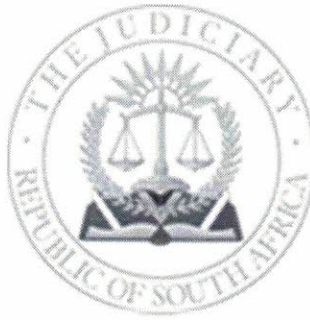




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO OTHER JUDGES: YES/NO
 (3) REVISED

DATE: 21 FEBRUARY 2020

SIGNATURE:

[Handwritten signature]

Case No. 56080/2012

In the matter between:

AVELA MYEKWA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MILLAR, A J

1. The plaintiff was injured in a motor vehicle collision that occurred on 20 August 2011. He was 17 years of age at the time and is presently 26 years of age. I was informed by counsel for the parties that the liability has been settled on the basis that the defendant is to pay to the plaintiff 90% of his damages and also that the claims for both future medical expenses and general damages have already been settled.
2. The only remaining issue for determination between the parties is the quantum of the plaintiff' loss of income. In this regard the parties, in consequence of agreements reached between the experts briefed in the matter were able to agree on all matters in regard to the quantum of the loss of income save 2. It is these 2 issues that are to be decided and an award made by the court – firstly which income scenario is applicable post-accident and secondly the contingencies to be applied in respect of the pre and post-accident scenario's.
3. No evidence was led by either party. The argument in respect of the two issues was made with reference to the reports filed and the agreements reached by the experts.
4. It was common cause that:
 - 4.1 the plaintiff was still at school when the collision occurred;

- 4.2 the plaintiff would but for the collision have attained a grade 12 with a further 3 to 4-year qualification;
- 4.3 pre-accident the plaintiff would have completed his studies and after seeking work for 12 to 18 months started working earning R235 700 per annum which would have increased uniformly to R520 000 over a 20-year period and thereafter remained constant apart from inflationary increases until retirement at age 62,5.
- 4.4 post-accident the plaintiff, having only obtained a grade 12 will after 3 years without work start earning R25 500 per annum which will increase uniformly to R116 500 or R160 000 per annum at age 45 and thereafter remain constant apart from inflationary increases until retirement at age 62,5.
5. The first issue between the parties relates to whether the plaintiff would in the post-accident scenario have reached an income ceiling of R116 000 (median semi-skilled) or a ceiling of R160 000 (upper semi-skilled).
6. The plaintiff argued that the plaintiff's ceiling was limited to R116 000 and this was because the plaintiff besides the physical difficulties he experiences as a result of injuries sustained in the collision, has reached the upper limit of his education with the attainment of grade 12. The defendant argued that the plaintiff would reach the ceiling of R160 000 because he still had some ability to progress further although not to the level, he would have pre-accident.

7. The educational psychologists agreed that *“he seems to have reached his academic ceiling and would in any way not be able to reach his pre-accident potential. He would remain with a grade 12 qualification.”*
8. The argument for the defendant turns on the view of the one industrial psychologist that he would reach the “midpoint of the median and upper notch” – the R116 000 and on the that of the other that he would reach a ceiling “towards the upper quartile” – the R160 000. It bears mentioning that the R160 000 is the upper quartile. The experts agree that the plaintiff will now, never progress beyond semi-skilled work. I am of the view that the midpoint of the median and upper notch is the appropriate level at which the plaintiff’s post-accident earnings should be determined.
9. The parties agreed that the pre-accident earning capacity of the plaintiff, after the deduction of contingencies for the general hazards of life of 5% in respect of the past and 20% in respect of the future amount to a net figure of R6 404 640. It is from this figure that the post-accident earning capacity is to be deducted in arriving at the amount to be awarded.
10. It is trite that the deduction of contingencies from awards of damages for the general hazards of life are a matter within the discretion of the trial court and peculiar to each case.
11. The loss post-accident on the scenario argued by the plaintiff (the maximum of R116 000 per annum) is R1 801 400. I was urged by counsel for the plaintiff to make a contingency

deduction of 70% from this figure. Such a large contingency deduction, it was argued, was warranted by the totality of all the circumstances in the case and that the plaintiff was effectively unemployable on the open labour market. Counsel for the defendant argued for a contingency deduction of 35%.

12. I have considered the submissions made by counsel as well as the agreements of the experts and find that while the plaintiff has is indeed at an increased risk of losing or not maintaining employment at his post-accident level, such risk does not elevate to 70%.
13. Each 8.33% of a contingency deduction equates to one month of the year and so a 70% contingency deduction would equate to 8,5 months of the year. This seems to me inappropriate in the circumstances of the present case.
14. A 35% contingency equates to 4,2 months and this in the circumstances of the present matter is an appropriate post-accident contingency deduction.
15. Deducting a 35% contingency from R1 801 400 leaves a net figure of R1 170 910. This figure deducted from R6 404 640 is R5 432 945. From this must be deducted the 10% apportionment leaving a figure of R4 889 650. This represents the amount I intend to award.

16. The parties handed up a draft order in which they set out their agreement in respect of costs.
17. In the circumstances I make the draft that is attached hereto marked "XYZ" an order of court.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 17 FEBRUARY 2020
JUDGMENT DELIVERED ON: 21 FEBRUARY 2020

COUNSEL FOR THE PLAINTIFF: ADV P LEOPENG
INSTRUCTED BY: GODI ATTORNEYS
REFERENCE: MR GODI

COUNSEL FOR THE DEFENDANT: ADV M MASHAO
INSTRUCTED BY: BRIAN RAMABOA ATTORNEYS
REFERENCE: MS MABASA