

THE REPUBLIC OF SOUTH AFRICA



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

Case no: 35215/2017

•	REPORTABLE: NO
•	OF INTEREST TO OTHER JUDGES: NO
•	REVISED.
06 SEPTEMBER 2023	
DATE	SIGNATURE

In the matter between:

JABULA JOSEPH KUBHEKA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAKHOBHA, J

- [1] The plaintiff instituted an action against the defendant for damages as a result of injuries sustained in motor vehicle collision which took place on 16 July 2016
- [2] Merits have been settled in favour of the plaintiff 100%. The plaintiff sustained the following injuries.
- 2.1 Left pelvis fracture ;
 - 2.2 Right clavicle fracture and
 - 2.3 Soft tissue injuries and abrasions.
- [3] The defendant was not represented on the date of trial and the attempts to settle the matter did not yield any result. The plaintiff's counsel asked for the matter to proceed on a default judgment basis. Counsel addressed the court and referred the court to his heads of argument. I was asked to decide the matter based on the papers, and no oral evidence was led.
- [4] In respect of general damages counsel referred the court to various decide cases with almost similar injuries and the amounts awarded.
- [5] According to Dr Matshidza (orthopaedic surgeon) the injuries sustained by the plaintiff have healed satisfactorily. The orthopaedic surgeon appointed by the plaintiff does not dispute that the plaintiff has healed.

- [6] In the matter of the *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) the court said that there was no hard and fast rule of general application requiring the court or a court of appeal to consider past awards. The court further said that awards on decide cases might be of some use and guidance. Furthermore, in *Sandler v Whole Coal Supplier Ltd* 1941 AD the court held that the amount to be awarded as compensation and the figure arrived at depends on the Judge's view of what is fair in all circumstances see also *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A); *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at para 8. Thus therefore, the award of general damages must be fair to both plaintiff and the defendant see *Pitt v Economic Insurance Company Limited* 1975 (3) SA 284 (N).
- [7] Considering the injuries sustained by the plaintiff and the opinion of the experts and decide cases referred to by counsel for the plaintiff, I am of the view that the award of R800 000,00 (eight hundred thousand rands only) for general damages is fair and reasonable under the circumstance.
- [8] In regard to the loss of earnings the plaintiff in his affidavit at (043 - 21 on CaseLines) paragraph 8 thereof says the following: "....I was unable to resume my work duties as a front-end loader operator"

- [9] It is trite that the onus rests on the plaintiff to prove his case on the balance of probabilities see *Pillay v Krishna SA 946*. Thus therefore the duty is on the plaintiff to produce evidence on balance of probabilities that because of the injury, he has suffered loss of income.
- [10] The only issue remaining is whether this court after hearing counsel and reading the papers, this court should grant the amount as requested on behalf of the plaintiff in respect of loss of earning. During the proceedings, I did ask counsel to address me on all issues to the best of his abilities because I am going to reserve judgment.
- [11] The evaluation of the amount to be awarded for loss of income does not involve proof on a balance of probabilities. It is matter of estimation. The general approach is to posit the plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions to his case with the proven injuries and their sequela.
- [12] I am called upon to perform a delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability. Furthermore, I must determine the plaintiff future income, if any, having regard to the disability.

[13] The issues of loss earnings is intrinsically linked with the merit of the matter. To determine whether there was any loss of earning the court had first to determine whether the plaintiff had sustained any injury and, if so, the extent of such injury. It is not sufficient to place actuarial calculations before the court and ask the court to determine the loss of earning without any reference to the merits of the matter.

[14] There is no proof of employment by the plaintiff. The mere mentioning of employment by him in his affidavit is not enough.

[15] Furthermore, he does not indicate the address and names of his former employer or even telephone number.

[16] In my view, the plaintiff has failed in his duty to satisfy the court that he has lost any earning or stands to lose any earnings as a consequence of the motor vehicle accident in question.

[17] I therefore make the following order.

17.1. The defendant shall pay the plaintiff the sum of R800 000 (eight hundred thousand rand only) in respect of general damages.

17.2. The plaintiff's claim for loss of earnings is dismissed.

17.3 Cost of suit.



**MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD AND RESERVED JUDGMENT: 14 AUGUST 2023

JUDGMENT HANDED DOWN ON: 06 SEPTEMBER 2023

Appearances:

For the Applicant: Adv J BAM (instructed by) N S SWAN ATTORNEYS

For the Respondent: N/A