

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

**CASE NO: 1508/2021**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

23/09/2024

In the matter between:-

**VUSUMZI PLESTIN**

PLAINTIFF

And

**THE ROAD ACCIDENT FUND**

DEFENDANT

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**JUDGMENT**

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**AMIEN AJ:**

***Introduction***

[1] This is an action for the recovery of delictual damages under the Road Accident Fund Act 56 of 1996 arising from personal injuries sustained because of a motor vehicle accident that occurred on 16 September 2017.

[2] The Plaintiff claims for future medical expenses, general damages, past and future loss of earnings and earning capacity.

[3] At the time of the accident, the Plaintiff was 49 years old. He is currently 56 years old.

[4] The Plaintiff sustained the following injuries arising from the accident:

4.1. Axial skeleton injuries.

4.2. Mild to moderate disc degeneration of the Plaintiff's cervical spine and lumbar spine

4.3. Moderate thoracic spondylosis

4.4. Moderate lower lumbar facet joint arthropathy

4.5. Left 6<sup>th</sup> rib fracture

[5] The Plaintiff was taken to hospital for treatment but was not admitted. He was X-rayed and received conservative treatment.

[6] The Plaintiff complains of neck and back pain, which is exacerbated by activity and cold and severe weather. He experiences occasional headaches. The pain is treated with pain medication and rest.

[7] The Plaintiff has pain in his chest due to the fracture of his ribs.

[8] The Plaintiff also experiences stiffness in his neck and lower back as well as spasms in the paraspinal and trapezius muscles. He has difficulty sitting and standing in one position for too long. He walks with a mild limp.

[9] The Plaintiff's driving is affected because he now needs to turn his whole body to check the blind spots. He also cannot drive long distances anymore.

[10] The Plaintiff suffers 'pins and needles' and numbness in his lower left limb.

[11] The Plaintiff completed grade 6 and obtained a code C1 driving licence.

[12] Prior to the accident, the Plaintiff was a self-employed driver where he did delivery loads, including the delivery of furniture. He also did gardening jobs in a piece job capacity.

[13] Due to the back pain that he now suffers and difficulty in standing for too long, gardening work is a challenge for the Plaintiff. He also has difficulty lifting

furniture for delivery. He therefore handed over the delivery driving to his son and earned about R1 500.00 as his share of the earnings from November 2017 to December 2019 and has not earned any work-related income since then.

[14] The Plaintiff may only do sedentary 'light duty' type work, but he is not skilled sufficiently for this.

[15] Given the Plaintiff's age, limited level of education, and high unemployment rate in the open market, it will be difficult for him to find suitable employment.

[16] Prior to the accident, the Plaintiff had a combined income of about R3 560.00 per month for his delivery and gardening work.

[17] After the accident, the Plaintiff was off work for six (6) weeks, during which time he was not remunerated.

[18] It is also noted that the Plaintiff is diabetic.

[19] For future purposes, the Plaintiff may require surgery.

[20] It appears that the Defendant accepts that the insured driver was 100% negligent. Consequently, the merits are 100% in favour of the Plaintiff.

[21] Past loss of earnings comprises pre- and post-morbid past loss of earnings, which is calculated as R42 720.00 – R37 500.00 = R5 220.00). Future loss of earnings relates only to pre-morbid loss of earnings, which is R299 040.00. The total loss of earnings subject to nil contingencies is therefore R304 260.00.

[22] The Plaintiff is also entitled to fair and adequate general damages for pain and suffering in the amount of R400 000.00.

[23] Since the Plaintiff may have to undergo surgery in the future, he 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.

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

24.1. 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 16 September 2017 in which the Plaintiff was involved.

24.2. The Defendant shall pay to the Plaintiff the sum of R704 260.00 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, Wim Krynauw, whose trust account details are as follows:

Name of bank: ABSA Bank

Account number: 4[...]

Branch code: 6[...]

Branch: Krugersdorp

Reference: T[...]

24.3. The above amount is calculated as follows:

Loss of Earnings - R304 260.00

General Damages – R400 000.00

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

24.5. 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 15<sup>th</sup> day after the date of this order to the date of payment.

- 24.6. 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 16 September 2017, after such costs have been incurred and upon proof thereof.
- 24.7. The Defendant is to pay the costs of the Rule 38(2) expert reports.
- 24.8. 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 8 August 2024, which costs are subject to the Taxing Master's discretion.
- 24.9. 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.
- 24.10. The Plaintiff shall allow the Defendant 180 court days to make payment of the costs so taxed.
- 24.11. 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 15<sup>th</sup> day up to and including the date of payment.
- 24.12. 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**

**APPEARANCES:**

Counsel for the Plaintiff: L Whittle

Instructed by: Wim Krynauw Attorneys

Counsel for the Defendant: K Phokwane

Instructed by: State Attorney