



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

CASE NO: 78502/18

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED

23/09/2024

SELLO ABRAHAM TSHOSI

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

AMIEN AJ:

Introduction

- [1] In this matter, the Plaintiff sues the Defendant for damages under the Road Accident Fund Act 56 of 1996.

- [2] Although a Notice of Intention to Defend and Plea were filed by the Defendant, the latter did not make an appearance on 7 August 2024, which was the date of the hearing and did not file heads of argument. The matter accordingly proceeded on an unopposed basis.
- [3] At the time of the accident, which occurred on 14 July 2017, the Plaintiff was a 37-year-old back-seat passenger in a private motor vehicle that collided with another motor vehicle.
- [4] Plaintiff avers that the sole cause of the accident was the negligent driving of Jacobus Dut Toit, the driver of the other motor vehicle and whose further particulars are unknown to the Plaintiff.
- [5] It is trite that no negligence is attributed to the passenger of a motor vehicle that is involved in an accident.
- [6] The merits of the case are therefore 100% in favour of the Plaintiff.
- [7] The Plaintiff completed grade 11 and obtained a security certificate. He worked as a security officer at the time of the accident and returned to the same place of employment about one month after the accident and continues to work there. During the period of his recuperation after the accident, the Plaintiff was fully remunerated.
- [8] Had the accident not occurred, the Plaintiff would have remained in the same employment capacity. Due to his low educational level, he does not have promotional possibilities.
- [9] The Plaintiff is married with three children.
- [10] The Plaintiff was of good health prior to the accident.
- [11] The Plaintiff sustained the following injuries resulting from the motor vehicle accident:
- 11.1. Moderate brain injury with a laceration on the forehead and left eye. The laceration has left an unsightly scar on the Plaintiff's forehead and poor vision in his left eye. He also has decreased hearing. The head injury causes him to experience chronic headaches, especially when it is cold. He takes analgesics to relieve the pain. He suffers from memory loss –

he forgets conversations and given tasks. He has difficulty concentrating for long periods of time, and experiences insomnia.

11.2. Right knee injury.

11.3. Whiplash. The Plaintiff has difficulty with frequent neck movements.

11.4. Chest contusion, from which the Plaintiff has recovered, but which still leaves him experiencing chest pains when running.

11.5. Depression.

[12] The Plaintiff lost consciousness in the accident and became conscious at the hospital.

[13] Upon arrival at the hospital after the accident, the Plaintiff was treated conservatively, his forehead laceration was stitched, and he was admitted to hospital and discharged the next day.

[14] As a result of the accident, the Plaintiff fears traveling.

[15] The Plaintiff was attacked along with his colleagues and held hostage. As a result, he no longer works night shift. His salary has accordingly been reduced by about R1 800.00 per month. However, this is not a direct result of the accident and cannot factor into any loss of earnings.

[16] The medical expert reports indicate that the Plaintiff has suffered between 3%-5% whole person impairment, and that he will require conservative medical treatment in the region of R20 000.00.

[17] Medical intervention to treat the Plaintiff's facial scarring will cost about R70 000.00.

[18] The Plaintiff is therefore entitled to an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to be compensated by the Defendant for the cost of future accommodation in medical care facilities.

[19] Plaintiff avers that there are no past medical expenses.

[20] Since the accident did not impact on the Plaintiff's ability to continue to work and earn a salary as he did prior to the accident, he did not suffer past or future loss of earnings.

[21] The only other issue to be decided is whether the Plaintiff is entitled to general damages. Counsel for the Plaintiff advises that they wish to postpone the claim for general damages.

[22] In the result, the following order is made:

- 22.1. The Defendant is declared liable for payment of 100% of the Plaintiff's agreed or proven damages in consequence of the injuries sustained resulting from the motor vehicle collision which took place on 14 July 2017 in which the Plaintiff was involved.
- 22.2. 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, to compensate the Plaintiff for the cost of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff resulting from injuries sustained by her as a result of an accident that occurred on 14 July 2017, after such costs have been incurred and upon proof thereof.
- 22.3. The Defendant is to pay the costs of the Rule 38(2) expert reports.
- 22.4. The Defendant is to pay the Plaintiff's taxed or agreed party and party costs on a High Court scale B, including the costs up to and including 7 August 2024, which costs are subject to the Taxing Master's discretion.
- 22.5. Should the parties not be able to agree on the amount of the legal costs' payable by the Defendant, the Plaintiff shall serve a Notice of Taxation on the Defendant's attorneys.
- 22.6. The Plaintiff shall allow the Defendant fourteen (14) days to make payment of the costs so taxed.
- 22.7. Should the Defendant default, interest will be payable on the full amount owing at that time at the rate of 11.75% interest *per annum* calculated from the date of *allocator* to the date of final payment.
- 22.8. The claim for general damages is postponed *sine die*.

- 22.8. Counsel for Plaintiff confirms that a contingency fee agreement was concluded between the Plaintiff and her Attorneys, and that such agreement complies with the Provisions of the Contingency Fee Act.



W AMIEN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES:

Counsel for the Plaintiff: Adv. M.I. Thabede

Instructed by: Nkwane Attorneys