

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

Case no: Y68203/ 2013

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES:NO

REVISED

DATE: **29/11/2023**

In the matter between:

VERNON ANDRE DE JAGER

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR AJ

BACKGROUND

1. The Plaintiff is a 58 year old male who sues the Defendant for damages suffered as a result of personal injuries sustained on 7 November 2008 wherein the insured vehicle collided with with the Plaintiff who was a pedestrian at the time.

2. Summons issued at the instance of the Plaintiff was served on the RAF and thereafter, RAF appointed attorneys to represent it in the matter. The Defendant attorneys of record withdraws as attorney of record in this matter on behalf of the defendant. From the papers, it is apparent that the Plaintiff served documents,

including the notice of set down of the matter for trial electronically after its attorneys were terminated. On 31 October 2022, the Plaintiff obtained an order from this Court *per* Justice Mokose to the effect that RAF's defence, as pleaded is struck out with costs.¹ Therefore, the matter thenceforth proceeded towards default judgement.

3. The merits of the matter had been settled on the basis that the Defendant is liable for 70% of the proven or agreed damages of the Plaintiff and an order to this effect was issued on 7 March 2018.²

4. The Defendant also furnished the Plaintiff with an Undertaking, in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the Plaintiff arising out of the injuries sustained in the collision.

5. In this action the Plaintiff amended the Particulars of Claim in terms of Rule 28 compensation from the Defendant as a result of injuries sustained during the incident in the following amounts:³

5.1	Loss of earnings/earning capacity	R3 585 611,00
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5.2	General Damages	R1 100 000,00
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6. It is common cause that the Defendant elects to accept the RAF 4 assessment report.⁴

EVIDENCE

7. The Plaintiff filed the medico legal reports appearing herein in which his

¹ Caselines 000 Application for Default Judgment, bundle 5

² Caselines 000 Application for Default Judgment, bundle 7

³ Caselines A : Amendment of Particulars of Claim

⁴ Caselines 003 General Damages

injuries are detailed:

7.1	Dr MM Malan	- Orthopedic Surgeon
7.2	Ms L Keyser	- Occupational Therapist
7.3	Sandra Botha	- Occupational Therapist
7.4	Dr Jae J Theron	- Orthopaedic Surgeon
7.5	Lise van Gass	- Industrial Psychologist
7.6	Johan Sauer	- Actuaries

8. The Plaintiff after the accident was taken by ambulance to Barberton Hospital where he was admitted for three weeks. X-Rays were conducted and debridement and suturing of the right leg was done. There was no bone union and an external fixator was inserted for 8 weeks. He developed sepsis and the external fixator was removed. He was transferred to Witbank Hospital where he stayed for one month. Sepsis developed again, and the nail was removed nine weeks later. He is walking with a crutch since then.

9. According to Dr Malan, the Plaintiff sustained an open fracture right tibia and fibula, head injury and back pain. Mr de Jager reports that it was suggested that the right leg should be amputated, but he is still hopeful that the leg will heal. He walks with one crutch in his right hand. Dr Theron confirms that there is presently a 43 mm shortening, he still has a non-union and a fracture contracture of the ankle.

10. Ms Keyser (Occupational Therapist) noted that Mr De Jager's work as a Fitter and Turner fell into the heavy physical demand classification, for which there was only a partial job match.

11. Mrs Lise van Gass (Industrial Psychologist) notes that Mr De Jager has experienced significant occupational limitations which has rendered him incapable of securing permanent employment or positions with earning's in line with his work experience, as his total acquired skillset is noted to fall beyond his residual physical capacity. It is unlikely that he would be able to maintain his

current employment at Malanguza Vehicles Maintenance & Towing beyond the age of 60 in 2025. Thereafter, he will probably be highly vulnerable to prolonged periods of unemployment for the remainder of his career.

12. Therefore, on the basis of the calculations as per the report by JJC Sauer actuaries dated 18 May 2023 including the RAF cap and after applying contingencies are as follows:

Total loss of earnings after RAF cap

3 585 611

13. On the issue of General Damages, a court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. The Plaintiff is seeking compensation of R1 000 000,00 General Damages. I was referred to a number of cases by the Plaintiff. 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.

14. In my view, in the light of the cases that I have been referred to and based on the medical and expert reports, an appropriate award for General Damages would be R750 000,00.

15. In the circumstances I make the following order:

15.1 The Defendant is liable for 70% of the Plaintiff's proven or agreed damages relating to the accident which occurred on 7 November 2008;

15.2 The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 limited to 70% in respect of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of service or supplying of goods

to the Plaintiff, after the sits have been incurred on submissions of proof thereof resulting from the injuries sustained by the Plaintiff during and as a result of the accident that occurred on 7 November 2008;

15.3 The Defendant is to pay the Plaintiff the sum of R525 000,00 after the apportionment as General damages;

15.4 The Defendant shall pay to the Plaintiff the sum of R2 509 927,70 (two million five hundred nine thousand nine hundred twenty seven rand and seventy cents).

15.5. The Defendant shall pay the amounts above within 180 days from the date of this order;

15.6 Interest shall be charged at the prescribed rate *per annum* on any outstanding amount calculated 14 (fourteen) days from date of judgment to date of final payment;

15.7 the above mentioned amount(s) shall be payable into the Plaintiff's Trust account with the following details:

Account name	Christo Botha Attorneys
Bank	ABSA
Branch code	632005
Trust account	4[...]
Ref no	LEM/5115
Link no	3067766

15.8 the Defendant shall pay the Plaintiff's taxed or agreed party and party costs, including the costs relating to the following:

(1) the costs consequent upon the employment of counsel; including day fee, preparation fees, drafting of heads of argument;

(2) reasonable costs consequent to attending the medico legal examinations;

(3) the costs of obtaining all medico legal reports

ACTING JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties and / or parties preventatives by email. The date and time for hand down is deemed to be 29 November 2023.

Date of hearing 29 September 2023
Date of judgment 29 November 2023

APPEARANCES:

Counsel for Plaintiff :Adv Du Plessis
Instructed by :Christo Botha Attorneys
Email: litigatise2@cbattorneys.co.za

No appearance for the Defendant
Road Accident Fund
Link no : 3067766