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

CASE NO: 8475/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **6 October 2023**

SIGNATURE: **MPIENAAR**

In the matter between:

**M[...] M[...] E[...] OBO
R[...] M[...] M[...]**

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram : M PIENAAR (AJ)

JUDGEMENT

INTRODUCTION

1. The Plaintiff instituted action against the Defendant in terms of **section 17** of the **Road Accident Fund Act 56 of 1996**, as amended (“the Act”), pursuant to injuries suffered by the Plaintiff in a motor vehicle accident which occurred on the 29th July 2021.
2. The matter came before me on 18 September 2023. Mr Nkabinde appeared for the Plaintiff. The Defendant did not defend the action and the matter was enrolled on the default roll. It is on that basis that the Plaintiff proceed with an application for default judgment.
3. The Defendant has conceded liability in favour of the Plaintiff. **[1]**
4. The Plaintiff applied that the issue of General Damages be postponed sine die. The Court ordered that the issue be separated and that the matter should proceed on the quantum of the loss of earnings. The only issue for this court to adjudicate was the past and future loss of earnings.
5. The Plaintiff amended the Particulars of Claim for past and future loss of earnings and/or earning capacity as follows: **[2]**

Past and future Loss of Earnings	R3 000 000,00
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It is also noted that the Plaintiff intends amending the Particulars of claim by deleting paragraph 7 and paragraph 10 and replaces with the “attached amended particulars”, but there was no document attached to the notice of amendment. **[3]**

EVIDENCE

6. The Plaintiff, at the commencement of the hearing, relied on the evidence on affidavits. **[4]** The Plaintiff has served and filed the medico legal reports of the following experts:

- 6.1 Dr Khetani S Bila, Orthopaedic Surgeon (Exhibit A)
- 6.2 Gillian Sibiya, Clinical Psychologist (Exhibit B)
- 6.3 Yvonne Segabutle, Educational Psychologist (Exhibit C)
- 6.4 Koketso Rakgokong, Industrial Psychologist (Exhibit D)
- 6.5 Peggy Mabasa, Occupational Therapy (Exhibit E)
- 6.6 Tsebo Actuaries (Exhibit F)

7. Dr Khetani Bila assessed the Plaintiff on 03 August 2022. He was availed of the medical records. He came to the conclusion that the Plaintiff sustained a left leg injury and a head injury. The symptoms he presented with could be attributed to the accident injury. The issue of headache to be deferred to the Neurologist.

8. Gillian Sibiya assessed the Plaintiff on 03 August 2022. It is reported that Martin has no loss of consciousness and that he was transported to hospital where he was observed, stabilised, and later discharged home to recover the following day. He reported sustained injuries to his left hand and left leg. Based on background information it appears that Martin enjoyed a good quality of life before the accident and that the accident has disrupted his enjoyment and quality of life. Martin's psychological prognosis seems fair at this point.

9. Ms Yvonne Segabutle evaluated the Plaintiff on 03 August 2022 it transpired that the Plaintiff was repeating Grade 7 at Westview Christian Academy, when the accident occurred. He explained that he failed due to playfulness. It is likely that Martin had the potential to complete and pass his Grade 12 with a Diploma level, allowing him to proceed with tertiary studies, where he would obtain at least a Diploma qualification of choice (NQF6).

10. As far as the post accident is concerned, Ms Segabutle noted that his scholastic performance declined. He struggles to concentrate in class and his memory is a challenge in class. At the time of report finalization, school reports were not submitted.

Ms Segabutle has contacted Ms Rathobela' telephonically but her phone was on voicemail. The Clinical Psychologist, Gillian Sibiya concurs and noted that Martin's overall performance on the assessment revealed difficulty in cognitive functioning. Considering his cognitive functioning he is likely to benefit from placement in a vocational programme found in Mild and Moderately Intellectually disabled special schools to allow him to follow skills related stream allowing him to obtain a level 1 qualification, equivalent to Grade 9. He is likely to proceed and reach fail at least once in the current Senior Phase and proceed to Grade 10 where he would struggle to proceed as the departmental rule of repeating once in a phase falls off. As such he could be expected to fail Grade 10 numerous times until he decides to drop out with Grade 9 as highest academic attainment at NQF 1.

