

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

69361/17

10/2/2020

In the matter between

NONHLANNHLA MASANGO

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Coram: HUGHES J

JUDGMENT

HUGHES J

[1] The plaintiff, Nonhlanhla Masango, was a passenger in motor vehicle [...], which was involved in a motor vehicle collision on 16 February 2016 with another motor vehicle bearing registration [...]. The issue of liability has been settled between the parties on the basis that the defendant's liability is 100% of the plaintiffs proven damages. The only issue outstanding is that of quantum.

[2] In respect of quantum the plaintiff has accepted the defendant's offer of R350 000.00 for the claim of general damages of the plaintiff. I need not concern myself with this aspect any longer. The defendant has also offered, which offer was accepted by the plaintiff, to provide the plaintiff with an undertaking in terms of

section 17(4) (a) of the Road Accident Fund Act 56 of 1996, where the defendant is to reimburse the plaintiff 100% for the costs of any future accommodation in a hospital or nursing home, treatment or rendering of services to plaintiff or the supplying of goods to her arising out of the injuries she sustained in the collision upon which this action is based.

[3] There was no claim instituted for past medical expenses. The only issue before this court is that of loss of earnings. The plaintiff as at the date of the collision was unemployed but volunteered as a paramedic assistant, as a volunteer she earned no income. According to the hospital records she sustained the following injuries: an injury of the right leg and left shoulder; a 5 cm laceration on the chin; a haematoma on the occipital area; pain and limited motion range of the right knee, right hip and left shoulder and there were no fractures or dislocations.

[4] Dr Birrell an orthopaedic recorded, having examined the radiologist report, that there is a tiny anterior osteophyte formation at C4 and a smaller antero-superior osteophyte at C3 and the anterior inferior border of C2. He does record that the plaintiff is capable of returning to work as a volunteer ambulance worker and that she is also capable of working as a security guard. According to Dr Mokhuane, a psychiatrist, the plaintiff suffers from Somatoform pain disorder, depression and posttraumatic stress disorder. Whilst, Dr Roper, a clinical psychologist, diagnosis was that the plaintiff suffered from posttraumatic stress disorder and major depressive disorder. He believed that this was as a result of how she had dealt with the traumatic event of the collision, even though she had only suffered a mild head injury with no neuropsychological changes.

[5] The occupational therapist Ms Van de Walt, opined that the plaintiff was able to engage in light strength demands with no impairment of mobility and tolerance for posture of sitting, standing and stooping. She was best suited for tasks that have practical cognitive demands. Due to her light strength demand and mood disorder she could not resume her position as a voluntary ambulance assistant but was rather suited as a security, which course she had completed but never worked therein. Of importance is the fact that Ms Van der Walt is optimistic that with rehabilitation 'she might return to work as ambulance assistant on the level that she functioned pre-accident.'

[6] Mr Moodie, the industrial psychologist, is of the opinion that the

plaintiff would have probably continued as a volunteer ambulance assistant until 2019, bearing in mind that she fell pregnant in 2017 and gave birth in 2018. Of course during this time, she would be selling her Avon Products as she has alluded to. From 26 November 2019, it would take her 6-12 to secure employment as a basic ambulance assistant, who earn between R9 000-R12 000 per month. Now she can only do sedentary or light duty work, although, she would not earn on a lower salary scale in respect of individuals having passed Grade 12 level of education. The plaintiff having attained Grade 12. Though she states that having regard to the sequelae of her Injuries she would only obtain promotional recognition at a later stage and progress on a slower pace than her counterparts. That **said** she would then reach her career ceiling 3 to **5 years** later and plateau 1 to 2 Patterson levels lower than individuals with a Grade 12 level, meaning her career ceil would be attained at age 47-59 on Patterson 81/82.

