

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

CASE NO: 29434/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

23/09/2024

S[...] M[...]

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

AMIEN AJ:

Introduction

[1] In this matter, the Plaintiff sues the Defendant for loss of earnings and general damages under the Road Accident Fund Act 56 of 1996 and that the merits be decided 100% in Plaintiff's favour.

[2] The Defendant does not oppose Plaintiff's claim.

[3] On 10 March 2017, the Plaintiff, a pedestrian, was knocked down by a motor vehicle with registration number Z[...] 6[...] G[...] ('insured vehicle') at or near Angola Street, Cosmo City Extension 2, Randburg, Gauteng Province at approximately 13h30.

[4] At the time of the accident, the Plaintiff was a minor child aged 11 years.

[5] It is trite that a minor child bears no contributory negligence in motor vehicle accident cases, therefore the merits are 100% in the Plaintiff's favour.

[6] The Plaintiff is presently 19 years old and in grade 12.

[7] The Plaintiff sustained the following injuries because of the accident:

Mild head injury involving 17% neuro-cognitive impairment. The Plaintiff suffers significant long term mental disturbance and has recurrent headaches.

Right knee injury. Right wrist injury.

Upper lip and forehead laceration.

[8] After the accident, the Plaintiff was admitted to casualty, received emergency care and nursing, and was administered analgesics and antibiotics. He was discharged the next day.

[9] The Plaintiff recuperated at home for three weeks before returning to school.

[10] The following can be gleaned from the experts' reports:

10.1. The Plaintiff complains that he cannot stand for long periods, cannot walk for long distances, experiences pain in his right knee, cannot kneel with his right knee, is forgetful, has chronic headaches, sometimes has swollen and painful eyes, does not hear properly in his right ear, is easily distracted in class, can no longer play soccer, and is easily irritated.

10.2. The Plaintiff reportedly has a combined whole person impairment of 17% and has reached maximal medical improvement.

10.3. According to the Industrial Psychologist who assessed the Plaintiff in 2022, the Plaintiff's mother was a baker, and his father was unemployed. The Plaintiff has one younger sister who was a grade 8 learner at that time.

10.4. The Educational Psychologist is of the opinion that but for the accident, the Plaintiff could have obtained admission to a bachelor's degree and possibly also an honours degree.

10.5. The Industrial Psychologist is of the opinion that had the accident not occurred, the Plaintiff could have entered the labour force as a semi- skilled worker within the formal sector and may have progressed to a higher earning level at age 45 and he would have retired at age 65.

10.6. At the time of the accident, the Plaintiff was in grade 6 and had never failed a grade prior to that. After the accident, the Plaintiff failed grade 10 in 2021 but passed it in 2022. He is currently in grade 12. His scholastic performance fluctuates, and he will most likely not achieve his pre- accident potential. He may likely pass grade 12 but may only obtain a NQF level 5 qualification, after which he may be unemployed for about three years and then may enter the labour market as an unskilled or at best, a semi-skilled worker. He will be an unequal competitor in the open labour market.

10.7. The Plaintiff is expected to cope in the construction or engineering sector as a manual or general worker. Any growth in his earning capacity will most likely be due to inflationary related increases.

[11] The Plaintiff did not suffer past loss of earnings.

[12] Loss of earnings must therefore be considered in terms of future loss of earnings.

[13] Counsel for Plaintiff submitted that a fair and reasonable amount for loss of earnings is R5 273 010, and this Court agrees.

[14] This Court is further of the view that a fair and adequate amount for non-pecuniary loss suffered by the Plaintiff is in the amount of R700 000.00

[15] Given the Plaintiff's injuries, he is further 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.

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

16.1. 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 10 March 2017 in which the Plaintiff was involved.

16.2. The Defendant shall pay to the Plaintiff the sum of R5 073 010.00 in full and final settlement of the Plaintiff's claim, which amount shall be paid within 180 days to the credit of the trust account of the Plaintiff's Attorneys of record, Sotshintshi Attorneys, whose trust account details are as follows:

Name of Bank: First National Bank

Account number: 6[...]

Branch code: 2[...]

Branch name: Hatfield, Pretoria

16.3. The above amount is calculated as follows:

Loss of Earnings - R4 373 010.00

General Damages – R700 000.00

16.4. The Defendant will not be liable for any interest on the said payment provided payment is made timeously.

16.5. In the event of the default of the Defendant, interest will be payable on the full amount owing at that time at the rate of 11.75% interest per annum, calculated from the 15th day after the date of this order to the date of payment.

16.6. 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 10 March 2017, after such costs have been incurred and upon proof thereof.

16.7. The Defendant is to pay the costs of the Rule 38(2) expert reports.

16.8. 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 5 August 2024, which costs are subject to the Taxing Master's discretion.

16.9. 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.

16.10. The Plaintiff shall allow the Defendant 180 court days to make payment of the costs so taxed.

16.11. 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 15th day up to and including the date of payment.

16.12. Counsel for Plaintiff confirms that a contingency fee agreement was concluded between the Plaintiff and his 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: R Resenga

Instructed by: Sotshintshi Attorneys

Counsel for the Defendant: M Sekgotha

Instructed by: State Attorney