

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

Case No.: 60992/2011

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
2013 06-01	
DATE	SIGNATURE

12/6/2013

In the matter between:

V.E. VAN ROOI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

HIEMSTRA AJ

[1] The plaintiff was injured in a motor collision on 10 July 2010. He suffered the following injuries:

1. Left ankle medial malleolus fracture, closed fracture;

2. Lacerations to his right wrist as well as to his face;
3. According to Dr P.R. Engelbrecht, an orthopaedic surgeon, the plaintiff further reported a lower back injury and mentions an extensive haematoma to the right side of his back as well as the right flank area.

[2] His right hand was rinsed and an open reduction and internal fixation of the left medial malleolus fracture were performed under general anaesthesia.

[3] The defendant, the Road Accident Fund, admitted that it is liable to pay 100% of the plaintiff's proven or admitted damages.

[4] The plaintiff does not claim compensation of past medical expenses.

[5] The defendant has tendered an undertaking to pay for all future medical expenses incurred in respect of the plaintiff's injuries in terms of s 17(4)(a) of the Road Accident Fund Act, 56 of 1996.

[6] The parties are in agreement that the plaintiff is not entitled to damages for pain and suffering.

[7] The only matter for me to decide is whether the plaintiff has established a claim for loss of earning capacity.

[8] The plaintiff is a 39-year old refrigeration technician and is employed by an enterprise, Dalucon Refrigeration, as a supervisor/installer of refrigeration systems in cold rooms and mortuaries. The plaintiff supervises two technicians, but also performs some of the physical tasks.

[9] Dr Engelbrecht describes the plaintiff's present complaints (as at 16 March 2012) as follows:

"The patient experiences pain left ankle, especially when it is cold and rainy. If he were to be quite active, his symptoms worsen. In the mornings, if he were to get out of bed, he finds it difficult to put weight on his left leg, which improves after a short while. He does not experience swelling of his left

ankle and states that his left ankle is stable. Pain is described as sharp of nature, accompanied by paresthesias. Walking distance is not impaired, no stiffness to the ankle. He does not experience pain at night in his ankle.

...
The patient experiences lower back pain and has had 3 acute episodes since the accident which lasted 3 – 4 days. On occasion he required treatment via UNITAS Casualty Unit for lower back pain. Lower back pain does not refer to his legs. On occasion he has experienced back pain of such a nature that his lower back was 'locked'."

[10] Dr Engelbrecht is of the opinion that the patient does have some impairment of work capacity, working as a refrigeration artisan. A 3% loss of work capacity should be allowed. This will not necessarily lead to loss of income or early retirement.

[11] Ms C.J. Nel, an Industrial Psychologist, contacted Mr Dirk Hatting, the factory manager at Dalucon Refrigeration, who is the plaintiff's superior. The contents of all expert reports were mutually agreed by both parties and the opinions stated by Mr Hatting can therefore be admitted as evidence. They are, however, no more than opinions. His comments were summarised by Ms Nel as follows:

- He is employed as a site supervisor. He is responsible for supervising the installation and maintenance of cold rooms. His work is of a physical nature. He is sometimes required to work in the space between ceilings and roofs, crawling on his stomach and working in confined spaces.
- He is *inter alia* responsible for carrying panels (30kg – 100kg) with the assistance of 1 or 2 technicians.
- When performing maintenance duties to cold rooms, Mr van Rooi is required to work in low temperatures. These temperatures vary between -25 C and 3 C.
- They are provided with special suits when working in very low temperatures.
- Normally, a malfunctioning item would be removed from the cold room and repaired in a room with normal temperature.
- Mr van Rooi is only required to work in low temperatures $\pm 5\%$ of his work time.
- He confirmed that Mr van Rooi was absent from work for ± 1 month after the accident and remunerated fully. He was placed on light duty at that time as his sick leave was depleted. This entailed administrative duties and light physical work.
- In comparison with his peers, his work performance is described as above average.
- He often complains about pain in his left ankle at work. He sometimes phones from a site, complaining about pain when he had to work in a confined space in a roof. He would then request a

brief rest period to recover. Mr Hattingh expects more problems in this regard during the upcoming winter season.

- His chances for promotion are very good, depending on the growth of the company. He could be promoted to factory manager or a similar position within the next 4 years. Mr Hattingh himself currently earns R35 00 p/m plus a company vehicle.
- He is not sympathetically employed or under any threat of retrenchment or dismissal.
- An official retirement age is not determined by the company.

[12] There are no significant disagreements between the industrial psychologists retained by the respective parties. Both experts are of the opinion that the career opportunities of the plaintiff have been diminished to a mild degree. Ms Nel estimates a 3% reduction in his employability.

[13] It is trite law that damages can only be awarded if a plaintiff's loss of earning capacity translates to a diminution of the plaintiff's patrimony¹.

[14] On a conspectus of all the expert opinions submitted, it is clear that the plaintiff suffers moderate discomfort from time to time in his work environment. There is no indication that he is incapable to perform any of the tasks required of him. He is in stable employment and his promotional prospects have not been affected. His employer is of the opinion that he will be promoted to the position of factory manager or a similar position within 4 years. Such a position would be less physically demanding than the plaintiff's present position.

[15] A diminution of the plaintiff's patrimony is speculative and unlikely. In my view, the plaintiff has therefore not established a claim for future loss of earnings or earning capacity.

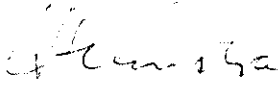
In the result, I make the following order:

1. The defendant is ordered to issue an undertaking to pay all the plaintiff's future medical expenses arising from the injuries sustained in the motor

¹ See *Santam Versekeringsmaatskappy v Beyleveldt* 1973 (2) SA 146 (A); *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A) and numerous other judgments.

collision in accordance with section 7(4)(a) of the Road Accident Fund Act, 56 of 1996.;

2. The defendant is ordered to pay the costs of the action, excluding the costs of the proceedings of 9 May 2013;
3. The plaintiff's claim for loss of earning capacity is dismissed;
4. The plaintiff is ordered to pay the costs of the proceedings of 9 May 2013.



J. HIEMSTRA
ACTING JUDGE OF THE HIGH COURT

Date heard:	9 May 2013
Date of judgment:	5 June 2013
Counsel for then plaintiff:	Adv. C. Spangenberg
Attorney for the plaintiff:	Spruyt Incorporated
Counsel for the defendant:	Adv. S.J. Myburgh
Attorney for the Defendant:	Mothle Jooma Sabida Incorporated