



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

Case No:42733/2020

(1) Reportable: NO
(2) of interest to other judges: NO
(3) REVISED: YES


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SIGNATURE 28 May 2024
DATE

In the matter between:

TSHEPISO MTHEMBU

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

LESO AJ,

INTRODUCTION

1. This is an action for personal damages brought by Tshepiso Mthembu against the Road Accident Fund as a result of injuries sustained by her in a motor vehicle collision on 19 May 2019. In this action the plaintiff claims that she suffered damages including loss of income as a result of the negligence of the insured driver.

BACKGROUND

2. The merits of this claim has become settled between the parties on the basis that the Road Accident Fund shall be liable for 70% of Tshepiso Mthembu agreed or proven damages. The parties have further agreed that Mthembu is entitled to R500 000,00 in respect of general damages, R350 000,00 post apportionment. Mthembu has not claimed past medical expenses and the balance of Plaintiff's quantum remains in dispute for adjudication.
3. Plaintiff relied on the expert report to proof the balance of damages sought.

ISSUES TO BE DETERMINED

4. The issues to be determined by the court is whether Mthembu will require medical attention in the future and the appropriate capital value for loss of earning and earning capacity.

DISCUSSION AND APPLICABLE LAW

5. It is common cause that the plaintiff suffered The Plaintiff sustained the following injuries in the aforesaid collision;
 - 5.1. fractured left femur;
 - 5.2 soft-tissue injury of the back;
 - 5.3 head injury;
 - 5.2 bruised left arm
6. Plaintiff's claim is governed by the provisions of the Road Accident Fund Act, No. 56 of 1996 as amended. Defendant is liable in terms of section 17 of the Act, to pay compensation to a third party for damages, arising out of the negligent driving of a motor vehicle when the identity of the owner is established.

Claim for future medical expenses

7. On the issue of future medical expenses plaintiff sought an order directing the defendant to furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996. Here the test is whether the plaintiff made a proper case to justify that she will require future medical treatment. Monique Kok(Clinical Psychologist) deferred to a Psychiatrist, Occupational therapist, Industrial Psychologist and Mutyaba (Neurosurgeon) and reported that Mthembu suffered a mild traumatic brain injury with post-concussion syndrome from such injuries no long- term deficits are expected to persist. The experts reported negative on Neurophysical sequelae however she reported Neuropsychological behaviour of Mthembu in that her physical condition has a dire impact on her psychological functioning as she also becomes more emotionally sensitive and cries easier. She reports that Mthembu present Mild depressive mood disorder secondary to a general medical condition as a result of injuries sustained in the accident and she had the following complaints: dizziness especially when waking up; she cannot stand for long periods or walk long distances; she cannot carry heavy objects; she experiences back pains when doing house chores; headaches $\pm$ 3 times per week and inner ear pains when chewing.
8. Monique Kok(Clinical Psychologist) reported that Mthembu's mood may negatively affect her employment however it is treatable if not at least manageable. With the correct combination of treatment(Psychotherapy-20 sessions) and compliance, her prognosis for the mood is relatively fair however guarded by the ongoing experience of physical difficulties

Claim for loss or earning

9. P.C. Diedericks & associates (Industrial Psychologist) reported that Mthembu was 34 years old at the time of the accident and her highest completed grade is grade 11. It is further reported that at the time of the accident, Mthembu had been a full-time sales assistant at Billabong since 2012 earning $\pm$ R2 500,00 per month and she worked Monday to Friday and the occasional weekends, more so during busy periods until she resigned in order to take up self-employment, however,

since 2018 and at the time of the accident Billabong would request her to assist mostly in weekends earning an average of $\pm$ R1 200,00 per month. It is reported that following the accident, she never returned to this job again as she reported that due to the standing and walking requirements, she is no longer able to do without experiencing pain and discomfort arising from her accident-related injuries.

10. The above expert reported as follows: that at the time of the accident Mthembu was self-employed as a caterer where she and her cousin operated the business together getting orders almost weekly and making an average profit of between R1 500,00 and R2 000,00 per month which they would divide equally between them. Since May 2018 Mthembu left Billabong and started her full-time catering career and at the time of the accident she was making an average personal profit of between R1 500,00 and R2 000,00 per month, however, following the accident, she was unable to assist her cousin with catering jobs until $\pm$ March 2020. Her cousin paid her an amount of approximately R600,00 per month during this time to assist her financially. She has since resumed some catering work but reported that she struggles with pain and dizziness when standing and cooking for long periods of time. She currently only assists when feeling physically able to and she reported that her current profit is only on average R600,00 per month.
11. Diedericks is of the view that Mthembu would eventually have reached the point with the fluctuating and relatively lower income in the catering business to seek alternative or more lucrative and stable employment possibly by approximately 2022. It is reported that at the age of 38, with her previous work history she would probably have been able to secure employment of a low-level semi-skilled nature, initially earning an income slightly higher than the lower quartile earnings for a semiskilled worker in Gauteng (probably in the region of R54 000,00 to R60 000,00 per annum). The expert further opines that Mthembu's income would then have probably progressed steadily to a career ceiling in the region of R78 to R84 000,00 per annum in current value to be reached at approximately age 50 and the retirement age would have been between 63 and 65. Post-morbid, Mthembu received no further earnings from Billabong. The only earnings she received was the R600,00 per month received from her cousin. Close (orthopaedic surgeon)

