

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 25807/2014

DATE: 23-10-2024

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 23/10/2024

SIGNATURE [REDACTED]

10 In the matter between

TEBOGO JOY CHOANE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

20 This is matter number 41, that is case number 25807 of 2014, the matter of TJ Choane and the Road Accident Fund. This matter was called on the 22nd of October 2024, and counsel presented the plaintiff's case. As far as the presentation of evidence is concerned, counsel commenced by moving an application in terms of Rule 38(2) for the

leading of evidence by way of affidavit. This application is to be found on CaseLines under 14-24. The date of the accident from which this claim arose occurred on the 8th of December 2012. The plaintiff's date of birth is the 9th of July 1990. This matter had been before court before and on the 23rd of July 2024 the Court made an award in respect of general damages, future medical expenses, and a comprehensive order in respect of costs.

The only issue outstanding in the matter is the
10 plaintiff claim, if any, in respect of loss of income. Now despite the age of the matter there are significant gaps in respect of collateral information, and which has an influence on the Court's approach to the claim for loss of income. The plaintiff was in Grade 12 in 2010, the plaintiff allegedly enrolled at the University of Free State for a BSc degree in 2011 but failed his first year. The plaintiff remained at the University of the Free State, allegedly, in 2012 still pursuing a BSc degree but dropped out in March 2012 for financial or academic reasons. That was nine
20 months before the accident, and which occurred in December 2012.

There is no detailed history available between the period March 2012 and 2015, there is an indication of a short stint of work at a fast-food outlet and there is an indication of an attempt to enroll at both the University of

the Witwatersrand and the University of Johannesburg, both applications being unsuccessful. There is no collateral or substantiating documentation in respect of these statements. What we do know is that the plaintiff has been employed by the City of Johannesburg from 2015, approximately three years after the accident. We know that he commenced work on a non-permanent basis and thereafter became a permanent employee which he still is in 2024, nine years later.

10 When the matter was in court in July 2024, the Court expressed reservations due to the fact that there was no report available from an educational psychologist. Part of the reason why the matter for loss of income was not dealt with in July 2024, was to enable the plaintiff to secure the assistance of an educational psychologist and which would then lead and did lead to an addendum report from the industrial psychologist.

20 Now every expert in submitting a report includes in that report a paragraph in confirmation of the amended Rule 36(9)(b) indicating that the report is prepared for the assistance of the Court. I am uncertain as to the extent an expert, in including that paragraph, mostly at the end of their report, actually applies their mind to what it is that they are saying, and whether they consider in reviewing their report before signing it, after having affixed the

requirements of Rule 36(9)(b) to their report, how the report will be of assistance to the Court.

One of the aspects that I would have thought an expert in preparing a report would take particular cognisance of would be if there are any comorbidities or pre-accident incidents which may or may not have an influence on the outcome of the matter. And once an expert is aware of an incident or incidents that may or may not have an influence whether that does not create an
10 obligation on the expert to investigate those incidents and in preparing a report for the assistance of the Court to give the Court the comfort that those incidents have no influence on the outcome of their assessment.

In the report of the educational psychologist, on page 06-59, we find reference to two pre-accident collisions in which the plaintiff was. Now the first of these occurred when the plaintiff was ejected out of, or off, a moving vehicle, and why that is of interest to this Court and why it should have been considered more comprehensively is the
20 plaintiff description of the primary injury sustained or retained from that accident. The plaintiff described it as follows, "he sustained a laceration on his forehead". Now why is the phrase "sustained a laceration on his forehead" of significant and why should it have been considered further? Because the third accident, which is the one that

we are dealing with, in it he utilises the exact same words in describing his head injury, "a laceration to the forehead".

So, what we do know is that there are two accidents and in both of which he describes the injury as a laceration to the forehead. We also know that some of the other experts in their reports refers to scarring on the forehead. But we do not know now, now that we are aware that there is an earlier accident, where there was a laceration to the forehead, whether or not the scarring to which the other
10 experts refer relates to the first or the third accident. There is no information on that, and there ought to have been, because if there is a suggestion that there is any impediment in the plaintiff's ability to academically progress, then the expert had the obligation to give the Court the comfort that these earlier accidents had no influence.

