

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

Case no: 59220/2021

Heard on: 7 August 2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 28.10.2024

IN THE MATTER BETWEEN:

V[...] V[...] A[...] obo T[...] B[...]
T[...] A[...]

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

REASONS FOR JUDGMENT

STRIJDOM, J

1. After it had heard argument, this Court issued the following order on 7 August 2024:

"1. Defendant will be liable for 100% (one hundred percent of the Plaintiff's damages.

1. The Defendant is ordered to pay to the Plaintiff the amount of R2 000 000,00 (two million Rand) in respect of general damages and R6 671 350,00 (six million six hundred and seventy one thousand three hundred and fifty rand) in respect of loss of earnings/earning capacity."
2. Attorney P Rangata who appeared for the Defendant conceded that the above amount for general damages and loss of income/earning capacity would be a fair and reasonable amount to be awarded for the proven damages.
3. The reasons for the above order now follow.
4. It is common cause that on 1 November 2020 at the age of 10, T[...] B[...] T[...] A[...] was seriously injured in a motor vehicle accident.
5. The Defendant has conceded liability for the Plaintiff's claims.
6. The Defendant has tendered a statutory undertaking for future medical and related expenses.
7. The Plaintiff has filed expert summaries by:
 - 7.1 Dr Z Domingo, a neurosurgeon,
 - 7.2 Dr T Sutherland, a psychiatrist,
 - 7.3 Ms L Durra, a clinical psychologist,
 - 7.4 Dr JS Sagor, an orthopedic surgeon,
 - 7.5 Dr Cronwright, a plastic and reconstructive surgeon,
 - 7.6 Ms M Bester, an occupational therapist,
 - 7.7 Ms M Clerk, an educational psychologist,

- 7.8 Ms K Kotze, an industrial psychologist and,
- 7.9 Munro Forensic Actuaries
8. The Defendant has filed expert summaries by:
- 8.1 Dr AJ Magan, an orthopedic surgeon,
- 8.2 Dr G Prag, an educational psychologist,
- 10.3 Ms Moses, an industrial psychologist.
9. The parties' respective surgeons appear to be in broad agreement.
10. The parties' respective psychologists have prepared joint minutes reflecting broad agreement.
11. The parties' respective industrial psychologists have been requested to prepare joint minutes.
12. The Defendant has filed no expert reports to contradict the evidence of any of the witnesses referred to in paragraph 7.1 to 7.3, 7.5, 7.6 and 7.9 above.
13. The application by the Plaintiff for the evidence of the expert witnesses to be admitted by way of affidavit in terms of Rule 38 (2) was granted. No such application was brought by the Defendant.

General Damages

14. The Defendant has conceded that the injuries suffered by T[...] were serious and that he qualifies for general damages.¹

¹ Caselines 00-6

15. It is apparent from the medico-legal reports that the claimant suffered the following serious injuries in the accident.²

15.1 A head injury with facial lacerations:

15.2 A moderate to severe traumatic brain injury:

15.3 A secondary brain injury due to hypoxia;

15.4 Liver lacerations:

15.4 Splenic lacerations:

15.6 A fracture of the right femur.

16. In respect of the sequela of the injuries Dr Domingo - the neurosurgeon, concluded that because of the severity of the brain injury sustained, T[...] remains at risk of developing late post-traumatic seizures and the development of seizures will have a negative impact on his schooling and employment opportunities. His injuries can be considered to be severe, and he will continue to suffer a permanent and serious long-term impairment in respect of his work and personal life. His calculated WPI is 51%.

17. Dr Sutherland the psychiatrist³ concluded that the combined psychological and physical effects of the accident have had a significant effect on T[...]’s mental wellbeing and enjoyment of life. In the light of the cognitive symptoms, academic difficulties and chronicity of the psychiatric symptoms his prognosis is poor. It has been over two years since the accident and maximal medical improvement has been reached.

² Caselines, Dr Domingo, 07-6 to 07-7

³ Caselines, 08-60

18. According to Ms Dura, the clinical psychologist⁴, T[...] presents with the following psychological difficulties, which are causally related to the motor vehicle accident.

18.1 Post-traumatic stress disorder (PTSD), mild;

18.2 Symptoms of Major Depressive Disorder, mild;

18.3 Attention-deficit disorder, mild to moderate.

19. Dr Sagor, the orthopaedic surgeon⁵, stated that:

19.1 The femur shaft fracture has healed. The metal inserted has been removed and good function has been obtained. The only finding of concern is the scars on the right thigh. A plastic surgeon should assess them regarding cosmetic improvement.

