



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable / Reportable

Appeal No: A87/2023

Court a quo Case No: 5746/2015

In the matter between:

JACOBUS JOHANNES MARITZ

APPELLANT

And

THE ROAD ACCIDENT FUND

RESPONDENT

Neutral citation: *Jacobus Johannes Maritz v The Road Accident Fund (A87/2023)*

Coram: **Chesiwe, et Daniso, JJ, Ramdeyal, AJ**

Heard: **16 September 2024**

Delivered: **06 December 2024**

Summary: Claim for future loss of earnings- plaintiff must adduce evidence which proves a physical disability resulting in a loss of earning capacity including the actual loss-in assessing damages, the court is not expected to adopt a cavalier approach and accept

expert medical opinions solely on the grounds that they are uncontentious- principle restated.

ORDER

The appeal is dismissed.

JUDGMENT

Daniso, J (Chesiwe, J et Ramdeyal, AJ concurring)

[1] This is an unopposed appeal against the whole judgment and order handed down by Molitsoane J on 7 March 2023 dismissing the appellant's claim for future loss of earnings with costs.

[2] The judgment emanates from an action instituted by the appellant against the respondent under various heads including: loss of earnings, future medical expenses and general damages arising from injuries he sustained when the vehicle he was driving collided with a motor vehicle driven by Mr. Poka Richard Lekhu on 26 August 2012.

[3] It was common cause that, at the time of the accident, the appellant was 36 years old. He was employed at Transnet as a welder. He resumed his employment in the same position post-accident. Two days after the accident, he experienced persisting neck pain which resulted in him driving himself to hospital where X-Rays

were performed. However, no abnormalities were evident as a result, he was discharged on the same day with pain medication for muscle spasms of the cervical spine. The neck pain and headaches persisted for at least a month with the result that he consulted his doctor on various occasions and also underwent more X-Rays, which repeatedly revealed no abnormalities.

[4] Subsequent to defending the action, the respondent conceded the merits 100% of the plaintiff's proven or agreed damages and undertook to furnish the appellant with the statutory undertaking for future medical expenses as provided for in s 17(4)(a) of the Road Accident Fund Act¹ (the Act) whilst the appellant withdrew his claim for general damages upon the findings by the Appeal Tribunal (the Tribunal) that his reported neck injury was not serious as predicated in Regulation 3(1)(a) of the Road Accident Fund Regulations, 2008,² as it was simply a typical whiplash with no significant long-term, life-altering consequences. The only issue that remained to be adjudicated by the court a quo was the claim for loss of earnings.

[5] In the court a quo, the parties agreed that no oral evidence was to be led by either party. By agreement, the appellant submitted his expert reports together with affidavits which included reports by the general practitioner Dr JJ Schutte, orthopaedic surgeon Dr Oelofse, occupational therapist Ms Carien Smit, industrial psychologist Dr EJ Jacobs and actuaries Munro Actuaries, in his quest to prove his claim. The respondent handed in a letter from the Health Professions Council of South Africa (the HPCSA) incorporating the findings of the Appeal Tribunal regarding the assessment of the appellant's reported neck injury.

[6] The experts diagnosed the appellant's neck injury as a cervical spine injury (C6/C7 disc lesion). According to the experts, as a result of the *sequelae* of the injury namely, chronic headaches, muscle spasm, constant neck pain and mild to advanced spondylosis, the appellant's productivity and working ability as a welder has been curtailed. Three months after the accident, he also started experiencing knee pain which is also attributable to bumping his knee against the dashboard at the time of the

¹ Act No, 56 of 1996 (as amended).

² See record volume 2 page 261 to 264.

accident. The neck pain is aggravated when he is looking up for a prolonged period or by working with his hands above his head. The knee pain increases when he kneels while doing his welding duties or even walking for long periods. As a result, the appellant must be accommodated in light sedentary duties, and he will likely be able to work until the retirement age of 60. If not, he will retire earlier. Furthermore, the applicant might require a spinal fusion in the future, therefore, he has become an unfair competitor in the job market. He must, accordingly, be compensated for future loss of income in the amount of R2 370 700.00.

[7] On the other side, relying on the Tribunal's report, the respondent was adamant that the injury relied upon by the appellant as the basis of his claim was found to be a non-serious injury, but a typical whiplash which had no significant long-term, life-altering consequences. This fact was also confirmed by the Magnetic Resonance Imaging (MRI) scan which diagnosed the neck injury as a mild or early spondylosis at C6/C7, consistent with whiplash and not the C6/C7 disc lesion as proffered by the appellant's experts. The series of X-Rays underwent by the appellant also did not reveal any abnormalities to the spine and the respondent contends that if the appellant were to undergo surgery in the future, it would be due to age-related spondylosis and not as a result of the *sequelae* of the accident injury. Ten years post the accident, the appellant is still employed in the same position with salary increases since then. The appellant is still able to work therefore, he is not entitled to a total loss but a reduced capacity compensation in the amount of R634 640.00.

[8] In arriving at its conclusion that the appellant failed to prove his entitlement to the damages he sought, the court *a quo* held that the assessment of the appellant's damages was based on incorrect facts in that the admitted expert reports regarding the nature and severity, including the *sequelae* of the appellant's reported neck injury, was gainsaid by the Appeal Tribunal's findings of non-serious injury which were not reviewed and set aside, including the MRI scan which diagnosed the neck injury as a mild whiplash.