is of the view that up to 9 months sick leave could have been anticipated following her injury followed by a further 3 months of light duty. Monique Kok (Clinical Psychologist) reported that Mthembu's mood may negatively affect her employment, however it is treatable if not at least manageable. With correct combination of treatment (psychotherapy-20 sessions) and compliance, her prognosis for the mood is relatively fair however guarded by the ongoing experience of physical difficulties.

12. The Neurosurgeon reported that Mthembu suffered a mild TBI from which no long-term deficits are expected while Van Rooyen (occupational therapist) is of the view that Mthembu is currently only suited to very light work with adaptations in place and that she will likely not be able to cope with standing and walking requirements involved in catering or sales work. Van Rooyen is of the view that Mthembu will probably be limited to work that is at most light in physical demand with reasonable accommodations in place but that she will likely not be able to cope with the standing and walking requirements involved in catering or sales work. She also notes that it is possible that, with degeneration, her capacity will become sedentary. Diedericks is of the view that based on expert opinion, it is highly unlikely that Plaintiff will be able to secure formal employment again at all, in the future and that following the accident she never returned to this job again. She reported that due to the standing and walking requirements, she is no longer able to do so without experiencing pain and discomfort arising from her accident-related injuries should she be forced to discontinue her endeavour as a caterer and/or should her pathology decline and she becomes suited only to sedentary work. It is reported that she will likely stop working altogether.
13. The Plaintiff's limited level of education and previous work experience preclude her from sedentary employment and therefore her career choices are clearly severely curtailed. She has been rendered a very vulnerable individual and unequal competitor for employment when competing against her non-impaired peers.
14. The plaintiff relied on the calculations by the An actuary to proof her claim for loss of income. The calculation was obtained from Algorithm Consultants and

Actuaries wherein Mthenbu's total loss of earnings amounts to R1 231 254,00 after having applied 5% contingency deductions in respect of plaintiff's past loss on an uninjured and injured basis and a 12.5% contingency deduction in respect of plaintiff's uninjured future earnings and 32.5% in respect of plaintiff's injured earnings.

It is therefore justified that Plaintiff was unable to resume her pre-morbid job as a casual salesperson at Billabong or her self-employment as a caterer on a full-time basis and she intends to manage her business and employ people to perform manual labour. Information was obtained from plaintiff's cousin and business partner, Ms Mbulelo Matabane, who confirmed the aforementioned details however the information provided is not sufficient proof of income. There are no bank statements or any form of financial statement to proof the income of Mthembu. Consequently, I am of the view that Mthembu is entitled to the total Net Loss of income after 25% contingency deduction on future loss uninjured and less apportionment of 30%.

15. The calculations are as follows:

Net Past Loss	R200,605
Future Loss(Uninjured)	R1,395 805 - 25%
Value of Future Loss(Uninjured)	R348 951,25
	R 1046 853,75
Value of income(injured)	R190,681
Net Future Loss	R856 172,75
Total Net future loss	R1056 777,75

CONCLUSION

16. Mthembu's claim for future medical expenses has been supported by the Clinical Psychologist report which indicates that Mthembu will require psychotherapy-20 sessions. Consequently, the Road Accident Fund is liable in terms of Section 17(4)(a) of Act 56 of 1996 for such expenses.
17. The actuarial calculations on past loss on an uninjured and injured basis after the application of 5% contingency deductions and 32.5% contingency deductions in respect of Mthembu's injured earnings are fair and reasonable. The actuary applied 12.5% contingency deduction on Mthembu's uninjured future earnings however the court applied 25% contingency deduction on future loss(uninjured).

THEREFORE, I MAKE THE ORDER AS FOLLOWS:

1. The defendant to provide the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996.
2. The defendant is to pay an amount of **R739 744,43** towards the plaintiff's loss of income.
3. The defendant to pay the costs on party and party scale.

The judgment was handed down electronically and by circulation to the parties/ legal representatives by e-mail and by uploading to Caseline. The date of hand down is the date when the judgment was signed.



J.T LESO

**ACTING JUDGE OF THE HIGH COURT,
SOUTH AFRICA, GAUTENG DIVISION, PRETORIA**

Date of Hearing: 12 February 2024

Date of Judgment: 28 May 2024

APPEARANCES:

For the Plaintiff: **Snyman Lotz Inc.**

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