



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 6707/2017

In the matter between:

MANANYANA JANE MOLOI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 6 SEPTEMBER 2022

JUDGEMENT BY: LOUBSER, J

DELIVERED ON: 20 OCTOBER 2022

- [1] In the early morning hours of 7 August 2016 the Plaintiff was a front seat passenger in a vehicle that collided with another vehicle at an intersection in the city of Bloemfontein. She sustained a head injury with multiple open wounds on her face and soft tissue injuries on her right lower limbs. Subsequently, the Plaintiff claimed damages from the Defendant in the amount of R8 711 483.00, calculated as follows: General damages R900 000.00, future medical expenses R200 000.00 and the future and past loss of income R7 611 483.00.
- [2] On 21 April 2019 the merits of the matter were settled by the parties at 100% in favour of the Plaintiff. On 24 May 2022 the parties agreed that the Defendant would pay the amount of R800 000.00 to the Plaintiff in respect of her claim for general damages, and the matter was postponed for trial in respect of the issue

of loss of earnings only. By agreeing as such, there was obviously a mutual understanding between the parties that the claim for future medical expenses would not proceed.

- [3] The outstanding claim in respect of loss of earnings came before this Court for hearing. The Plaintiff herself did not testify, but she called three expert witnesses to testify in her case. They were me. Lenmarie Stanton, a clinical psychologist, dr. L.A. Fourie, an industrial psychologist, and mr. R. Immerman, an actuary. The Defendant did not present any evidence at all, and chose to rather focus on any possible shortcomings in the case of the Plaintiff.
- [4] During the hearing, it soon transpired that the Plaintiff claim for loss of income is not really based on the physical injuries she suffered in the accident, but on the effect of those injuries on her emotional, cognitive, psychological and social functioning. For instance, me. Stanton testified that the purpose of her assessment of the Plaintiff was to assess her emotional state. On the date of the assessment, she found that the Plaintiff was suffering from anxiety and a depressed mood as a result of the accident. This condition affected her emotional life, and it had an impact on her quality of life.
- [5] In the medico-legal report prepared by me. Stanton, it is mentioned that clinical syndromes are suggested in the Plaintiff's test profiles in the areas of generalised anxiety disorder and posttraumatic stress disorder. However, the interviews with the Plaintiff took place some two years after the accident, in May 2018, and some four years before the hearing in Court. In addition, it appears that the findings of me. Stanton are based on what only the Plaintiff told her, since no collateral information was obtained to verify the information gained from the Plaintiff.
- [6] Me. Stanton testified that the Plaintiff completed her secondary school years in 2014, after which she enrolled for a degree in political science at the Free State University in 2015. The following year she changed her course of studies and commenced with a B. Comm accounting degree. Due to the accident, she had to repeat her first year of the accounting degree. The Plaintiff reported she was struggling to complete this degree and that she was repeating certain modules.

According to the Plaintiff, this was the result of poor concentration caused by the accident.

- [7] In cross-examination, me. Stanton conceded that her assessment was done four years ago, and that her findings could now be different. She does not know whether the Plaintiff received any treatment for her problems in the past four years, but she conceded that if she did, her problems could have improved. When it was put to her that the Plaintiff had since obtained her degree and that she is presently employed by an auditing firm in Johannesburg, me. Stanton conceded that such facts pointed to an improvement in the Plaintiff's condition.

- [8] Dr. L.A. Fourie, the industrial psychologist, based his evidence on an addendum to his original report, which addendum is dated May 2022. In this addendum he indicates that the Plaintiff discontinued her studies in 2018 at the Free State University, because she failed to gain admission to exams in most of her courses. The next year she transferred to Unisa and completed the degree of Bachelor of Accounting Science in 2021. Referring to other expert reports that were made available to him, dr, Fourie mentions that the Plaintiff has unsightly scars on her face. Due to her poor attention and memory, the Plaintiff has struggled to complete her degree, and it has been by dint of her perseverance and determination that she achieved this.

- [9] Dr. Fourie further expressed the view that, considering that the Plaintiff only completed her degree three years later than expected, she would enter the labour market at least three years later than expected. This should be calculated as a loss of income for such time, according to his addendum.

- [10] In cross-examination dr. Fourie conceded that the Plaintiff has a better chance of finding employment because she is a woman. He also confirmed that he did not make any inquiries with her present employer. On a question by the Court, he confirmed that the Plaintiff is a woman of potential.

- [11] Mr. R Immermann, the actuary, testified that he did a second audit because it emerged that the Plaintiff was now employed. He calculated her past loss of income from the date of the accident to the date of his second report, namely 20

May 2022. Having regard to the fact that the completion of the Plaintiff's studies was delayed by some 3 years, and her entering the labour market delayed by the same period, he calculated her past loss of earnings to be R1 117 832.00. Applying a contingency deduction of 5%, the past loss amounted to R1 061 940.00. I need to mention here that mr. Immermann took into account that the Plaintiff is currently, and from the beginning of the year, employed at a salary of R13 658.54 per month. The Plaintiff's past loss of income is therefore R1 011 363.00. Applying the limit imposed by Act 19 of 2005, the net past loss amounts to R840 211.00.

