

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

CASE NO: 61319/2020

CASE NO: 4549/22

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED</u>

16 October 2023
DATE

.....
SIGNATURE

In the matter between:

MATHOPA GAURUTWE RAYMOND

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

PIENAAR AJ

[1] The Plaintiff herein instituted action against the Defendant herein, the Road Accident Fund as a result of the motor vehicle accident which occurred on 3rd September 2016. On 17 April 2019 the claim was lodged at the Road Accident Fund. On 24th day of November 2020 the Road Accident Fund was served with the summons. **[1]** The Defendant failed to enter an appearance to defend.

[2] On 18 September 2023 the matter came before me, Mr Schouton appeared on behalf of the Plaintiff. Counsel requested to proceed with the matter and referred the court to the Expert witness affidavits. **[2]** There was no appearance on behalf of the RAF. The notice of set down was served on 20 June 2023. **[3]**

[3] Regarding the merits or liability counsel for the Plaintiff submitted that RAF ought to be held liable for 80% of the proven or agreed damages suffered by the Plaintiff. **[4]** The only issue for determination is the quantum of the Plaintiff's loss of earnings or earning capacity and General Damages. The RAF made an offer on 18 September 2023 which includes General damages and Loss of earnings, but Plaintiff rejected the offer for quantum. **[5]**

[4] The Respondent's defence in the principal action its struck out in accordance with the provisions of the Judge President's Revised Practice Directive 1 of

2021 **[6]**

[5] The Plaintiff amended the Particulars of Claim in terms of Rule 28 as follows:
[7]

Past Loss of Earnings	R267 737,00
Future Loss of Earnings	R800 000,00
General Damages	R2 000 000,00

[6] The Plaintiff did not present any viva voce evidence, but relied on 5 (five) Expert Confirmatory affidavits, accompanied by reports, compiled by expert witnesses. These experts did stated their qualifications. **[8]**

EVIDENCE

[7] The Plaintiff has served and filed the medico legal reports of the following experts: **[9]**

- | | |
|---|-------------------------|
| 7.1 Dr G A Versfeld | Orthopaedic Surgeon |
| 7.2 Dr Gian Marus | Neurosurgeon |
| 7.3 Tracy Holshausen | Occupational Therapist |
| 7.4 Marina Grove | Industrial Psychologist |
| 7.5 Algorithm | Actuary |
| 7.6 RAF 4 assessment reports and addendum reports | |

[8] For sake of completeness the following documents are uploaded onto Caselines as exhibits for the trial, namely:

- 8.1 Plaintiff's merits settlement documents bundle as Exhibit A
- 8.2 Plaintiff's Lodgment documents bundle as Exhibit B
- 8.3 Plaintiff's Court Order (strike out) as Exhibit C
- 8.4 Plaintiff's Expert reports and confirmatory affidavits as Exhibit D

[9] To recap: the Plaintiff sustained the following injuries in the accident: a chest injury with fractured ribs, a left knee injury, a laceration to the left lower abdomen, a left shoulder injury and fracture of his thoracic spine. From a neurological perspective, he sustained a significant brain injury that has left him with some cognitive impairment that is likely to affect work capacity.

[10] At the time of the accident the Plaintiff was 49 years old, and he was employed as a Gardener for a block of flats. He had been doing this work since 1997.

Dr G.A Versified (Orthopaedic Surgeon)

[11] Dr Versfeld examined him on 19 September 2019 and an addendum report was done on 11th September 2023. Following the accident he returned to work in about November 2016. Mr Mathopa is already retrenched because of the accident. His formal education consists of having passed Standard 5.

He has problems climbing stairs because of his left knee and because he become short of breath. About once a week his knee feels like it will give away, especially if the weather is cold. Prior to the accident his right knee, left shoulder and his back was asymptomatic. When one takes into account his symptoms and disabilities resulting from the accident, the probability is that he will remain unfit for work. He has suffered serious long term impairment of a body function as a result of the accident.

Dr Gian Marus (Neurosurgeon)

[12] Dr Marus examined him on 8 March 2021 and an addendum report was done on 11 September 2023. He reports that the major problem with work is if he gets dust in his chest, he gets short of breath. From a neurological perspective, he sustained a significant brain injury that has left him with some cognitive impairment that its likely to affect work capacity. He sustained a severe chest injury that has resulted in residual impairment in his physical abilities.

