REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO:6321/2021

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

Signature:

Date: 11th OCTOBER 2024

In the matter between:

VINCENT SEKGOBELA MANKGELA **PLAINTIFF**

And

ROAD ACCIDENT FUND. **DEFENDANT**

JUDGMENT

MONENE AJ

[1] The plaintiff instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 25 September 2019. The plaintiff was a driver of a motor vehicle at the time of the accident and according to his

uncontested version he sustained injuries as he swerved his motor vehicle to avoid colliding with another motor vehicle driven by the insured driver but ended up hitting a wall.

[2] The defendant did not defend this action at all leading to the plaintiff approaching this court on default and seeking to be heard per cover of affidavit in terms of uniform rule 38(2).

[3] It being so that the jurisdiction of this court is unfortunately as per precedence hampered by the defendant's failure to make an election on the seriousness of the injuries in casu, what stands to be determined before this court the is plaintiff's loss of earnings with general damages having to be postponed sine die.

[4] Under cover of affidavit the plaintiff adduced the following uncontested evidence in brief:

> [4.1] Regarding the merits the plaintiff tendered a damages affidavit, an accident report as well as a section 19(f) affidavit which spoke to the supra-mentioned version of what happened which cannot, in the absence of evidence from the defendant, be gainsaid.
>
> [4.2] Accordingly I must find that the defendant was 100 percent liable for the plaintiff's proven damages.
>
> [4.3] Regarding the extent of the injuries suffered by the plaintiff resulting from motor vehicle collision, an Orthopaedic surgeon, Dr Baloyi's evidence was in pith that the plaintiff had suffered a right femur fracture which left him in permanent pain, inability to stand for long and a Whole-Body Impairment of 15 percent.
>
> [4.4] Ms L T Sambo, an occupational therapist, testified that the plaintiff suffers from persistent headaches, occasional swelling of the right foot, has reduced

ability in climbing stairs, bending, driving for long distances and walking long distances. It was opined here that the accident had diminished his pre-accident employment capacity of light to medium work to merely light. The plaintiff having been employed as a sales consultant prior the accident it was this witness' opinion that the plaintiff may basically be unable to perform functions germane to that work; such functions as crouching, standing, and climbing stairs.

[4.5] Ms C Goncalves, an industrial psychologist, observed that the plaintiff earned at the time of the accident, R5 000.00 a month which translated to about R60 000.00. Post the accident the plaintiff had, owing to the accident, not returned to his sales consultant work and thus lost out on probable career progression and general future potential of a better economic life. It was further opined by this witness that given the high unemployment rate in the country, a physically compromised person like the plaintiff was at an even more prejudiced position regarding employment prospects.

[4.6] Stephen Texeira, a clinical psychologist's evidence to the effect that owing to a leg injury the plaintiff was suffering from sequelae of forgetfulness, going mentally blank and losing his trail of thought was to this court's mind a bit curious as I could not understand how a leg fracture could have cognitive sequelae.

[4.7] Actuarial Quantification Services (AQS), Actuarial scientists, informed in the main by the industrial psychologist's report, postulated a net future loss of earnings at R3 355 911.00 having factored contingencies at pre-morbid 10 percent past and 20 percent future as well as post morbid 0 percent past and 50 percent future.

[5] The approach in computation of loss of earnings was stated in ***Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F|("Bailie")*** where the following was stated:

> “*Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augururs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment by y way of mathematical calculations on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.”*

[6] In ***Prince v Road Accident Fund(ca143/2017) [2018] ZAECGHC 20(20 March 2018)*** the full court cautioned courts never to ignore loss of earnings computations so long as those computations are having an evidential basis.

[7] This court has a point of departure, no appetite to deviate from actuarial computations in this matter seeing that they are premised on the uncontroverted evidence of preceding experts such as the Orthopaedic surgeon, the occupational therapist and the industrial psychologist whose evidence was reflected on in sum supra.

[8] Furthermore, having regard to the facts and expert opinions already referred to above, particularly the plaintiff’s relatively young age of 27 years at the time of the accident and consequent expected long life expectancy against the backdrop of a very high unemployment rate in this country, I am persuaded that the contingency percentages for past and future loss of earnings factored in by the actuaries as already alluded to above are fair and reasonable. Indeed, I find those contingencies to accord with ***Van der Plaats v Southern African Mutual Fire and General Insurance Co 1980(3) SA 105(A) 114-115*** which a long time ago spelt out that contingency deductions must allow for the possibility that the plaintiff may have less than normal expectations of life and may experience periods of unemployment flowing from accident

sequelae and is seen within the prism of prevailing economic conditions.

[9] I am furthermore counseled on contingencies by ***Dlamini v Road Accident Fund (59188/13) [2015] ZAGPPHC 646(3 September 2015)*** where, inter alia, it was stated that:

> "*Both favorable and adverse contingencies have to be taken into account in determining an appropriate contingency deduction. Bearing in mind that contingencies are not always adverse, the court should, in exercising its discretion, lean in favour of the plaintiff as he would not have been placed in the position where his income would have to be the subject of speculation if the accident had not occurred*."

[10] Although I am in the main inclined to award loss of earnings as computed by the expert actuarial scientists, I am, as already stated above, uncomfortable with the opinion of the clinical psychologist. For that reason, I am of a mind to interfere with the computed amount employing thus a hybrid of the ***Bailie*** notions of a mathematical calculations and a judge's round estimate. That takes me to a round estimate of R3 000 000.00 and that is what I am inclined to order.

[11] I thus make the following order:

> [11.1] The defendant is 100 percent liable for damages suffered by the plaintiff arising from the motor vehicle accident of 25 September 2019.
>
> [11.2] The defendant shall pay an amount R 3 000 000.00(**THREE MILLION RANDS ONLY**) in respect of loss of earnings.
>
> [11.3] The said amount shall be paid into the infra-mentioned trust account by direct transfer within 180 days of this court order being delivered:

ACCOUNT HOLDER: LESHILO ATTORNEYS BANK: FNB
ACCOUNT NUMBER: 6[...]
REFERENCE NUMBER: 2022/JM/RAF/LKL/121

[11.4] The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale which costs shall include the costs attendant to obtaining expert reports and the costs of counsel on scale B

[11.5] Should the defendant fail to pay the amount in 11.2 above within the 180 days and/or the agreed to or taxed costs within 30 days; the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of allocator to date of final payment.

[11.6] The issue of general damages is postponed sine die.

MALOSE S MONENE
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	*: 10 June 2024*
Judgment delivered on	*: 11 October 2024*
For the Plaintiff	*: Adv. L F Makgopa*
	: Instructed by Leshilo Attorneys
	: Tel: - 015 280 0070
	: Email: Leshiloattorneys1@gmail.com
For the Defendant	*: No appearance*