- [12] When it comes to the future loss of income, the calculations of mr. Immermann are based on the addendum report of dr. Fourie. Based on that report, mr. Immermann assumed that, having regard to the accident, the Plaintiff will enter the labour market in 2023, earning in line with the Paterson B4/B5 median package. Thereafter, she will progress to a career ceiling by the age of 45, earning in line with the Paterson D1 median package. Mr. Immermann mentioned that he was informed that after completing her degree in 2021, the Plaintiff is currently enrolled at UNISA for an NQF8 course in Applied Auditing, Financial Accounting, Management Accounting and Applied Taxation. At the same time, she is currently and with effect from 31 January 2022 employed as an audit trainee at Crowe Johannesburg. Mr. Immermann has taken all these factors into account in making his calculations. He came to the conclusion that the Plaintiff suffered a net loss of R3 121 850.00 as far as her future loss of earnings are concerned.
- [13] Mr. Immermann mentioned that dr. Fourie recommended a higher than normal post-morbid contingency deduction for the Plaintiff to account for the factors he set out in his report. The factors mentioned by dr. Fourie originated *inter alia* from the outdated report of me. Stanton and a report by me. Gibson, an educational psychologist, which is dated earlier this year. Me. Gibson was not called to testify, and her report was merely handed in. As a result, me. Gibson could not be cross-examined, and this factor obviously reduced the probative value of her findings.
- [14] On the basis of what was found by me. Stanton and me. Gibson, dr. Fourie had the following to say: "Also, considering ms Moloi's emotional problems, neuro-

cognitive deficits in the areas of attention, concentration, memory and processing speed as well as mood changes and cognitive limitations, she would be disadvantaged in the competitive workplace in terms of efficiency, effectiveness and productivity in comparison to normal healthy individuals of the same age for similar type of position. Bearing also in mind the dental and facial injuries sustained, she would be restricted in terms of her choice of occupations and choice of employer – putting her at a disposition comparing to her peers... It is therefore recommended that a higher post-accident contingency be negotiated in this regard”.

- [15] In my view, dr. Fourie has not given sufficient weight to the fact that the Plaintiff had obtained an auditing degree some 10 months ago and that she is currently a trainee at an auditing firm, while she is furthering her studies at Unisa. Nor has dr. Fourie, me. Stanton and me. Gibson bothered to interview the current employers of the Plaintiff to gain information regarding her performance at the workplace. In addition, the Plaintiff attended the hearing in Court, and no scarring or facial injuries could be observed by the Court where she sat some 7 to 8 metres from the bench.
- [16] Also having regard to dr. Fourie’s opinion in Court that the Plaintiff is a woman of potential and that she has a better chance of finding employment because she is a woman, I am of the view that the prognosis for the Plaintiff’s future is far too pessimistic, as postulated by dr. Fourie. Also bearing in mind that the Plaintiff did not testify while she carried the onus of proving on a balance of probabilities that she suffered a loss of earnings as far as her future career is concerned, I have to conclude that she has failed to make out a proper case for a future loss of earnings.
- [17] In this respect I emphasize that the Plaintiff’s claim for future loss of income is premised on her alleged emotional and cognitive problems arising from the injuries she sustained in the accident, and not on the physical injuries itself. Her present emotional and cognitive state is therefore of vital importance in the adjudication of this matter. There is simply no evidence before this Court to sustain a conclusion that her emotional state will have a detrimental effect on her future career. There is also no evidence before this Court to suggest that her

present performance at her place of employment is not up to standard. The Plaintiff herself did not take the Court into her confidence by testifying and informing the Court of any emotional problems she is currently experiencing in the workplace and in the furtherance of her studies.

[18] What we do know with the benefit of hindsight, is that the Plaintiff has managed to rise above her problems and to obtain a degree and employment, which, on a balance of probabilities, will only hold good for her in the future. The conclusion that she has failed to prove any future loss of earnings, is therefore inevitable.

[19] In the premises, the following order is made:

1. The Defendant is ordered to pay to the Plaintiff the amount of R840 211.00 for past loss of earnings within 180 days of date of this Order.
2. The Defendant is ordered to pay the Plaintiff's costs of suit, including the qualifying and reservation fees of me. Stanton, me. Gibson, dr. Fourie and mr. Immermann not already covered by the Court order of 24 May 2022.



P. J. LOUBSER, J

For the Plaintiff: Adv. N Gama
 Instructed by: Mokhetle Inc, Mahikeng
 c/o Phatshoane Henney Inc.
 Bloemfontein

For the Defendant: Adv. J. Gouws
 Instructed by: The State Attorneys
 Bloemfontein