Tracy Holzhausen (Occupational Therapist)

[13] Ms Holzhausen assessed the Plaintiff on 4 November 2019. He would be suited to sedentary to limited light category work demands. He would not be seen to be an equal competitor on the open labour market in the type of manual labour positions.

Marina Grove (Industrial Psychologist)

[14] Ms Grove assessed the Plaintiff on 11 December 2019 and an addendum report was done on 7 September 2023. Pre accident, Mr Mathopa was 50 years old at the time of the accident, working as a groundsman from 1997. He reported that he completed school up to Standard 5 and security guard training up to Grade C. As a groundsman/gardener he would be regarded as operating at an unskilled occupational complexity level, where intact physical ability, mobility endurance and strength would have been required to secure and maintain employment. He would have continued with employment as a groundsman/gardener from the remainder of his working life.

[15] Post morbid he returned to work after a sick period of about six weeks, but was accommodated in a lighter position, that of cleaner, but could not sustain this job and was eventually retrenched. He was retrenched on 30 June 2019. Given that he has been rendered unemployable on the open labour market, he would be subjected to a total loss of earnings for the remainder of his working life.

Algorithm Consultants & Actuaries

Mr Whittaker based his calculations on the industrial psychologist report for the Plaintiff's past and future loss of earnings and earning capacity. On the facts of this case, I would accept Mr Whittaker's calculations and apply a contingency deduction of 10% on the uninjured future loss of earnings.

Thus: Total loss of income - **R734 273,00**

GENERAL DAMAGES

[16] The Plaintiff is seeking compensation of R1 500 000,00 for General Damages. I was referred to a number of cases dealing with the type of injuries that the Plaintiff has sustained. So for example in *Classes v Road Accident Fund* (2019) JOL 45669 (GP) the Plaintiff sustained blunt abdominal trauma, a severe head injury, injury to the neck, left rib fractures, injury to the right foot, injury to the left leg, injury to the left shoulder, injury to the spinal cord (paravertebral joint fusion of C2/C3), laparotomy for spleen laceration and a poly trauma injury to the left lung. The Court awarded an amount of R1 200 000,00, current value is R1 456 800,00

[17] I have considered the cases that I have been referred to. In determining quantum for General Damages, I am required to exercise a broad discretion to award what I consider to be fair and adequate compensation. In so doing, I must consider a broad spectrum of facts and circumstances connected to the Plaintiff and the injuries suffered by him, including their nature, permanence, severity and impact on his life.

[18] In my view, in the light of the cases that I have referred to and based on the medical expert reports, an appropriate award for General Damages would be **R1 200 000,00.**

As a result the following order is made:

[19] At the hearing of the matter, I was presented with a draft order, which a trust will be created in terms of the Trust Deed **[10]**

I accordingly mark the draft order "X" and it is made an order of Court.

M PIENAAR

ACTING JUDGE OF THE HIGH COURT

For the Plaintiff : Adv H Schouten
Instructed by : Munro, Flowers & Vermaak Attorneys
For the Defendant : No appearance
Link no: 4684555
Claim no: 502/12818355/24/0

Date of Hearing : 18 September 2023
Date of Judgement : 16 October 2023

The Judgment was handed down electronically by circulation to the parties representative via email and by uploading on caselines.

[1] Return of Service : Road Accident Fund Section 008 Pleadings, bundle 1
[2] Expert Witness Affidavits : Section 010

- [3] Notice of Set down: Section 004: Served Notice of Set down, bundle 2
- [4] Signed merits offer : Section 007 , bundle 5 pg 007-70
- [5] General Damages confirmation : Section 007 , bundle 9
- [6] Court Order - Respondent's defence action is struck out Section 006
- [7] Amended Particulars of Claim Section 008 Pleadings
- [8] Plaintiff experts reports : Section 009 Plaintiff Expert reports
- [9] Confirmatory affidavits : Section 010
- [10] Trust Deed : Section 007, bundle 13 Default Judgment trial with Heads of Argument and Consent as Trustee