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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: 2396/2018

Heard: 11/05/2021

Date delivered: 28/10/2022

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

MICHAEL NTELEKOA MOKALA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

EILLERT, AJ

[1] This is a judgment on the quantum of the Plaintiff's claim against the Road Accident Fund. In a pre-trial conference held by the parties in terms of the provisions of Uniform Rule 37 on 5 June 2019 the Defendant conceded that it may be held 70% liable in respect of such damages as the Plaintiff may prove, which concession the Plaintiff accepted.

[2] The Plaintiff's case was presented by Advocate Van Onselen. Ms Rabie, the attorney for the Road Accident Fund, was present in court during the hearing, but did not actively take part in the proceedings. The Plaintiff sought leave to adduce the evidence of his expert witnesses by affidavit in terms of Uniform Rule 38(2) and such leave was granted to the Plaintiff.

[3] The Plaintiff's claims are only in respect of future medical costs and loss of earnings. The Plaintiff has no claim in respect of past medical costs. Furthermore, according to the expert witnesses, the injuries sustained by the Plaintiff do not qualify as being of such a serious nature that the Plaintiff is entitled to non-pecuniary damages in respect thereof. I will proceed to deal with the Plaintiff's claims in turn.

Claim in respect of future medical costs

[4] The Plaintiff seeks an order in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 ("the Act"), that the Defendant be directed to furnish an undertaking to compensate the Plaintiff in respect of 70% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or supplying of goods to him, after the costs have been incurred and on furnishing proof thereof, resulting from the motor vehicle collision that occurred on 28 July 2017.

[5] The Plaintiff sustained the following injuries as a result of the motor vehicle collision: a fracture of his right tibia and fibula, a mild head injury, lacerations to his head, left elbow and both hands, a soft tissue injury of the right knee, and various bruises, abrasions and cuts.

[6] The orthopaedic surgeon, Dr J F Greyling, noted in his written report that the Plaintiff has a 2-centimeter leg length discrepancy between his right and left lower limbs, the right lower limb being shorter than the left. Dr Greyling ascertained that a

prominent screw was palpable on the skin of the Plaintiff's right leg and is therefore of the view that the Plaintiff would benefit from the future surgical removal of hardware from the right tibia. In addition, he noted that the most distal screw inserted in the Plaintiff's lower limb has broken. Dr Greyling also recommended future conservative medical treatment, consisting of physiotherapy to his knee, ankle and foot, and for the provision of anti-inflammatory medications, gel and analgesics. In the joint minute filed between Dr Greyling and the Defendant's expert witness, Dr H L Moloto, the orthopaedic surgeons were in agreement that the Plaintiff is in need of future medical treatment, and that the estimated costs of such future medical treatment be set at the amount of R80,000.00 (Eighty Thousand Rand).

[7] Ms Maree, the Plaintiff's occupational therapist, added that the Plaintiff would also benefit from treatment by a biokineticist, occupational therapy, and the provision of very conservative assistive devices and equipment.

[8] I am satisfied in the circumstances that a directive in terms of section 17(4)(a) of the Act should be ordered in respect of the anticipated future medical costs of the Plaintiff.

Claim in respect of loss of earnings or earning capacity

[9] The evidence of Ms Maree on this question may be summarised as follows: before the motor vehicle collision the Plaintiff was employed as a layer-up in a clothes factory, Jaff & Company. The work could be classified as medium work demands with constant standing and walking. The Plaintiff was stabilized in his career and would have continued performing medium work demands until retirement age. Following the motor vehicle collision, the Plaintiff was unable to work for four months. He returned to work on 1 December 2017. He was moved to the 'fusion machine', where he would be stationary as he experienced difficulty in prolonged standing, walking and heavy load handling. The Plaintiff was therefore sympathetically accommodated by his employer. On recommencing his employment, the Plaintiff was performing frequent light demands,

not handling more than 4,5kg whilst constantly standing. Jaff & Company closed down in September 2018 and the Plaintiff was retrenched. Regarding the Plaintiff's future work prospects, Ms Maree is of the view that the he would possibly be competitive in light work demands with seated rest breaks, as necessary. He would not be an equal competitor in the open labour market and would need to be accommodated by a sympathetic employer. The Plaintiff would probably find it difficult to secure and sustain employment and has limited career options as his level of education is only Grade 11. Should medical intervention be successful in relieving pain and discomfort, the Plaintiff would probably be competitive in medium work demands, but he would have to undergo intensive rehabilitation.

[10] The Plaintiff further relied on the report of his industrial psychologist, Dr Jacobs. In Dr Jacobs' view, the Plaintiff is entitled to past loss of income, which should be calculated from the date of the motor vehicle collision to the date of his report, being 25 July 2019. The Plaintiff did not work from September 2018 and although he did not lose his job as a result of his injuries, the Plaintiff had to compete in his injured state for jobs.

