

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 1811/2009

In the matter:

LEHLOHONOLO EMMANUAEL PUTSANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: MIA, AJ

JUDGMENT: MIA, AJ

HEARD ON: 20 MAY 2015

DELIVERED ON: 25 JUNE 2015

- [1] On 1 March 2007 at approximately 06h50, a collision occurred near Dewetsdorp Road, Bloemfontein, Free State, between a motor vehicle bearing registration number [.....] and a motor vehicle bearing registration [.....]. The plaintiff was conveyed in the latter vehicle. Both drivers were insured. As a result of

the collision the plaintiff suffered injuries including a fracture of his right distal tibia-fibula and a swollen and bruised left eye and cheek.

[2] The plaintiff was taken to Pelonomi Hospital where his injuries were assessed and x-rays taken. He was administered medication for pain, namely analgesics. The following day, 2 March 2007, he underwent an open reduction and internal fixation to repair the right tibia-fibula fracture. Initially, he had a plaster cast applied to his right leg and used crutches to walk. He underwent physiotherapy and received follow up treatment. He still experiences pain and discomfort as a result of the injuries he sustained. The pain and discomfort affects his mobility and his ability to work. As a result the plaintiff avers that he suffered a loss of past earnings and will in the future suffer a loss of earnings. The plaintiff claims an amount of R1 369 350 from the Road Accident Fund.

[3] At the commencement of the trial, counsel for both parties indicated that certain aspects of the claim were resolved, namely, general damages had been agreed upon at R250 000; the claim for future medical expenses was resolved in that the defendant, the Road Accident Fund (RAF) had furnished an undertaking to pay future medical expenses in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996; it was agreed that the costs of past medical expenses would not be

paid to the plaintiff as he had received treatment at State hospitals and there were no receipts to prove payment of monies. The only issue the parties wished the court to determine was the loss of earning capacity and future loss of earnings. The plaintiff called three witnesses, the plaintiff; an occupational therapist and an industrial psychologist. The parties agreed that the findings of the orthopaedic surgeon's reports dated 24 March 2011 and 12 November 2014 were not in dispute and were to be accepted. The defendant called no witnesses.

- [4] The plaintiff was in grade 9 when the accident occurred in 2007. He commenced grade 10 in 2008 and repeated grade 10 in 2009 and 2010. In 2010 he left school as his father could not cover the cost of schooling for another year. He obtained temporary employment at Victor Logistics in 2010 where his father was employed. This work was erratic as he was called in on short notice when permanent employees did not arrive. He received a cash payment of R100 per day and worked approximately five days per month. He was employed for approximately three to eight months. He then found employment at a company called Supergroup in 2012 where he packed goods per clients' instructions. He was required to climb stairs to reach goods on higher shelves and often worked through his lunch time to catch up with his work as he could not keep the same pace as his colleagues. Due to the injuries he

had sustained, he experienced difficulty climbing stairs as his knee was not stable with the full weight of his body on one leg in mid-air whilst climbing up ladders. He still experiences pain in the knee during cold weather and cannot stand for long hours.

- [5] The occupational therapist Ms. Letitia Delport (Ms Delport) qualified with a Bachelor of Occupational Therapy degree from the University of the Free State in 1995. She worked at Pelonomi Hospital after her graduation. She attended to rehabilitation and vocational evaluation of clients from 1995 to 2007. She commenced a private practice in 2007 and has been compiling medico-legal reports since then. She sees on average 50 cases per year. Her evaluation sessions last approximately three hours long and the tests are repetitive in nature in some instances. She is then able to determine how an injury impacts on a client's normal functioning.
- [6] According to Ms Delport the plaintiff could perform most tasks once. He could not however perform physically demanding tasks. She testified that it meant that tasks like general labour, gardening work and any work with high physical demands were not suitable. She also explained that the plaintiff would not be in a position to perform work where he would have to climb ladders. He would not feel comfortable on a ladder as it required him to shift all the weight to one leg and the right leg in

particular would not feel secure whilst climbing on a ladder. She expressed the view that the plaintiff would struggle to find employment in the open labour market and mentioned that he would be excluded from more than 50 % of positions in the open labour market. She further expressed the view that the plaintiff's unemployment was not due to malingering but due to his inability to do a range of work that he would previously have been able to do had he not been injured in the accident.

- [7] Mr. Larny Martiny (Mr Martiny) is an industrial and organisational psychologist who completed a Master's degree at the University of Cape Town in 1990. He currently does forensic work and specialises in medico-legal work since 1980. He undertakes work for many litigants, including the Road Accident Fund and legal practitioners who specialise in delictual claims. He has completed 4000 reports to date. He interviewed the plaintiff for the purposes of furnishing his opinion. Whilst he believed that the complainant completed grade 11, he deferred to the plaintiff's evidence in court that he only completed grade 10.
- [8] He referred the court to the premorbid scenario and explained that as a rule of thumb it was accepted that children generally advance further than their parents in life. He pointed out that this particular scenario was further influenced by the plaintiff's parents' circumstances, during apartheid. The opportunities

available then were limited for African persons who were not expected to progress or achieve much. Positions characterised by unskilled and semi- skilled were available to the plaintiff's father. The present environment post the liberation of Nelson Mandela afforded a lot more opportunities to African persons.

