

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

CASE NO: 15916/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: 4 JUNE 2024

SIGNATURE:

In the matter between:

CORNELIA JOUBERT

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

PIENAAR (AJ):

Introduction

1. The Plaintiff, Ms Cornelia Joubert instituted action proceedings in her personal capacity against the Defendant for damages in terms of the Road Accident Fund Act

56 of 1996, pursuant to a motor vehicle collision.

2. At the time of the accident the Claimant was a passenger in motor vehicle with registration numbers and letters V[...] 4[...] G[...]. On the 25th of March 2024 I granted an order in terms of which the Defendant was found liable for the Plaintiff's proven damages to the extent of 100% whilst the issue of General Damages is postponed sine die. Therefore, this judgment will only deal with Loss of earnings/earning capacity.

3. The Plaintiff brought an application to compel the Defendant and to strike out their defence. The Court ordered that within ten days the Defendant comply as per the request failing which the defence will be struck out and proceeded with by default. [1]

4. Counsel for the Plaintiff brought an application in terms of Rule 38(2) to use the medico legal reports, which application I granted. As a result of the collision, the Plaintiff sustained the following injuries:

- 4.1 Traumatic brain injury
- 4.2 Cervical spine injury
- 4.3 Right and left shoulder injuries
- 4.4 Soft tissue injury sternum
- 4.5 Abdominal injuries
- 4.6 Multiple lacerations

5. There were a number of medico legal experts who assessed the Plaintiff and prepared some reports.

5.1	Dr J J Schutte	General Practitioner (Dr Schutte completed the RAF 4 assessment report)
5.2	Dr L F Oelofse	Orthopaedic Surgeon
5.3	Dr L F Oelofse	Orthopaedic Surgeon - addendum report
5.4	Dr L M Wynand-Ndlovu	Neurologist
5.5	Dr DK Mutyaba	Neurosurgeon
5.6	Dr S van Heerden	Plastic Surgeon - RAF 4 form
5.7	Dr S van Heerden	Plastic Surgeon report
5.8	V Samouris	Clinical Psychologist
5.9	A Rossouw	Occupational Therapist
5.10	P de Bruyn	Industrial Psychologist
5.11	J Sauer	Actuary

6. **De Bruyn & Associates - Industrial Psychologist:** [2]

Pieter de Bruyn, the industrial psychologist, prepared a report that is dated 11 March 2024. Assessment was done on 18 May 2022 and an updated report was done on 07 March 2024.

7. The Plaintiff had a Grade 10 as her highest qualification. She commenced her working life around age 15 years (still attending school at the time) as a part time Packer at a Spar. She then executed Sales and Administrative position at, i.e. at a "Water Park", Edgars.

8. Around 2000 she decided to be home based and raise her children full-time. She was unemployed at the time of the motor vehicle accident on 30 August 2019 and still is at present. According to Mr Pieter de Bruyn, collateral information was not obtained and is not available, owing to compliance and adherence to the restrictions and limitations as stipulated in the POPI Act of 2013. Therefore there is no collateral information before the Court.

9. At the time of the motor vehicle accident, she was 39 years of age, and she was unemployed. Should she attempted to secure work, she would have still been an unskilled worker.

10. But for the accident it can be postulated that she would have been able to continue to function as an unskilled worker.

11. It is trite that the Plaintiff must prove the extent of her loss and damages on a balance of probabilities. With regard to loss of income the Plaintiff must adduce evidence of her income in order to enable the court to assess her loss of past and future earnings.

12. In order to determine a Plaintiff's claim for future loss of income the court must compare what the Plaintiff would have earned if it was not for the accident with what she would likely have earned after the accident.

13. The information that the Industrial Psychologist relied upon for the Plaintiff's stated loss of earnings is wholly inadequate. It follows that the actuarial calculations are, in turn unsound. The Plaintiff is required to prove the loss that she suffered. There is insufficient evidence to substantiate the loss claimed by the Plaintiff.

14. I accordingly make the following order:

14.1 The Defendant is liable for 100% of such damages as agreed or as proven by the Plaintiff.

14.2 The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

14.3 Absolution from the instance is granted in respect of the Plaintiff's loss of earnings/earning capacity.

14.4 The issue of General Damages is postponed sine die.

14.5 The issue of Past medical expenses is postponed sine die.

14.6 The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on a High Court scale. In the event that the costs are not agreed, it is ordered that:

14.6.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

14.6.2 The Plaintiff shall allow the Defendant Fourteen (14) court days to make the said payment of the taxed costs.

PIENAAR, AJ

Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 25 March 2024

Judgment delivered: 4 June 2024

On behalf of the Plaintiff: Adv S Niemann

Instructed by: Corne Nell Incorporated

For the Defendant: No appearance

Link no: 4885627

[1] Court Order dated 10 March 2022

[2] Pieter F C De Bruyn Industrial Psychologist