

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 4835/2021

DATE: 18-10-2024

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 18/10/2024

SIGNATURE [Redacted Signature]

10 In the matter between

NTULI MANDLA ALPHEOS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: In this matter I also asked that the matter stand down until this morning for the purpose of a judgment.

20 The accident from which this claim arose occurred on 17 July 2019 and the plaintiff was born on 17 July 1984.

The aspect of negligence had previously been settled on the basis of a 70 / 30 apportionment in favour of the plaintiff and the plaintiff has been offered an undertaking in terms of Section 17 (4) (a) of the Road

Accident Fund Act for 70 percent of his future hospital, medical, and ancillary expenses. There has also been an award for general damages.

The difficulty that arose in this matter related to the plaintiff's employment, the claim for loss of income being the only claim before Court. I may mention that there was a Rule 38 (2) application and which was granted. The plaintiff's primary injury was a fracture of the left tibia and fibula and the plaintiff's whole person impairment was
10 assessed at two percent.

If one looks at the plaintiff's employment history, which can be found on case lines at 008-93, then from 2006 to 2008, he was a bricklayer, 2009 there is no record of employment so one assumes he was unemployed. From 2010 to 2012 he was a barman. From 2012 to 2017 he was a bar manager, then from 2018 to the accident he was a barman again.

After the accident he started again to work as a bartender at a place called Gatsby Night Club in 2020 and
20 that position terminated, not as a result of his injury, but because of Covid and as a result of which the club closed down.

When discussing the matter with counsel I drew attention to the comments reflected in industrial psychologist's report from the owner of Gatsby Night Club,

the last position where the plaintiff worked after the accident as a barman and where the following was said:

"Performance was excellent, he was always reliable. Next position he would have been promoted to is the position of junior assistant manager. They consider work performance and work experience before appointing someone to that position. Earnings R10 000-00 to R12 000-00 per month retirement age 55."

That suggested to me that the plaintiff's pre-accident ambition to work as a barman have not been terminated as a result of the injury to his leg but that he had the opportunity to continue working in that capacity had it not been for Covid and that as he already had a proven track record as a bar manager, having performed that function for five years from 2012 to 2017, he would have been imminently suitable for this position in this club, had Covid not intervened.

On case line at 008-97 it is recorded that he would have worked as a barman had the accident not occurred. The problem arises with the calculation and the claim as formulated by the industrial psychologist.

There is reference to the security industry which is of no assistance in the context of this matter. I also have a

difficulty with theoretical projections when factual information is available. Given the nature of the work that the plaintiff had done for the period 2006 through to 2022 it is not work which remotely could be defined as falling within the corporate or non-corporate sector, it is semiskilled closer to the informal sector.

If the calculation takes the Plaintiff into the upper quartile of semiskilled in the non-corporate sector, then there is no evidence available which would suggest why that
10 would happen. There were two addendums to the industrial psychologist report.

The second addendum, dated 30 September 2024, now contained the opinion of the industrial psychologist based on a future career in the security industry, case lines 008-120. I find that the change of stance from the early report to this report problematic and there is no evidence before court to support that approach.

That being the case problems arise as far as the calculation of the actuary is concerned. The calculations
20 are based on a set of instructions for which there are no facts before court. However, irrespective of what the Court's opinion of the various industrial psychologist reports and addendums might be, ultimately parties are bound by their pleadings.

Pleadings forms the perimeters within which an

action is conducted. It serves no purpose to present argument or to present evidence which does not speak to or is dealt with in the particulars of claim.

In this particular matter the plaintiff's claim for past loss of earnings as per his particulars of claim is for the sum of R200 000-00 and his claim for future loss of earnings as per the summons is for R1 million a combined total of R1.2 million.

All the premises and calculations which exceeds
10 these amounts is of no relevance until such time as the pleadings have been amended to bring it line with what the plaintiff may believe the evidence is.

As the matter stands the maximum amount that can be awarded to the plaintiff is R1.2 million in respect of past and future loss of income and that is then the amount that the Court awards.

My order is therefore as follows.

1. In respect of the plaintiff's claim for past and future loss of income, combined, the Court awards the
20 amount of R1 200 000-00, pre-apportionment. Taking into consideration the apportionment on liability the net amount, after apportionment, is R840 000-00.

2. The plaintiff is entitled to his party and party costs as taxed or agreed.

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JUDGMENT

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 18/10/2024