

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 096233/2023

(1)	REPORTABLE: NO
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
2/7/2024 DATE	 SIGNATURE

In the matter between:

TRACY THEMBI MAHLANGU

APPLICANT/PLAINTIFF

and

ROAD ACCIDENT FUND

RESPONDENT/DEFENDANT

JUDGMENT

PIENAAR AJ

Introduction

1. The Plaintiff, Ms Tracy Thembi Mahlangu, instituted action proceedings in her personal capacity against the defendant for damages in terms of the **Road Accident Fund Act 56 of 1996**, pursuant to a motor vehicle collision.
2. The Plaintiff issued summons for Past hospital and medical expenses of R300 000,00, Future medical expenses an undertaking, Future loss of earnings of R7 152 900,00, and General Damages of R3 000 000,00 which were served on the defendant.
3. At the commencement of the trial I was informed that the issue of liability (the merits) was settled 100% in favour of the plaintiff. The plaintiff was a passenger at the time of the accident and was 34 years old. **[1]**
4. General damages have been settled in the amount of R2 300 000,00 by way of an offer and acceptance.**[2]**
5. The matter was enrolled for default judgment on 3rd July 2024 for determination of loss of earnings claim.
6. On 25th day of June 2024 the Defendant enter an appearance to defend. **[3]**
7. On 28th day of June 2024 the plaintiff served a motion to set aside the notice of defendant on the defendant. **[4]**

8. Plaintiff Counsel, Adv Malatji made submissions that the default judgment against the Defendant should proceed and that the notice of intention to defendant should be set aside on the grounds that same constitutes an abuse of the court processes.
9. I informed the Plaintiff that judgment will be reserved.
10. The Plaintiff filed several medico legal reports in support of her claim. Plaintiff proceeded by way of Rule 38(2) uniform rules of court.

Analysis

11. It is important to state that a default judgment is granted not because the defendant against whom it is granted does not have a defence to the action but it is one granted in terms of the rules with the discretion of a Court
12. In my view, before a Court exercises its discretion, it must be satisfied that a valid claim has been presented to justify a judgment against the defaulting party.
13. The purpose of hearing evidence, is to enable the Court to reach a decision that a valid claim in law existed. If that is not the purpose, the Court shall be required to enter default judgment as a matter of course once a party appears without the defendant. Such shall be inconsistent with the constitutional duties of a Court of law. Taking into account that section 165(5) of the Constitution dictates that an order or decision issued by a Court binds all persons and organs of state, a Court should not willy-nilly, as it were, dispense with orders or decisions, even in the circumstances that the evidence before it does not justify an order or decision.

Dr M Modisane (Orthopaedic Surgeon)

14. The Plaintiff was transported by ambulance to Kwa-Mhlanga hospital, upon arrival she received emergency treatment and x-rays were done. Thereafter she was transferred to Sunshine Hospital where she was admitted for a month into the facility. According to Dr Modisane she sustained a humerus fracture and femur fracture, ankle fracture and T11 fracture with catheter neurology, neurogenic bowel, neurogenic bladder. The paralysis will limit her choice of occupation.

Linda Maye (Clinical Psychologist)

15. Miss Mahlangu likely sustained a moderate to severe traumatic brain injury as a result of her involvement in the accident. Her psychological symptomology (depressive disorder, due to a traumatic brain injury symptoms of post traumatic stress disorder, and decreased self esteem) post accident have also impacted negatively on her enjoyment and quality of life.

Rabelani Makuya (Occupational Therapist)

16. At the time of the accident (pre accident) Ms Mahlangu was employed at Department of Social Development as a Social Worker.
17. She was unable to return to work as her contract expired in May 2021 and she was still at Rehab center. In December 2021, she secured a position as a Social Worker at Department of Social Development. She performed only office-based duties and her contract expired in March 2022.

Ruwa Y Ntuli (Industrial Psychologist)

18. Ms Mahlangu was involved in the motor vehicle accident on 6 December 2020. At the time of the accident she was employed as a Social Worker.
19. Post accident Ms Mahlangu is unemployed. She suffers from being a paraplegic and she is on wheelchair. Ms Mahlangu is likely to have suffered physical, emotional loss as well as a loss of likely earnings.

Collateral informaton - Caselines 003-180

20. Employment collateral was not obtained.[pg 003-180 on Caselines]

Ms Mahlangu testified

21. Ms Mahlangu testified that she employed as a Contract Worker at the Social Development. They also gave her another contract, which started in December 2022, it was a four months contract. She was earning R6000,00 +- She started receiving Social grants and is still receiving social grants. Currently she received an amount of R2000,00 a month social grants.

Tsebo Actuaries

22. Tsebo actuary report is based on the Industrial Psychologist report.
23. Ms Ntuli (IP) did not contact the Department of Social Development. There is no collateral information pre morbidly of which the department was happy with her work or not. Post morbidly, according to the testimony of Ms Mahlangu she is working on a contract basis if necessary by the Social

Development. She is also receiving social grant on a monthly basis.

Conclusion:

24. Counsel for the Plaintiff referred the Court to the matter of Seronica Nathram [1] where the Plaintiff's attorneys contended that the RAF was simply using its notice of intention to defend in order to delay matters. The RAF's response was contained in an answering affidavit.

25. I refer to paragraph 29 of the above mentioned judgment of my brother Judge Davis as follows: "Any determination made by a court in this regard should not only be case-specific, but also only be done after the RAF has been given the opportunity to respond and to be heard"

ORDER:

For the above reasons, I make the following order:

1. The application to set aside the notice to defend is refused.
2. The Defendant is ordered to file their answering affidavit by no later than 14 October 2024
3. The Plaintiff is granted permission to apply for the allocation of a preferential hearing date
4. The Defendant shall pay the Plaintiff costs on Attorney and Client scale.
Counsel costs on scale C


PIENAAR (AJ)
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing : 3 July 2024

Date of judgment : 3 October 2024

Appearances

For the Plaintiff : Adv S M Malatji

Instructed by : Fish Letsoalo Inc

For Defendant : Road Accident Fund
No appearance
Link no: 5226817

[1] Seronica Nathram Case no: 46876/2020

[1] Acceptance of merits offer - Section 010

[2] Acceptance of General Damages and Future medical expenses - Section 011

[3] Notice of intention to defend - Section 016

[4] Motion to set aside notice to defend - Section 017