In respect of the second accident, we do not know what the extent of the injuries were. All we know is that it was a pedestrian vehicle accident and that he was
20 evacuated from the scene of the incident to hospital in an ambulance. We do not know whether that was just for observation, and he was immediate discharged, or whether he sustained more serious injuries. If there is then any reference in any of the medical legal reports to anxiety, to fear in relation to travelling, fear in crossing roads, concern

of any sort relating to travel in any form, then the experts had the obligation to either indicate that this is because of a combination of three accidents, or that the earlier accidents had no influence. To merely record in a report the fact that there were earlier accidents and then say nothing further, falls short of the expert's obligation in preparing a report for the assistance of the Court.

What we further know is that the plaintiff started part-time studies again in 2021 when he enrolled for an LLB degree through UNISA, this is now approximately eight years after he ceased his studies at the University of the Free State. Taking up study after an extended period of absence from the academic environment would, on its own, be difficult. To study part-time, anybody that has had to study part-time will know that it is generally speaking more difficult than if you are in a classroom environment. He had, despite holding down a full-time job in the period 2021 to June 2024 succeeded in successfully completing 16 of the LLB modules with a further 24 left.

His academic performance differs significantly between the various subjects, but that in my lay opinion is not an indication of a brain injury. If I look at my own performance, it took me four years to pass one specific subject, I failed it three times and if that was supposed to be an indication of my intellectual capacity then I would not

be sitting here. So, the fact that in some subjects you do better than others do not, in my mind, equate to a brain injury, there has to be more. To simply make the statement that he will fail, and he will not complete the other 24 modules, without any collateral or substantiating evidence is just not good enough.

The industrial psychologist's projection, leaving aside the calculation relating to the health environment, which seems to have been terminated as a result of the non-
10 acceptance at the University of the Witwatersrand and the University of Johannesburg, looking only at the alternatives which may include the LLB degree, it is not enough to simply say that, "in my opinion this individual will progress to the D5 level". On the D5 level you are on the CEO level of fairly big corporations. The income package reflected for a D5 is higher than what a judge earns, it is higher than what most of the most senior state employees earn. It implies that you are flying in the thin air of the top echelon of employees. If you are going to do a projection to that
20 point you need to do more, you need to indicate what additional qualifications would be required, you need to indicate what kind of environment it will be that will enable you to reach that high a level. We have got nothing to support the view, in my opinion, that he will progress to the D5 level.

I quote from the matter of *Bee v The Road Accident Fund*. This is a Supreme Court of Appeal decision reported in 2018 (4) SA 366 (SCA) and in that matter the court held:

"It is trite that an expert witness is required to assist the court and not to usurp the function of the court. Expert witnesses are required to lay a factual basis for their conclusions and explain their reasoning to the court. The court must satisfy itself, as to the correctness of the expert's reasoning."

10 If a person is to be taken, on a package basis, to the D5 level, as an expert, in my opinion, you must lay a factual basis for that conclusion and you must explain the reasoning. An indication of "in my opinion" does not fulfil the requirement as it is laid down in *Bee v The Road Accident Fund*.

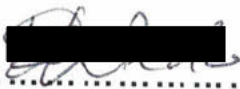
The industrial psychologist predictions are of no assistance to the Court and it is rejected. That being the case, the actuarial calculation is equally of no assistance to the Court and rejected.

20 The ruling of the Court is then that, as far as the claim for past loss of income is concerned, it is neither here nor there, it deals with short periods off, it is the amount of R57190, and that claim succeeds, and the defendant is liable to compensate the plaintiff in respect of past loss of income, the amount of R57190.

As far as the plaintiff claim for future loss of income is concerned, I do not wish to dismiss the claim and given the time delay, I also do not want to hand down an order of absolution because it would have the same effect as a dismissal. What I am going to do is I am going to refuse the application for default judgment in respect of future loss of earnings and which would allow the plaintiff the opportunity to reconsider the manner in which he wishes to present his case and hopefully do so in future on a better
10 factual basis than the one that is before Court at the moment. To the extent that the plaintiff is successful, albeit on a limited basis, the plaintiff will be entitled to party and party costs as taxed or agreed insofar as they relate to the aspect of loss of income, subsequent to the date of the previous cost order of the 23rd of July 2024.

My order is therefore as follows:

1. The defendant shall pay the plaintiff the sum of R57190 in respect of past loss of income,
- 20 2. The plaintiff's application for default judgment for future loss of income is refused.
3. The defendant shall pay the plaintiff's party and party costs as taxed or agreed incurred subsequent to the Court Order of the 23rd July 2024.


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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 7/11/2024