

REPUBLIC OF SOUTH AFRICA

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

CASE NO:7361/2022

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

Signature 

Date: 08 November 2024

In the matter between:

MOKOENA MANYISANE STEPHEN

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MONENE AJ**INTRODUCTION**

[1] On 30 June 2021, the plaintiff then a 38-year-old truck driver was involved in an motor vehicle collision involving a motor vehicle driven by him and another motor vehicle.

[2] In action proceedings he instituted against the defendant in terms of the Road Accident Fund Act 56 of 1996 he averred that the other driver, the insured driver was the sole cause of the accident in that the latter had negligently failed to apply brakes , failed to have due regard of other road users, drove at an excessive speed, driven on the wrong lane and/or failed to keep a proper lookout.

[3] The defendant who, as is now custom, failed to defend the action, causing the plaintiff to proceed before this court in terms of uniform rule 38(2) upon leave being granted by this court.

[4] The seriousness of the plaintiff's injuries having not been conceded by the defendant and thus ousting this court's jurisdiction on general damages, what remains to be determined is liability, loss of earnings and the additional question of an undertaking for future medical expenses.

LIABILITY

[5] To prosecute his case on the merits or liability the plaintiff relied on his section 19(f) affidavit and the accident report the latter which has the insured driver conceding that his brakes failed leading him to lose control of his motor vehicle resulting in the motor vehicle accident in casu.

[6] Absent a version from the defendant who never even filed a plea in this matter, there is nothing placed before me to gainsay the plaintiff's version, and I accordingly have no rational basis to reject that version.

[7] I am thus inclined to accept the only version before me and find the defendant 100 percent liable for the plaintiff's damages.

LOSS OF EARNINGS

[8] Regarding loss of earnings the plaintiff then adduced the following uncontested evidence in brief:

[8.1] Regarding the injuries suffered by the plaintiff, Dr L D Ramushu, an Orthopaedic surgeon, testified that the plaintiff had a right knee injury, a neck injury (C5 fracture) and a head laceration. The sequelae thereof were determined by this expert to be

chronic knee and neck pain, inability to work for long and a general struggle regarding executing manual labour. This witness further indicated the plaintiff had reached medical improvement suggesting that all that can be done regarding the plaintiff's injuries and sequelae would not alter the plaintiff's condition but will merely be to manage it.

[8.2] The occupational therapist, Petronella Radzuma, observed in her report that post matric the plaintiff had not acquired any work-related skills and further that having previously worked as machine operator on a contract basis, the plaintiff had at the time of the accident been employed as a truck driver, had returned to that job post the accident only to be dismissed on account of accident-induced poor work performance. This witness further remarked as follows in her report:

"...He stands with more weight distributed to the left leg. He struggles with prolonged standing and stooping because of the pain in the right knee and lower back. He displays reduced work speed. He displays reduced physical endurance."

"He demonstrates a moderate degree of stamina, his physical capacity to maintain a fairly consistent work pace for a normal working day is within sheltered labour rate."

[8.3] Finding thus that the plaintiff has been rendered less competitive within the open labour market, the occupational therapist further opined as follows:

“The pain in the lower back and right knee has compromised his sitting tolerance and the pain in the right knee has compromised his ability to use the right lower limb for prolonged periods, which has compromised his ability to handle the physical demands of his work, hence he could not cope with his work post-accident and had to be dismissed...His chances of securing alternative employment have been compromised by his physical and cognitive limitations. He will require reasonable accommodation measures such as rest breaks, alternating between sitting and standing, and close assistance.”

[8.4] Masase Mokhethi, the industrial psychologist, gave evidence that at 38 years of age when the accident occurred, the plaintiff was left with 27 years of active employment in the non-corporate sector until the retirement age of 65 years “defending on his health and conditions of his employment”. Noting that the plaintiff had, post the accident, tried to resume his pre-morbid truck driver work but failed after three months having been salaried for only two months, this expert witness opined that the injuries and sequelae of the accident have resulted in losses of earning capacity and employment potential. The industrial psychologist went on to conclude as follows:

“Due to his reduced work capacity affecting his future employability and earning potential, he will therefore not realize his pre-accident earning potential. He is currently unemployable and has exited the open labour market.”