[7] The following considerations were set out in the actuarial report of Mr Potgieter the actuary with GRS Actuarial Consulting:

Had the accident not occurred

'Ms Masango's income would have been as follows:

- R2' 400 per year (R200x12) at present
- Increasing with earnings inflation until 31 July 2020 (i.e. 9 months from the date of the Industrial Psychologist's report)
- From 1 August 2020, an income of R129'000 per year (R10'750x12, in current terms)
- Thereafter, increasing in a straight line until reaching R403'300 per year (Paterson C1, assumed median guaranteed packages, in April 2019 terms) at age 45
- Thereafter, increasing with earnings inflation until retirement at age 62 ½.'

Having regard to the accident

'Ms Masango's income would be as follows:

- R2'400 per year (R200x12) at present
- Increasing with earnings inflation until 31 July 2020 (i.e. 9 months from the date of the Industrial Psychologist's report)
- From 1 August 2020, an income of R129'000 per year (R10'750x12, in current terms)
- Thereafter, increasing in a straight line until reaching R201'500 per year average of Paterson B1/B2, assumed median guaranteed packages, in April 2019 terms) at age 48½
- Thereafter, increasing with earnings inflation until retirement at age 62½.'

[8] I am mindful of the fact that the plaintiff completed Grade 12 in 2012. In September 2014 she completed a 3 weeks security service provider's course- Grade C Security Guard. Thereafter in March 2015 she underwent a 1-month basic training course and qualified **as a** basic ambulance assistant on 4 March 2015. On 26 November 2015 she had completed her 1000 hours' service on a voluntary basis and was awaiting an opening for a permanent paying position as a basic ambulance assistant.

[9] On the day of the collision, 16 February 2016, she was on duty as a volunteer basic ambulance assistant at the back of the ambulance and a vehicle collided with the ambulance. In essence she was never gainfully employed since she completed Grade 12 in 2012. She fell pregnant around July 2017 giving birth In March 2018. Hence, cognisance must be made of the fact that she was not gainfully employed from 2012 to 2018 some 6 years after she completed Grade 12. In the face of the aforesaid Mr Moodie still places her on a salary level of R10 750 per month as at 26 November 2019 in the pre-accident scenario.

[10] It is also pointed out that during her voluntary period after she completed her 1000 hours she was also looking for work in the open labour market. Interestingly enough, she stated that she again tried to apply in the open labour market from January 2019 this time in the security sector so as to not put strain on her injuries. One of the security companies mentioned by the plaintiff to which she applied was Mafuku Security.

[11] It is noted that the calculation provided to the court only takes cognisance of

the plaintiff pursuing a career as a basic ambulance assistant and not as a security. In fact, I am mindful that Ms Van der Walt, the occupational therapist, states that having regard to the accident she is still able to do the functions assigned to a security officer. Whilst Birrell, the orthopaedic, states she could still function in her volunteer position as an ambulance assistant and as a security officer. The plaintiff is thus employable in her previous vocations chosen, at best as a security officer, having done the course and having sought such employment since January 2019.

[12] Now having due regards to all the facts that I have mentioned above I am of the view that a contingency of 50% be applied, for both scenario's that is past and future earnings. I believe Mr Moodie was overly generous in the scenario submitted to the actuary, in light of the fact that the plaintiff was never gainfully employed before the collision.¹

[13] On application of the 50% contingency the past and future loss is set out below:

	Future Income	Total
Income if accident did not occur	5 699 369.00	
Less 50% contingency		2 849 684.50
Income given accident did occur	3 440 411.00	
Less 50% contingency		1720205.50
Difference		1129 479.00

[14] In the result the plaintiff is awarded general damages in the amount of R350 000.00, an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996 and loss of earnings in the amount of R1129 479.00. Thus, the total amount **awarded is** R1479479.00.

[15] Consequently, the following order is made:

[a] The order marked 'X' is incorporated as the order of this court.

¹ A.A Mutual Insurance Association Ltd v Maqula 1978(1) SA 80S (A) at 81JA-H.

W. Hughes

Judge of the High Court, Gauteng Division