

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO:553/2024

- (1) REPORTABLE: YES / NO
 (2) OF INTEREST TO THE JUDGES: YES / NO
 (3) REVISED.

Signature 

Date.....

In the matter between:

MAKGABO MICLAS MOTHOTSE

PLAINTIFF

And

ROAD ACCIDENT FUND.

DEFENDANT

 JUDGMENT

MONENE AJ

[1] On 29 August 2020, the plaintiff then a 42 year old male truck driver in the employ of the Polokwane Municipality, was standing behind a truck driven by a colleague of his and in the process of directing and guiding the driver on how to reverse a municipality truck when the truck reversed onto him smashing and crushing him against a wall in the streets of the city of Polokwane.

[2] Arising from this incident the plaintiff instituted action proceedings pursuant the Road accident Fund Act 56 of 1966 ("the Act) claiming compensation for the injuries he sustained and blaming his colleague, the insured driver, for sole negligence in the causation of the accident

[3] The defendant filed nothing in defence of the plaintiff's claim and thus filed nil reports pertaining to merits and quantum determination.

[4] Regarding both liability and quantum the plaintiff proceeded before this court per default and sought and was granted leave to prosecute his case in terms of Uniform Rule 38(2).

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

MERITS (LIABILITY)

5.1 Regarding liability the plaintiff relied on his section 19(f) of the Act affidavit confirming the supra-stated version and emphasizing that had the insured driver exercised caution as he reversed the truck, kept a proper lookout and not reversed the truck at a very high speed, the accident would have been avoided. He took no portion of the blame for the accident indicating that given the high speed engaged in by the truck driver there was nothing that he could have done to avoid being hit and crashed against the wall. Added to his sworn evidence mix was the hospital records which only served to confirm the uncontested version that on the said date he was hospitalized following the incident.

5.2 Absent any evidence to countervail that of the plaintiff and without any reason to find his evidence incredible or improbable, I have no option but to accept the plaintiff's evidence as to how the accident happened and how it arose from the sole negligence of the insured. Any other finding would suggest that I must speculatively engage in an assessment of evidence-divorced "ifs" and "what ifs" which should, in my view, take no tenancy in my mind as I will then be clearly self-misdirecting against the only evidence before me.

5.3 That said I am comfortable with having to order that the defendant should be 100 percent liable for the plaintiff's proven damages.

5.4 The question of general damages having to, as per precedence, regretfully be postponed on account of the defendant not having taken a stance on the seriousness of the plaintiff's injuries, all that I must, in these proceedings do, is to determine loss of earnings and the section 17(4)(a) undertaking issue.

QUANTUM

5.5 Dr Mphele Tladi, an orthopedic surgeon's evidence was that the plaintiff sustained a pelvic fracture, a bladder injury and a rectum injury and further that he presented with sequelae of pain, constant pelvic pain and extensive scars.

5.6 The urologist, Dr Puleng Masegela, confirmed the pelvic fracture and bladder injury and testified further about the sequelae of pain on urination, termed micturition, erectile dysfunction, early ejaculation, pelvic pain during coitus and inability to drive and walk for long.

5.7 Dr Sadiki, a neurosurgeon's evidence was that additional to the injuries identified by the orthopedic surgeon, the plaintiff suffered a head injury with consequent neurocognitive and neuro-physical disorders.

5.8 The clinical psychologist, Lebogang Selahle testified that the plaintiff had sustained a mild traumatic brain injury which left him with significant

neurocognitive deficiencies, fine motor dysfunctions all of which led to severe functional limitations.

5.9 An occupational therapist, Dr N J Mabote, testified that the plaintiff was found to be unable to lift heavy items and is virtually incapable of tasks which are germane to his previous work as a water truck driver, tasks like prolonged sitting, prolonged standing and lifting heavy objects. This witness further opined that given the injuries and sequelae suffered by the plaintiff, forced early retirement was almost a certainty.

5.10 Dr Lowane Mayayise, an industrial psychologist testified about his observations and expert opinion as follows:

5.10.1 That the plaintiff earned a monthly income of R20 643.59 as a water tank driver.

5.10.2 Following the accident the plaintiff could no longer work as a water truck driver proper hence he was accommodated in lighter duty menial tasks by the municipality.

