IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 031315/2024

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

MKHONZA SIPHOSETHU Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

WEIDEMAN, AJ: Matter number 12 on the roll, case number 03135/2024, the matter of Mkhonza and the Road
20 Accident Fund. This matter is on the roll for the week of the 22 October 2024. The matter was called on the 22nd, counsel made his submissions, and I indicated that I would like to consider the matter and would give my ruling this morning.

The date on which this accident occurred, the date

of the accident is the 13 August 2019, and the plaintiff was born on the 1 June 2002. He was therefore approximately 17 years old at the time of the accident. Plaintiff was a cyclist and the collision occurred on the road.

Between the section 19(f) affidavit and which is to be found on CaseLines at 14-124 and the officers accident report form which can be found at 14-100 there appears to be some differences as to how exactly the accident occurred. I had sight of and considered these documents
10 as a result of an application that was brought by counsel at the commencement of the hearing in terms of Rule 38(2) for the tendering of evidence by way of affidavit. That application is to be found on CaseLine at 02-1.

Despite my reservations as to the exact circumstances of the collision the only evidence that is before me is the version of the plaintiff and which is not inherently improbable. Based on that version the plaintiff should be entitled to succeed on the aspect of negligence.

As far as the quantum of the matter is concerned
20 the plaintiff sustained multiple injuries including a fractured pelvis and a fracture of the left tibia and fibula. There were further a left pneumothorax with rib fractures and a fracture of the right malleolus.

The plaintiff was repeating Grade 11 when the accident occurred and succeeded with Grade 12 in 2020. I

could not find a clear indication between the documentation of what exactly occurred during the period 2021 to 2024, but be that as it may, given the content of the reports file of record, I am satisfied that the plaintiff has made out a case for loss of income and which is effectively the only issue that is before me. The calculation is to be found on CaseLines at 08-64.

I find no reason to deviate from the actuarial calculation as far as it relates to accrued or past loss of
10 income and the amount of R248 235 in respect of past loss of income is allowed, after the deduction of a contingency.

I am a bit more concerned about the claim for future loss of income and in particular do not have absolute clarity as to whether the uninjured or the injured income represents the more realistic future projection of the earning capacity of the plaintiff.

The approach that I have adopted is because of the length of the period and the nature of the work that the plaintiff will be doing, to apply a contingency, the same
20 contingency, to both uninjured and injured earnings at one percent per annum, which is about 43 percent over the period of the calculation. Looking at the two amounts that the actuary reflected in his report being R4 979 000 and R4 838 600, I have deducted a contingency of 43% to arrive at a future value of income of, in the once instance,

R2 838 030 and in the other R2 758 002.

As I am not certain which of those figures are the correct one I have adopted the approach of adding them together and dividing them by two to arrive at an average which is R2 798 016. Based on the information available to me I am of the opinion that the plaintiff's impairment of capacity is 20%. I have made provision for 20% of the amount of R2 798 000 and which is an amount of R559 603.20. If you add back the R248 235 in respect of accrued loss of income then the combined total for both past and future loss of income is R807 838.20. This is then the amount that I award in this matter in respect of loss of income.

There are multiple draft orders uploaded on CaseLines. Looking at the draft order at CaseLines 21-1 I follow that order but for the amount in paragraph 4 which reduces and changes to the said sum of R807 838.20. The balance of this order is acceptable and can stay as it is.

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COURT: Counsel do you wish to amend the order and hand it up to me to mark or do you want me to read this order into the record?

APPLICANT'S LEGAL REP: M'Lord I would happily amend the order downstairs. It will probably take me about 10 minutes and then I can bring that back up to Your Lordship.

COURT: Thank you.

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ORDER

I then hand down the following order which counsel will prepare in hard copy for assistance:

1. that the applicant's application in terms of rule 38(2) is granted.

2. The defendant is held liable for 100% of the plaintiff's proven and or agreed damages.

10 3. To furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 as amended for the cost of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in a motor vehicle accident.

4. The defendant is ordered to pay the plaintiff an amount of R807 838. 20 in full and final settlement of

20 the plaintiff's claim for past and future loss of earnings within a 180 days of date of this order.

5. The aspect of general damages is postponed *sine die*.

6. The amount stated in paragraph 4 above shall be paid into the plaintiff's attorney's trust account with details

and then insert the details.

Paragraph 7 deals with interest.

Paragraph 8 and 9 deals with cost.

Paragraph 10, just reconfirm to me the position in respect of the contingency fee agreement.

APPLICANT'S LEGAL REP: There, M'Lord there is a valid contingency fee agreement, and it makes provision for 25 percent inclusive of VAT.

COURT: And that has or will be uploaded?

10 APPLICANT'S LEGAL REP: That has been uploaded under the lodgement bundles M'Lord.

COURT: Paragraph 10 of the order then reads it is recorded that the plaintiff's attorney do act in terms of the contingency fee agreement in this matter.

This then is the order in matter in number 12.

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COURT: In case number 031315/2024 the matter of Mkhonza and the Road Accident Fund, I handed down a ruling in this matter earlier. That is now reduced to an

20 order which I have in front of me consisting of 7 paragraphs.

The first deals with the aspect of negligence.

The second with the undertaking.

The third is in respect of loss of income. A payment of the amount of R807 838.20.

Paragraph 4 deals with interest.

Paragraph 5 and 6 with cost. There is a contingency fee agreement, and you say it complies.

APPLICANT'S LEGAL REP: That is correct M'Lord.

COURT: I mark it X for identification.

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10 **WEIDEMAN, AJ**

JUDGE OF THE HIGH COURT

DATE: 27/11/2024