

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA

Case no: 31752/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
03 OCTOBER 2024
DATE SIGNATURE

In the matter between:

ZANDILE JULENDA NKOSI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAKHOBHA, J

- [1] The plaintiff instituted an action against the defendant for damages suffered as a result of injuries sustained in a motor vehicle accident that occurred on 1 February 2019.
- [2] At the time of the accident the plaintiff was 39 years old. Merits have been conceded 100% in favour of the plaintiff.
- [3] The remaining issue before court is general damages and loss of earnings. According to counsel for the defendant which is not in dispute. On 2 August 2024 Mabesele J ordered that the parties should engage in settlement.
- [4] On 30 August 2024 the parties appeared before me and since counsel for the defendant had not yet filed her heads, I asked that she must do so which she did and filed her heads on 5 August 2024. Both parties addressed the court.
- [5] The plaintiff was admitted in hospital for 3 days namely from 10 February 2019 to 13 February 2019.
- [6] For general damages the plaintiff claims an amount of R 2 800 000.00 and for loss of income R 7 688 600.00.
- [7] According to the orthopaedic surgeon, the plaintiff sustained the following injuries:

7.1 Laceration in the head

7.2 Back laceration

7.3 Thoracolumbar injury with paraparesis

7.4 Right thigh abrasion

7.5 Right knee bruise

7.6 Hospital X-rays showed no fracture

- [8] In the forensic Accounting Report filed on CaseLines (14 - 315) by the plaintiff it is stated that at the time of the accident the plaintiff was self-employed earning R 70 000.00 per month. She was also a hawker earning R 4 000.00 per month.
- [9] After the accident she did not return to her work due to domestic issues between her husband (business partner) and herself and eventually she left the business to her husband.
- [10] After leaving the business with her husband she was paid a once off payment of R 121 000.00.
- [11] Currently she is a hawker and makes a profit of R 1 500.00 per month.
- [12] In my view the plaintiff did not attach in her Forensic Audited Report any tangible proof of what she was earning before and after the accident. There are no bank statement of salary advice.
- [13] It is trite that the onus rests on the plaintiff to prove his case on balance of probabilities see *Pillay v Krishna*, 1946 SA 946. Thus, the duty is on the plaintiff to produce evidence that because of the injury, she has suffered loss of income.
- [14] I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability.
- [15] The locus classicus as to the value of actual expert opinion in assessing damages is *Southern Insurance Association Ltd v Bailey* NO 1984(1) SA 98(A) where Nicholas JA said the following:

"Where the method of actuarial computation is adopted in assessing damages for loss of earnings capacity, it does not mean that the trial Judge is "tied down" by inexorable actuarial calculations. He has 'a large discretion to award what is

considers right'. One of the elements in exercising that discretion is the making of a discount for 'contingencies' or differently put the 'vicissitudes' of life'. These includes such matters as the possibility that the plaintiff may in the result have less than a normal expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labor unrest or general economic conditions. The amount of any discount may vary depending upon the circumstances of the case."

- [16] In the matter of *De Kock v Road Accident Fund*, Case no. 2237/2013 reported on 22 April 2015 in the High Court of South Africa (Gauteng Division, Pretoria) the Court once again confirmed the approach to be taken with the calculation of loss stated in paragraph 22 follows:

"[22] In approaching claims of this nature, the courts have always had open to it two possible approaches, namely;

22.1 either that the Judge makes a round estimate of an amount which seems to him to be fair and reasonable. That process is entirely a matter of guesswork – a blind plunge into the unknown;

22.2 that the Judge tries to make an assessment by way of mathematical calculations on the basis assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumption, and the may vary from the strongly probable to the speculative.

[23] It is manifest that either approach involves guesswork to a greater or lesser extent. However, the court cannot for this reason adopt a non possumus attitude and make no award."

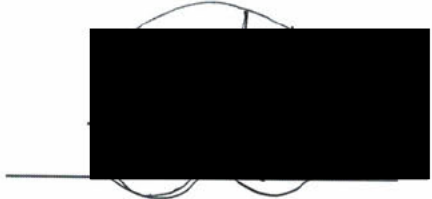
- [17] I am of the view that the plaintiff failed to show on preponderance of probabilities that she was self-employed before and after the accident. She failed to provide the following documents:

17.1 Salary slip or salary paid into a bank account. Deposit slips into her banking account.

17.2 Tax document or IRP5 form.

17.3 Lump sum payment by her previous employer.

- [18] Due to her qualifications, I accept that there is a future loss of income suffered by the plaintiff however it is not properly calculated by the actuary. Taking into account that the lumpsum was not taken into consideration during the calculations.
- [19] The court is satisfied that the plaintiff sustained serious injuries and the amount claimed is in line with the previous decided cases.
- [20] I am further of the view that the amounts claimed by the plaintiff in respect of loss of incomes is excessive and not justified and must be reduced.
- [21] I make the following order:
- 21.1 Merits awarded 100% in favour of the plaintiff.
- 21.2 Section 17(4)(a) undertaking in terms of the Road Accident Fund Act 56 of 1996.
- 21.3 General damages: R 1 500 000.00 (one million five hundred rand only).
- 21.4 Loss of income: R 2 000 000.00 (two million rand only).
- 21.5 Cost of suit at Scale "B".



MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 30 AUGUST 2024

JUDGMENT HANDED DOWN ON: 03 OCTOBER 2024

Appearances:

For the Applicant: Ms B Tsabedze (instructed by) Marisana Mashedi Incorporated
For the Respondent: Ms L Nelufule (instructed by) State Attorney Pretoria.