[8.5] Understanding the industrial psychologist's report to have indicated loss of earnings as the difference between the plaintiff's pre-accident and post-accident earning capacity, Gert du Toit of Independent Actuaries and Consultants postulated a net loss of earnings at R3 167 274.00 comprised of past loss of income at R141 426.00 and future loss at R3 025 848.00. The expert did not factor in any contingencies into the amount proposed deferring that to the court.

[9] In submissions before me counsel for the plaintiff proposed contingency deductions of 5 percent for past loss of income and 25 percent for future loss of income. Given the unemployability of the plaintiff as testified to by the industrial psychologist, seen together with the slightly over twenty years the plaintiff still has to traverse until retirement and factoring the unpredictability of life expectancy regard being had to the fact that at about 40 years the plaintiff can hardly be seen as a youngster, I am persuaded that a 25 percent deduction on the future loss of earnings is fair, reasonable and just. That translates to a future loss of income of R3 025 848 less R756 462.00 equaling R2 269 386.00. Adding this difference to the past loss income amount of R141 426.00 as is results in a net loss of earnings at R2 410 812.00.

[10] It is trite that the principle underlying our law on compensation in Road Accident Fund matters is that the plaintiff who has been harmed by the negligence of an insured driver must, as far possible, be placed by a compensation award given, in the position

such a plaintiff would have, but for the injuries suffered, been. Trite as that principle is, I give in to the temptation, in that regard, to once more defer to the time-tested counsel of Rumpff J in **Dippenaar v Shiel Insurance Co Ltd 1979(2) 904(A)**, which went this way:

"In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate."

[11] In so far as this court is concerned, the approach in assessing loss of earnings can be put no better than it was stated in **Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F** 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 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.”

[12] As displayed in the computation this court engaged in supra, this court is not inclined to deviate from the uncontested expert evidence tendered before it, more so the actuarial computations without evidence countervailing such expert opinion or without a reasoned view that the expert evidence led is irrational or otherwise not to be believed for another justified reason. I thus am unable to fault any of the experts *in casu* in any manner.

FUTURE MEDICAL CARE

[13] According to the orthopedic surgeon's expert evidence the plaintiff will in future need analgesia, anti-inflammatories, scans and knee surgery. The occupational therapist opines that in the future the plaintiff will need occupational therapy as well as assistive devices like heat packs and high stool on castors. All this clearly indicates, in my view that an order relating to an undertaking for the plaintiff's future medical care needs as they flow from the injuries he suffered in the road accident and sequelae thereof in casu, is, questions about the legal efficacy thereof notwithstanding, deserved.

ORDER

[14] Resultantly, I make the following order:

[14.1] The defendant shall be liable 100 percent for damages suffered by the plaintiff arising from the motor vehicle accident of 30 June 2021

[14.2] The defendant shall pay an amount R2 410 812.00 (**TWO MILLION FOUR HUNDRED AND TEN THOUSAND EIGHT HUNDRED AND TWELVE RANDS ONLY**) to the plaintiff in respect of loss of earnings.

[14.3] The amount in 14.2 shall within 180 days of this order being granted be paid by direct transfer into a trust account nominated by the plaintiff's attorneys of record which nomination shall be made within 14 days of this order.

[14.4] 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.

[14.5] Should the defendant fail to pay the amount in 14.2 above within the 180 days and/or the agreed to or taxed costs within 30 days of taxation or agreement;

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.

[14.6] The defendant is ordered to, within 14 days of this order, furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act in respect of which all future medical expenses of the plaintiff arising from the injuries and sequelae of the accident of 30 June 2021 shall upon proof be paid by the defendant.

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



MALOSE S MONENE

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

APPEARANCES

Heard on : 04 July 2024

Judgment delivered on : 08 November 2024

For the Plaintiff : Mashiloane Mphego Attorneys

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For the Defendant : No appearance