11. From the evidence of Ms Segabutle, Motsamai would have been depended on both his physical and cognitive abilities to secure and maintain employment with a Diploma level of education. Motsamai would have entered the open labour market with his earnings starting at the median quartile of Paterson B4 R282 000 - R332 000 - R383 000 per annum - total package. He would have at best reached the upper quartile of C4 (R624 000 - R710 000 - R844 000 per annum total package as his earning ceiling through changed of employers and positions for better prospects as well as in house training courses at the approximate age of 45 years. Motsamai would have worked until normal retirement age of 60-65 years, provided his health and personal circumstances permitted.

12. Ms Segabutle under medical and para medical report findings, confirms that Dr Bila reported that there is evidence of a healed Tib-Fib fracture. The issue of headache to be deferred to the Neurologist [pg 04-90]

13. From a Neuropsychological viewpoint, Ms Sibiya stated that he reported struggles with increased anxiety, poor school performance, intrusive thoughts of the accident and reduced attention and concentration due to constant headaches. He also reported to

have limited function of the left hand. Martin's psychological prognosis seems fair at this point.

14. The Industrial Psychologist postulates that post accident he would sustained employment not able the probationary period with prolong periods of unemployment in between his jobs anticipated between five to seven years and more noting the current high unemployment rate in South Africa open labour market. His earnings are not expected to call above the lower quartile of the unskilled scale (R24 200 - R43 700 - R97 000) per annum. He would like remain his earning ceiling for the reminder of his career noting that he would also suffer from period of unemployment between his jobs and will hinder career advancement.

15. The Educational Psychologist indicated in her report that at the time of report finalisation, school reports were not submitted. I have no evidence before me relating to the Plaintiff's school reports pre and post morbidly. The onus rests is on the Plaintiff to ensure that the court has all the necessary and relevant evidence to assist the court in arriving at a just and fair decision.

16. Motsamai is complaining about headache pains. Dr Bila reported that the issue of headache to be deferred to the Neurologist. The onus rests on the Plaintiff to discharge the onus.

17. The Plaintiff bears the onus to prove his or her loss. There is therefore a duty upon the Plaintiff in RAF actions to prove the elements of their claims on a balance of probabilities.

18. With regards to Loss of earnings/earning capacity there is a shortage of information of sufficient evidence. In the event of justice the Plaintiff must be granted an opportunity to supplement to there claim and in view of the foregoing I grant the order to the issue of loss of earnings.

ORDER:

In the result the following order is issued:

19. The Defendant is liable for 100% of Plaintiff's proven or agreed damages;

19.1 The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of the provisions of Section 17(4)(a) of the Road Accident Fund Act 1996 (Act No 56 of 1996) in respect of future accommodation of the Plaintiff in a hospital or nursing home for treatment of a service or supplying of goods to him pursuant to the injuries which the Plaintiff suffered in the collision on 29 May 2021 and to compensate the Plaintiff in respect of the said costs, after the costs have been incurred and proof thereof.

19.2 The issue of General Damages is postponed sine die;

19.3 As the claim for Loss of Earnings is postponed sine die, leave is granted to supplement the evidence in respect to the Claim for Loss of Earnings/ earning capacity.

19.4 The Defendant is liable for the Plaintiff's taxed or agreed party and party costs on the High Court scale and the Plaintiff's lodging and traveling costs in attending the Plaintiff's experts which costs shall inter alia include the following:

19.4.1 The costs of counsel

19.4.2 The costs of obtaining Plaintiff's medico legal reports;

19.4.3 The costs incurred in the preparation of the trial bundles

19.5 The party and party costs are payable within 14 days of date of settlement/taxation, where after interest will be charged at 11,25% from the

aforementioned date to date of payment. The Plaintiff's attorneys of record trust account with the following details:

ACCOUNT HOLDER : V.F. HLUNGWANE ATTORNEYS
BANK NAME : FIRST NATIONAL BANK
ACCOUNT NO : 6[...]
BRANCH NAME : PRETORIA
BRANCH CODE : 2[...]
ATTORNEYS REF : R[...]

MPIENAAR
PIENAAR, AJ

Date of hearing: 18 September 2023

Judgment : 6 October 2023

APPEARANCES

On behalf of Plaintiff : Adv Nkabinde

Instructed by : V F Hlungwane Attorneys

On behalf of the Defendant: No appearance

Instructed by : Road Accident Fund

Link no: 5164560

[1] Merits offer from the RAF Caselines 12 Offer from the Fund, item 2

[2] Amended Particulars of Claim Caselines 02 Pleadings, item 1 pg 02-6

[3] Notice of amendment Caselines 14, item 1

[4] Experts Affidavits Caselines 10 Experts Affidavits
