

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

CASE NO: 29943/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

23/09/2024

In the matter between:

BOTANG MALOPE MANGANENG

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] At the time of the accident, the Plaintiff was a 33-year-old pedestrian who was hit by a motor vehicle on 21 October 2017.

[3] In their submission to the Court, Plaintiff's Counsel indicated that the Plaintiff was on her way home from work. She was dropped off by a taxi in Hans Strijdom

Road. She looked both sides for oncoming vehicles and then proceeded to cross from Hans Strijdom Road to Hector Petersen Road to catch another taxi.

[4] The Plaintiff was therefore crossing the road from right to left. After crossing a substantial portion of the road, the vehicle being towed by the insured driver collided with the Plaintiff.

[5] Plaintiff avers that the driver executed a left-hand turn and failed to ensure that there was enough space between the vehicle being towed and the Plaintiff.

[6] Apart from a Notice of Intention to Defend, the Defendant did not file further papers.

[7] In particular, there is no plea by the Defendant of contributory negligence by the Plaintiff.

[8] Consequently, it is assumed that the Defendant was negligent, and the merits must be decided 100% in favour of the Plaintiff.

[9] The Plaintiff suffered the following injuries:

9.1. Mild traumatic brain injury, which resulted in post-traumatic headaches and is treated with non-steroidal anti-inflammatory medication.

9.2. Fracture of the L5 posterior elements, which resulted in the presentation of back pain for about three days a week and is also treated with non-steroidal anti-inflammatory medication.

9.3. She was diagnosed with cauda equina syndrome, which refers to an injury or herniated disc that compresses nerve roots at the base of the spinal cord. This causes the Plaintiff to lose function of the bladder. She may possibly suffer from repeated urinary infections later in life.

9.4. Soft tissue injury to the left knee, which has left a scar below and over the knee. She suffers pain in her knee and during severe weather, kneeling and squatting exacerbates the pain.

9.5. Injury to the left hip causing her to experience pain in the left hip about twice a month.

9.6. Minimal depression, low anxiety and moderate PTSD symptoms.

[10] To treat the Plaintiff's symptoms, conservative treatment is recommended by the medical specialists including medical consultations, physiotherapy, medication, and surgery to stabilise the lumbar spine.

[11] The Plaintiff is neither deemed able to perform heavy work tasks nor suited to be trained as a nurse.

[12] The Plaintiff is suited to perform at least medium work that involves minimal bending and squatting.

[13] Should she lose her current job, and with further deterioration of her left hip, as an unskilled worker in the cleaning industry, she may be rendered unemployable.

[14] In assessing whether the Plaintiff suffered any loss of earnings, the following factors are considered as at the time of the accident:

14.1. Plaintiff was 26 years old.

14.2. She did not complete Grade 12 and worked as a Cleaner at Wilgers Hospital where she earned R3 500.00 per month.

14.3. Her income was not affected by the accident. Her current basic salary is R4 259.92 per month, and her annual salary equates to R58 063.00 per annum.

14.4. The Plaintiff completed N4 and N5 courses in Hospitality and Catering Services but failed the N6 course in 2012.

14.5. She completed short vocational training courses including a certificate in Care Programme training.

14.6. The Plaintiff had intended to complete her Matric and obtain a Diploma in Nursing.

14.7. The Industrial Psychologist's Report suggests that the Plaintiff was possibly of below-average potential prior to the accident

[15] Plaintiff concedes that there is no past loss of earnings.

[16] Loss of earnings must therefore be considered in terms of future loss of earnings. Based on the actuary's identified earnings of R1 854 365 in the pre-morbid scenario with an application of 15% contingency, and R1 410 781.00 in the post-morbid scenario with an application of 25% contingency, the Plaintiff is deemed to suffer a total of R518 123.65 as her total loss of earnings.

[17] Section 17(1) of the Road Accident Fund Act 56 of 1996 as amended by the Road Accident Amendment Act 19 of 2005 makes the Defendant liable to compensate a third party for non-pecuniary loss arising from a serious injury.

[18] Regulation 3(1)(b)(iii)(aa) of the Road Accident Fund Regulations, 2008 includes inter alia loss of a body function as a 'serious injury'.

[19] Since the Plaintiff suffers incontinence as a result of the injuries sustained from the accident, she is eligible to be compensated for general damages in terms of Regulation 3(1)(b)(iii)(aa).

[20] An award of R350 000.00 for general damages would be a fair and adequate compensation.

[21] Since the Plaintiff may have to undergo spinal surgery in the future, she is 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.

[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 21 October 2017 in which the Plaintiff was involved.

22.2. The Defendant shall pay to the Plaintiff the sum of R868 123.65 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, Gert Nel Inc, whose trust account details are as follows:

ABSA Bank

Account number: 4[...]

Branch code: 3[...]

REF: GN13024

22.3. The above amount is calculated as follows:

Loss of Earnings - R518 123.65

General Damages - R350 000.00

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

22.5. 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.

22.6. 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 21 October 2017, after such costs have been incurred and upon proof thereof.

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

22.8. 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.

22.9. 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.

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

22.11. 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.

22.12. 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. Dredge

Instructed by: Gert Nel Inc

Counsel for the Defendant: Mr L Lebakeng

Instructed by: State Attorney