[11] Regarding the Plaintiff's loss of earning capacity, Dr Jacobs is of the view that had it not been for the motor vehicle collision, the Plaintiff would have been able to work in the capacity of a general (unskilled) worker until the age of 65 years. His earning capacity initially falls within the unskilled scale of the non-corporate sector and thereafter in the unskilled scale of the corporate sector. Further career progressions were probably likely for the Plaintiff, with a career span of 45 years post the motor vehicle collision, reaching a career plateau at 45 years of age.

[12] Considering the *sequelae* of the motor vehicle collision, Dr Jacobs is of the view that it is highly unlikely that the Plaintiff would obtain and sustain a sedentary position requiring some administrative capacity and skills. The Plaintiff will not be able to do medium and/or heavy physical work again if his symptoms persist. The Plaintiff is further likely to face significant periods of unemployment due to having fewer opportunities to aspire for, and may be restricted to sympathetic jobs on some

occasions. According to Dr Jacobs, a higher-than-normal post-morbid contingency deduction in respect of the Plaintiff is indicated.

[13] Based on Dr Jacobs' recommendations, the Plaintiff obtained the calculations of his actuary, Mr Whittaker. Mr Whittaker proposed that contingency deductions of 10% be made to the Plaintiff's past loss of earnings, 20% to his pre-accident loss of earning capacity and 40% to his post-accident loss of earning capacity. These contingency deductions seem to me to be appropriate and in accordance with the Plaintiff's expert evidence, and was accepted by the Plaintiff's legal representatives.

[14] In the circumstances it was calculated that the Plaintiff suffered past loss of income in the amount of R14,720.00 (Fourteen Thousand Seven Hundred and Twenty Rand), and a loss of earning capacity in the amount of R531,092.00 (Five Hundred and Thirty-One Thousand Ninety Two Rand). The apportionment of liability is to be applied to these figures.

[15] In the premise the following order is made:

[1]

1.1 The Defendant shall pay an amount of R382,068.40 (Three Hundred and Eighty Two Thousand and Sixty Eight Rand and Forty Cents) to the Plaintiff in settlement of the Plaintiff's claim;

1.2 The aforementioned amount shall be payable by direct transfer into the trust account of Adams and Adams, details of which are as follows:

Nedbank

Account number: [...]

Branch number: [...]

Pretoria

Ref: [....]

The Plaintiff shall allow the Defendant 180 (One Hundred and Eighty) court days to make payment of the capital from date of this court order, failing which the Plaintiff will be entitled to recover interest at the applicable rate.

[2] The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) in respect of 70% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him, after the costs have been incurred and on furnishing proof thereof, resulting from the accident that occurred on 28 July 2017.

[3] The Defendant is ordered to pay the Plaintiff's taxed or agreed costs in respect of the Plaintiff's claim on the Party and Party High Court scale, the quantum of which is within discretion of the Taxing Master, inclusive of but not limited to:

3.1 The fees of Counsel on the High Court scale, inclusive of counsel's full reasonable day fees for 10 and 11 May 2021;

3.2 The reasonable travelling and accommodation costs of Counsel;

3.3 The reasonable taxable costs of obtaining all expert/medico-legal, addendum, RAF4 Serious Injury Assessment and actuarial reports from the Plaintiff's experts which were furnished to the Defendant;

3.4 The reasonable taxable preparation, reservation and qualification fees in respect of all the Plaintiff's experts in respect of which the reports were served on the Defendant;

3.5 The costs of a consultation between the Plaintiff and his legal

representatives to discuss the terms of this order;

3.6 The reasonable taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred by or on behalf of the Plaintiff in attending medico-legal consultations with the parties' experts, attending the court and in respect of consultations with the Plaintiff's legal representatives, the quantum of which is subject to the discretion of the Taxing Master;

3.7 The above costs will also be paid into the aforementioned trust account;

3.8 It is recorded that the Plaintiff's instructing attorneys do not act on a contingency basis.

[4] The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

4.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

4.2 The Plaintiff shall allow the Defendant 180 (One Hundred and Eighty) court days to make payment of the taxed costs from date of settlement of taxation hereof;

4.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the applicable interest rate on the taxed or agreed costs from date of allocatur to date of final payment;

4.4 The Plaintiff shall not issue a writ prior to the expiry of the 180-day periods.

EILLERT, A

**ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION
KIMBERLEY**

For the Plaintiff: Adv. C. Van Onselen

Instructed by: Stefan Greyling Incorporated
SG/MOK3/SM/MS

For the Defendant: The State Attorney

Ms B Rabie

Link: 4364457; REF: 560/12648461/1035/0

(Claims Handler: Twananani).