overtaking the truck, let alone her car rolling.
- [7] The plaintiff submitted reports from several experts. Amongst those, an Orthopaedic Surgeon, Dr Hein Senske, submitted that the plaintiff was involved in a motor vehicle accident on 19 January 2018 and sustained the following injuries: right shoulder abrasion fracture; right wrist fracture; left wrist fracture; lower back soft tissue injury and soft tissue injury on both knees.
- [8] The court was also furnished with a report from an Occupational Therapist, Ms Anoet Rossouw. Interestingly, Ms Rossouw noted in her report that the plaintiff was involved in a motor vehicle accident on 19 January 2018 while travelling as a driver with her children. But there was no indication of how that accident occurred and whether it involved a motorcycle or a truck. This remains a mystery. Ms Rossouw observed, however, that due to the injuries sustained, the plaintiff is currently not fully suited for her pre-accident work due to postural tolerance limitations in the form of standing, walking, bending, sitting, and load handling demands.
- [9] Pieter de Bruyn, an Industrial Psychologist also submitted his report. In his report, he observed that the plaintiff's pre and post-motor vehicle accident probable earnings appear to have remained fairly comparable. However, she

cannot function at her workplace as she used to before the accident because of the ongoing pain and residual symptoms. He is of the view that the plaintiff's career prospects and associated probable earnings have been truncated to a mild degree by the *sequelae* of the sustained motor vehicle accident injuries.

- [10] An actuary's report was also submitted to the court. In this report, it is stated that it seems the plaintiff did not suffer a past loss of income. This report also demonstrates that the plaintiff continues to receive the same salary that she received before the accident and her future income would probably be the same notwithstanding the accident.
- [11] It cannot be denied that the plaintiff has the duty to prove her case on a balance of probabilities. This duty must be discharged through adducing evidence that not only illustrates that there was a motor vehicle accident but that the plaintiff sustained injuries that resulted from the negligence of an insured driver.
- [12] To be compensated, the defendant must admit liability, failing which the plaintiff must satisfy the court that the defendant is liable to compensate her. The plaintiff's testimony, witness reports, the case made out on her heads of argument, submission made by counsel in court as well as the case that is pleaded on her behalf in the particulars of claim, all demonstrate that the plaintiff was injured. However, the way the accident occurred is certainly not clear. According to the plaintiff's oral testimony, her injuries were sustained due to the negligence of a truck driver, but it is stated in her particulars of claim that these injuries were as a result of the negligence of the unknown person who was riding a motorcycle. Surely, both versions cannot be true.
- [13] The court is bound to assess the claim for loss of earnings from the fact that the plaintiff sustained injuries because of the negligence of an insured driver and the extent to which such injuries impacted the plaintiff's ability to earn the income that she was going to earn had the motor vehicle accident not occurred.¹

¹ *Mtshweni v Road Accident Fund* (34393/2020) [2023] ZAGPPHC 736 (30 August 2023) para 13.

- [14] The plaintiff was a police officer before 'the alleged motor vehicle accident' and she remains the police officer to date. There is no evidence that her income has been impacted in any way to the extent that she will not be able to make what she would have been able to had the 'accident' not occurred. The actuary's report also clearly demonstrates that the plaintiff will be able to earn that which she would have earned had the accident not occurred. Some of the expert witnesses also stated that the plaintiff had been accommodated at her workplace. There is no evidence before the court that suggests that the plaintiff has or will lose earnings because of the 'motor vehicle accident'.
- [15] The different versions put before the court during oral testimony as supported by the heads of argument and the particulars of the claim make it difficult for me to accept that there was any accident in which the plaintiff was involved. Surely, an accident is a factual event the facts thereto cannot evolve as time goes by. Its either the accident was caused by a truck driver or a motorcycle rider or at the very least, both at the same time. But the plaintiff's oral testimony points to one thing and the particulars of claim point to another. In my view, this is destructive to the plaintiff's claim.
- [16] I am also not satisfied that the plaintiff has lost any earnings or will lose any income as a result of the alleged 'motor vehicle accident'. It is worth noting that a 'without prejudice' offer in full and final settlement of the claim was made by the defendant without admitting liability. It is not clear how the plaintiff responded to this offer.
- [17] The fact that there are two versions before the court does not necessarily mean that the plaintiff was not involved in a motor vehicle accident that may warrant the payment of general damages and past medical expenses. Had the defendant not made an offer, I would have been inclined to also dismiss these two claims.
- [18] However, by making an offer, the defendant appears to accept that an accident did occur that warrants some compensation being provided to the plaintiff. For this reason and in fairness to the plaintiff, it is justified to postpone the issue of

general damages and past medical expenses *sine die* to allow the defendant to assess these claims and make an offer so that this matter can be finalised.

[19] In the result, I make the following order:

1. The plaintiff's claim for loss of earnings is dismissed.
2. The claims for general damages and past medical expenses are postponed *sine die*.
3. No order as to costs.



C MARUMOAGAE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Counsel for the applicant: Adv L Keijser

Instructed by: Gert Nel Incorporated

Counsel for the respondent: No Appearance

Instructed by: No Appearance

Date of the hearing: 08 November 2023

Date of judgment: 11 March 2024