

THE REPUBLIC OF SOUTH AFRICA



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

Case no: 34029/2020

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

08/10/2024
DATE

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SIGNATURE

In the matter between:

NKOPEDI CAREVEN THOKA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAKHOB A. J

- [1] The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor vehicle accident that occurred on 12 October 2018
- [2] The court found merits 100% in favour of the plaintiff. The only issue before court by the plaintiff is future loss of income. The amount claimed is R 1 149 650.40.
- [3] On the date of trial, the defendant was not represented and attempt to settle the matter did not yield any results. Counsel for the plaintiff asked the court for default judgment in favour of the plaintiff. He addressed the court. No oral evidence was led
- [4] On 3 October 2023 the court recalled the matter for counsel to address it on the contradiction by the plaintiff's experts in regard to his employment.
- [5] Dr Moja the neurosurgeon says at the time of the injury the plaintiff was unemployed and remained unemployed after the accident (CaseLines 08-37).
- [6] The occupational therapist also says that the plaintiff was unemployed at the time of the injury (CaseLines 08 -120).
- [7] The actuarial report contradicts both the neurosurgeon and the occupational therapist and instead he says that the plaintiff was employed earning R 6 140 at the time of his injury. (CaseLines 08 -157 at par 8 and 9).
- [8] On 3 October 2024 I pointed out these contradictions to counsel and asked him to address the court. Counsel insisted that the court must consider the matter in favour of the plaintiff taking into account that plaintiff had no longer the capacity to be employed

- [9] The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.
- [10] It is indeed so that even though defendant is not represented in the proceedings the court cannot simply grant the order as requested, the court must see to it that the requested order is in accordance with justice.
- [11] The evaluation of the amount to be awarded for loss does not involve proof on a balance of probabilities. It is a matter of estimation. Where a court is dealing with damages which are dependent upon uncertain future events, which is generally the case in claims for loss of earning capacity, the plaintiff does not have to provide proof on a balance of probabilities.
- [12] 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, he has suffered loss of income.
- [13] 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.
- [14] The contradictions by the plaintiff's expert reports report as to whether he was employed or not are of fundamental importance.
- [15] In my view in the light of these contradictions the court is unable to make a determination as to the future loss of income by the plaintiff. Consequently, the plaintiff's claim for loss of earnings must be dismissed.
- [16] I make the following order:
- 16.1 The plaintiff's claim for loss of earnings is dismissed.

16.2 The issue of general damages is postponed *sine die*.

16.3 Defendant must furnish to the plaintiff with a Section 17(4)(a) of Act 56 of 1996.

16.4 Defendant to pay plaintiff's cost for 28 August 2024 and 3 October 2024 on scale "A".



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

HEARD AND RESERVED JUDGMENT: 28 AUGUST 2024

JUDGMENT HANDED DOWN ON: 08 OCTOBER 2024

Appearances:

For the Applicant: Adv Moukangwe (instructed by) Mphela and Associates Attorneys
For the Respondent: N/A