20. According to Dr Gronwright,⁶ the plastic and reconstructive surgeon:

20.1 T[...] has been left with scarring of his left ear, left hand and right thigh and leg. The scars on his right lower limb are problematic. He may or may not be a candidate for surgery, depending on whether or not he may form "keloid scarring". He may end up with the current scars on his right leg for the rest of his life.

21. Ms Bester, the occupational therapist⁷ opine that T[...]’s physical injuries have healed reasonably well, but he is suffering from many neuropsychological problems. T[...] will struggle on a daily basis to progress in school. He is struggling to cope with his schoolwork and as he progresses further in his school career, the pressure on his altered abilities will only increase. He will struggle more and more with the workload and the demands it will place on his neuro-psychological abilities.

⁴ Caselines, 08-73

⁵ Caselines, 08-35

⁶ Caselines, 08-44

⁷ Caselines, 08-87

22. According to Ms Clerk, the educational psychologist,⁸ T[...] would probably have had a high average range cognitive potential pre-accident. He would probably have been able to achieve a Grade 12 (NQF4) level of education with endorsement for degree (NQF 7) level of education in a field of his interest, he would have entered the open labour market as an equal competitor and lived an independent life. Post-morbidly T[...] has the ability to achieve an NQF 4 level of education, but he will likely be reliant on his physical abilities to secure future employment. He will likely require sympathetic employment but may experience difficulties in sustaining employment due to his neurocognitive neuro psychological and emotional difficulties.

23. It is trite that the assessment of general damages cannot with ease be done with any measure of mathematical accuracy. It is equally trite that no two or more cases are always similar since it is difficult to find a comparable matter that is on all fours in respect of facts.

24. The amount of general damages is to compensate a claimant for the pain, suffering, discomfort and loss of amenities of life to which he/she has been subjected as a result of the particular injuries sustained and that amount should be updated to present day values where appropriate.

25. It is the sequelae of a brain injury rather than the classification of the injury which is of primary importance

26. Having considered relevant decided cases and the expert reports, I am of the view that an amount of R2 000 000,00 (Two million Rand) is fair, reasonable and adequate compensation to the Plaintiff for general damages.

The determination of the loss of earnings

27. The parties' respective educational psychologists are in broad agreement.⁹

⁸ Caselines, 08-96

⁹ Caselines, Joint minute 10.1

28. Pre-morbidly, they agree that T[...] would probably have obtained a Grade 12 (NQF 4) with an endorsement for further studies. Ms Clerk is of the view that T[...] would have been able to have obtained a degree pass (NQF 7). Dr Prag is of the view that it is probable that he would have obtained a diploma pass and possibly a degree pass.

29. Post-morbidly, they agree that T[...] has the ability/potential to achieve an NQF 4 level of education. The Plaintiff's industrial psychologist, Ms Kotze is of the view that had it not been for the accident, T[...] would have completed Matric whereafter he would probably have completed tertiary education (NQF7) by 2031.¹⁰

30. Ms Kotze is of the view that given a Grade 12 level of education, T[...] will probably commence earning remuneration associated with the median of earnings for unskilled workers, employed in the non-corporate section of the labour market. As he gains work experience, he will probably be able to secure more lucrative employment in due course.

31. An actuarial calculation based on the industrial psychologist's assumptions has been obtained.¹¹

Contingencies:

32. In *Rabie v MEC for Education, Gauteng*,¹² Koen J referred to cases where a 15% contingency deduction was considered to be the "normal contingency to be applied in respect of a young claimant Koen J nevertheless applied a contingency of 20% on the future uninjured earnings, to cater for any uncertainties."

33. It was submitted by the parties that a higher contingency of 45% would be fair. However, the parties agreed an amount of R6 671 350 after applying a higher contingency.

¹⁰ Caselines, 08-123

¹¹ Caselines, 08-131

¹² 2013 (6A 4) QOD 227 (GNP)

34. I am of the view that under the circumstances the amount of R6671350 (Six million, six hundred and seventy-one thousand and three hundred and fifty Rand) is a fair and reasonable amount for loss of earnings.

35. The draft order marked X was made an order of Court by agreement between the parties.

Strijdom JJ
Judge of the High Court of
South Africa (Gauteng Division, Pretoria)

Appearances:

For the Plaintiff: Adv JH Roux SC

Instructed by: JS Terblanche Inc

For the Defendant: Ms P Rangata

Instructed by: State Attorney