[9] The appellant is aggrieved by the court *a quo*'s findings. I will not repeat the appellant's grounds of appeal as embodied in the appellant's notice of appeal *verbatim*, except to point out that they are essentially directed at the court *a quo*'s

reasons for dismissing the appellant's claim and for '*intervening inappropriately in the proceedings*' by raising the issue of lack of evidence to sustain the claim, whereas the contents of the appellant's expert reports alluding to that fact were not disputed.

[10] It is the appellant's case that in determining the appellant's claim for loss of earnings, the court a quo incorrectly applied the test applicable to general damages by taking into consideration the Appeal Tribunal's findings that the appellant's injury was non-serious and thereafter reasoned that the appellant was disentitled to the damages he sought. The findings of the Appeal Tribunal were irrelevant for the determination of the appellant's claim as his claim for general damages was abandoned. The appellant further states that the court a quo erred by rejecting the medical opinions rendered in the appellant's expert reports regarding the nature of the injury sustained by the appellant on the grounds that they were flawed, as the reports were handed in by agreement between the parties, their contents were not disputed or gainsaid by evidence to the contrary. Instead, the fact that injury sustained by the appellant has reduced his earning capacity was admitted by the respondent with the result that the respondent offered a reduced amount of R634 640.00. Accordingly, the order of the court a quo must be set aside and replaced with an order in favour of the appellant in the amount of R2 370 700.00 together with interest and costs.

[11] The court a quo's reasoning for classifying the appellant's claim as one resorting under general damages is contained in para 15 of the court a quo's judgment. It is tested law that an appeal does not lie against reasons for an order or decision, but rather against the substantive order itself.³ That aside, having regard to the manner in which the court a quo meticulously evaluated the evidence upon which the appellant relied in his quest to prove his claim, the court a quo was alive to the fact that the species of the appellant's claim involved the assessment of damages arising from future loss earnings occasioned by the injury he sustained in the accident.

³ *Western Johannesburg Rent Board and another v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 355; *SA Metal Group (Proprietary) Limited v International Trade Administration Commission & Another* [2017] ZASCA 14 para 15.

[12] The onus is on the appellant to prove that the injury he sustained in the accident has resulted in a disability which in turn has resulted in a loss of his patrimony on a balance of probabilities.

[13] It is clear from what is deliberated in paras 16 to 20 of the court a quo's judgment that in arriving at the conclusion that the appellant failed to discharge that onus the court a quo took into account that the medical opinions of the appellant's experts regarding the nature and *sequalae* of the appellant's injury were also gainsaid by the medical diagnostic tools, notably the MRI scan which classified the injury as a minor whiplash as opposed to the incapacitating C6/C7 disc lesion proffered by the experts. (Record volume 1 page 142 to 144).

[14] In support of its findings the court a quo made reference to Corbett's *Quantum of Damages*⁴ and quoted the following: 'Before damages payable to the injured person can be assessed it is necessary that the court should determine factually what injuries were suffered by the plaintiff as a result of the defendant's wrongful act . . .'

[15] I cannot fault the court a quo's findings in this regard. This line of reasoning has also been endorsed by the Supreme Court of Appeal in *Road Accident Fund v Kerridge*⁵ (*Kerridge*) where it was pointed out that the assessment of the amount to be awarded as damages only arises after a claimant has proffered sufficient evidence to prove the alleged loss of income. This principle was also enunciated in *Rudman v Road Accident Fund*⁶ where the court held that there must be evidence that due to the nature of the injury sustained by the appellant, his capacity to perform his duties has been impacted with the result that his earning capacity has been diminished.

[16] It is a fallacy that a court is not at liberty to either accept or reject the evidence proffered in the expert reports where they have been handed in by agreement and the contents have been admitted or not disputed. In *Kerridge* the Court made it clear at para 50 that:

⁴ *Quantum of Damages*, Vol 1 Corbett 4th ed, Gauntlett at 30.

⁵ *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA).

⁶ *Rudman v Road Accident Fund* 2003 (SA) 234 (SCA).

'The role of experts in matters such as these and the opinions they provided could only be as reliable as the facts on which they relied for this information. Too readily, our courts tend to accept the assumptions and figures provided by expert witnesses in personal injury matters without demur. The facts upon which experts rely could only be determined by the judicial officer concerned. An expert could not usurp the function of the judicial officer, who was not permitted to abdicate this responsibility- the court should actively evaluate the evidence.'

[17] I am also in agreement with the court a quo's rejection of the expert medical opinions on the grounds that the assessment upon which they are based is flawed. In the oft cited English decision of *R v Turner*⁷ it was held that:

'Before a court can assess the value of an opinion it must know the facts upon which it is based. If the expert has been misinformed about the facts or has taken irrelevant facts into consideration or has omitted to consider relevant ones, the opinion is likely to be valueless.'

[18] It is also important to point out that the fact that the injury sustained by the appellant has reduced his earning capacity on its own, does not entitle the appellant to be awarded the damages he sought. There must be proof that the reduction in his earning capacity indeed gave rise to a pecuniary loss.⁸ On the facts germane to this matter there was no loss as post- accident, the appellant is still employed in the same position with the same salary including salary increases. In the circumstances this appeal stands to be dismissed.

ORDER

[19] In the light of the above, I propose the following order:

1. The appeal is dismissed.

⁷ *R v Turner* [1975] 1 All ER 70.

⁸ Footnote 6 at para 11.

The Honourable Justice 
2024 -12- 06
N.S. Daniso NS DANISO J

I concur


S CHESIWE J

I concur

P/A. 
T RAMDEYAL AJ

Appearances

Counsel for appellant: Adv. PJJ Zietsman S.C

Instructed by: Honey Attorneys

BLOEMFONTEIN

Counsel for respondent: No appearance by the respondent.

Instructed by: **BLOEMFONTEIN**