[9] Mr Martiny referred the court to the Paterson Peromnes Remuneration Scale (PPR scale) which is widely used in South Africa. The bands move from unskilled to semi-skilled to skilled, middle management and senior management levels. The work in each level by way of example increases in complexity and skills required. A1- level includes work such as gardening, general labour and a junior checking clerk. A- 2 includes work such as a filing clerk, stores assistant or general worker. A- 3 includes work as a junior clerk, copy typist, machine operator or a senior unskilled worker. B- 1 includes work such as a driver of bakkie or car, clerk or supervisor of unskilled workers. B-2 included work as a receptionist or operator. B-3 includes work as a shorthand secretary, artisan aide or driver of heavy duty vehicle. B-4 includes work as a typing pool supervisor or section leader. B-5 includes work as a senior section leader.

[10] Mr. Martiny explained how this scale could assist in understanding the plaintiff's earning capacity. The plaintiff's father had primary schooling and advanced to level B-1, a semi-skilled position. The plaintiff has secondary education,

albeit incomplete which enables him to access a higher level on the PPR Scale. The plaintiff could thus move to level B-3 which includes driving heavy duty vehicles. He expressed the view that there are further opportunities created under a new dispensation post-apartheid. It was thus not unrealistic to project that the plaintiff could move to a higher level. By way of illustration he highlighted that the plaintiff's brother was employed in a higher position than his father. The plaintiff's earning capacity and career mobility was enhanced further as he secured a Code 10 driver's license to drive light trucks. In his view it was quite conceivable that the plaintiff would have moved to level B-3 as a heavy duty truck driver had he not sustained injuries which now impacted on his ability to work in certain positions.

- [11] He indicated that although the allocation of contingencies was within the discretion of the court, a 50% contingency was suggested as a reasonable figure which impacted on his premorbid capacity. This meant there was a 50% chance of the plaintiff not achieving certain levels in his employment. In view of the injury sustained Dr Martiny indicated that the plaintiff now had fewer opportunities available as a general labourer. He determined the loss at 70% and indicated that the plaintiff had a 30% chance of realising his premorbid career path from level A-1 to B-3. He could not secure certain positions because of his incomplete schooling and in the unskilled labour market he

would experience great difficulty in securing positions due to his injuries rendering him unable to secure work as a general labourer. Had his leg not been injured there would have been many more opportunities for work available.

[12] There are two scenarios which apply in calculating the plaintiff's future loss. The first scenario proposed by Mr. Martiny is that the plaintiff would definitely reach level B-3 having regard to the rule of thumb principle. Having regard to his incomplete education the plaintiff is at present only able to secure work at level A-1. This is compromised by his injury as he is no longer suited to this work. Mr Martiny did not reject the possibility that the plaintiff could secure work eventually at level B-3 despite his injury and indicated that the plaintiff may be more suited to work in this band in view of his injury. The defendant did not challenge this evidence successfully and Mr Martiny's opinion regarding the plaintiff's future loss of work opportunities and his career trajectory is unrefuted.

[13] In calculating the past and future loss of earnings, I have had regard to the plaintiff's past income when he worked at Victor Logistics for 5 days per month and earned R100 per day. Over a period of eight months, the plaintiff earned R4000. Further accepting his basic salary of R4092 at Supergroup over a period of 12 months he earned R49104, yielding a total of R53 104.00. According to the actuarial report which was submitted

and accepted by counsel for the defendant projecting a progression to level A-3, the plaintiff's past loss of earning was R133 600. In respect of future loss of earnings the actuarial determination is R1 815 900 000. The two amounts add up to R1 949 500 without factoring in any contingencies. When a 50% contingency is applied the amount applicable is R1 041 550, the past loss of earning of R133 600 is added to this amount yielding a total of R1 175 150. The amount of the plaintiff's income received to date namely R53 104.00 is deducted from this amount and yields an amount of R 1 122 046. The plaintiff's past and future loss of earnings is thus R 1 122 046.

[14] Having regarded to the issues in dispute and the aspects raised in cross examination the defendant was not able to discredit any of the witnesses or offer a reasonable alternative to the expert evidence before this court. In fact no evidence was placed before the court on behalf of the defendant. There was no dispute or real challenge to the experts' evidence.

[15] In so far as costs are concerned, counsel for the plaintiff requested that Mr. Martiny be declared a necessary witness and his traveling costs be added to the costs that will follow the cause. There was no resistance or submissions to counter this view on behalf of the defendant.

[16] Having regard to the evidence above, I am satisfied that the plaintiff has proved his case on a preponderance of probabilities in respect of the claim past and future loss of earnings.

[17] In the result, the following order is made.

ORDER

[18] The plaintiff is awarded:

- a. General damages in the amount of R250 000.00.
- b. The Road Accident Fund is to cover all future medical expenses in terms of an undertaking in terms of section 17(4)(a) of the Road Accident Fund act 56 of 1996.
- c. The plaintiff is awarded R 1 112 046.00 in respect of past and future loss of earnings.
- d. Interest on the above amounts at the prevailing prescribed rate of interest from date of demand to date of final payment.
- e. Costs of suit including the travel costs, expenses and qualifying fees of Mr Martiny

S. C. MIA, AJ

On behalf of the plaintiff:
Instructed by:

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