5.10.3 The injuries sustained in the accident have diminished the plaintiff's physical, physiological, cognitive and neuropsychological functioning such that

as he ages he will be rendered completely incapable of maintaining any kind of employment.

5.11 This expert recommended a higher-than-normal contingency to be considered in determining the plaintiff's loss of earnings.

5.12 Informed by the industrial psychologist's report, Robert Koch, the actuarial scientist computed a total loss of R1 392 136.00 having factored in contingencies 10 percent overall for past loss and 15 percent to 45 percent for future loss. Considering that normal contingencies are generally 5% for past loss and 15% for future loss and 25% in general for children, I have no problem with the contingencies employed by the actuary as they are, as suggested by the industrial psychologist, significantly higher than normal.

[6] The proper approach in assessing loss of earnings remains, for this court, as was stated in ***Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F*** where the following was said:

"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...”

[7] In ***Hersman v Shapiro and Co 1926 TPD at 379*** it was held as follows:

“Monetary damage having been suffered, it is necessary for the court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the court is bound to award damages.”

[8] In my view the expert evidence which was led before me is solid, informed and unassailable. These experts represent, so far as this court is concerned, present day soothsayers and oracles and provide a very useful service to the court in its determination of loss of earnings. To needlessly compute outside their evidence where their evidence has not been gainsaid by any opposing view and where it cannot be faulted would, in my view, be uncalled for.

[9] The summary of expert evidence led before me above, which evidence I have no reason nor inclination to deviate from is, in my view, sufficient determinant of the quantum opined on loss of earnings. Given the well-documented sequelae of the injuries suffered by the plaintiff more so pelvic fracture, head injury and bladder

complications and persistent pain associated therewith which debilitates the plaintiff from doing work of any significance amidst the high unemployment rate where a virtually unemployable plaintiff is most unlikely to get any job going forward, I am persuaded that the computations recommended by the actuary are reasonable and fair.

FUTURE MEDICAL CARE

[10] I am inclined to grant an order regarding the future medical care of the plaintiff regard being had to the following considerations:

10.1 The cumulative evidence of the expert witnesses, especially the orthopedic surgeon, the clinical psychologist, the urologist and the neurosurgeon is indicative of the plaintiff going to need medical care in the future.

10.2 In particular, the plaintiff will need pain management medication to deal with headaches, constant pelvic pain, psychotherapeutic treatment and daily micturition pain.

[11] The result of all the above is that I make the following order:

[11.1] The defendant shall be liable for 100 percent of the plaintiff's proven damages.

[11.2] The defendant shall pay an amount R 1 392 136.00(**ONE MILLION THREE HUNDRED NINETY-TWO THOUSAND AND ONE HUNDRED AND THIRTY-SIX RANDS ONLY**) to the plaintiff as loss of earnings.

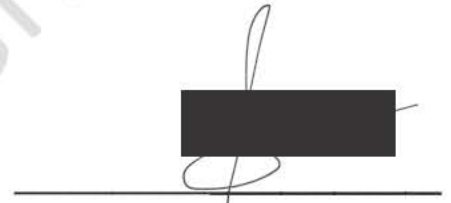
[11.3] The amount stated in 11.2 *supra* shall, within 180 days of this order, be paid by direct transfer into the following trust account which shall be nominated by the plaintiff's attorneys of record within 14 days of this order.

[11.4] The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale within 30 days of taxation or agreement which costs shall include the costs attendant to securing expert reports and the costs of counsel on scale B.

[11.5] Should the defendant fail to pay the capital amount and/or the taxed costs timeously, the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of mora to date of final payment.

[11.6] The defendant is to provide an undertaking to the plaintiff in terms of section 17(4)(a) of the Road Accident Fund, 56 of 1996, for the costs of the future accommodation in a hospital or nursing home treatment of or rendering of a service to the plaintiff or supplying of goods to him arising out of the injuries he sustained in a motor vehicle accident on 29 August 2020, after such costs have been incurred and upon proof thereof.

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



M S MONENE

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES

Heard on : 26 June 2024

Judgment delivered on : 05 November 2024

For the Plaintiff : Adv A M Mametse

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For the Defendant : No appearance