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

Not reportable

Case no:4166/2021

In the matter between:

R. J. RAMAKATSA **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *R. J. Ramakatsa v Road Accident Fund (4166/2021)*

Coram: **GUSHA, AJ**

Heard: **27, 28, 30 August 2024 and 16 September 2024**
Heads of Argument filed 19 and 20 September 2024.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time of hand down is deemed to be at **11h00 on 30 December 2024.** A hard copy has been placed in the pigeonholes of the legal representatives of the parties.

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Summary: *Motor vehicle collision – claim for damages consequent upon bodily injuries sustained – merits – liability of Road Accident Fund. Quantum – general damages – loss of*

earnings.

ORDER

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1. The defendant shall pay the plaintiff the total sum of R3 144 688.00 in respect of general damages and future loss of earnings.

2. The defendant is ordered to furnish to the plaintiff with an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.

3. The defendant shall pay the plaintiff's taxed or agreed party and party costs on scale A, including but not limited to the costs set out hereunder:

3.1. The reasonable qualifying and reservation fees and expenses (if any) of the following experts

3.1.1. Dr LF Oelofse – Orthopaedic Surgeon

3.1.2. Ms AM Kunz – Occupational therapist

3.1.3. Dr AC Strydom – Industrial Psychologist

3.1.4. Dr MB Huth – Neurologist

3.1.5. Dr S Van Heerden – Plastic Surgeon

3.1.6. Mr JJC Sauer – Actuary

3.1.7. Dr J Desai – Maxillofacial and Oral Surgeon

3.1.8. Ms M Kok – Neuropsychologist

4. Payment of the capital amounts shall be made without set-off or deduction, within 180 (hundred and eighty) calendar days from the date of granting of this order, directly into the trust account of the plaintiff's attorneys of record by means of electronic transfer, the details of which shall be furnished to the defendant by the plaintiff's attorneys of record.

5. The plaintiff's claim for past hospital and medical expenses is separated in term of the provisions of Rule 33(4) of the Uniform Rules of Court and postponed for later adjudication.

JUDGMENT

GUSHA AJ

[1] On 2 August 2020 the plaintiff, then 48 years old, was involved in a vehicle collision (the collision) with a heavy motor vehicle (truck) with unknown registration details and driven by an unknown driver (unknown insured driver). The collision occurred on the R30 and R34 intersection in the direction heading towards Odendaalsrus. At the time of the collision the plaintiff drove a motor vehicle with registration HCT […]. The plaintiff sustained bodily injuries as a result of the collision and resultantly instituted damages against the Road Accident Fund (the defendant) for the said bodily injuries and its *sequelae.*

[2] The plaintiff alleged in his particulars of claim that the collision was caused by the sole negligence of the unknown insured driver who, amongst others, drove at an excessive speed, failed to keep a proper look out and failed to comply with statutory road traffic regulations.

[3] The defendant denied any knowledge of the incident and pleaded that should it be found that the incident occurred as alleged by the plaintiff it specifically denies that the unknown insured driver was negligent. The defendant further pleaded that in the event that the court finds that the unknown insured driver was negligent, it denied that such negligence was the cause of the collision. In the alternative, the defendant further

pleaded that in the event that the court finds that the unknown insured driver was both negligent and that such negligence caused the collision, the court should find contributory negligence on part of the plaintiff and accordingly reduce his claim in accordance with the provisions of the Apportionment of Damages Act 34 of 1956.

[4] The parties could not meet each other with regards to separation of the merits and quantum in terms of rule 33(4) of the Uniform Rules of Court; this matter accordingly proceeded to trial on both merits and quantum.

[5] Prior to the commencement of the trial, I was informed by the parties that the following aspects were now common cause between them: compliance by the plaintiff with all formal requirements of the Road Accident Fund Act 56 of 1996 (the Act), *locus standi* as well as jurisdiction. The parties were further in agreement that the only issues in dispute were whether there was a collision, if so, whether there was an insured driver, and if so, whether any contributory negligence could be attributed to the plaintiff.

[6] In support of his claim, the plaintiff tendered evidence as follows: he testified that in the early hours of 2 August 2020 he was *en route* from the mine compound where he resided to his place of work at the mine. He travelled on the R30, a route he drove on routinely on his way to and from work for the past 14 years. The R30 is a dual carriageway and the traffic at the time was light with vehicles traveling in both directions. The speed limit on the R30 is 120 k/h and he drove between 60-80 k/h with his headlights on. Ahead of his vehicle were some four to five vehicles, he also noticed on his rear-view mirror vehicles behind him.

[7] The plaintiff further testified that the R34 intersects with the R30 at a junction, and a motorist travelling on the R34 must turn left or right in order to join the R30. A driver travelling on the R34, upon reaching the intersection, is met with a stop sign which, across the road, is accompanied by a chevron traffic sign signaling to motorists that the R34 does not continue straight, but merges with the R30.

[8] Whilst driving and approaching the T-junction in question, he observed a truck approaching from the R34 towards the R30. He surmised that the truck would stop at the T-junction as he, travelling on the R30, had the right of way. Soon after he drove past the T-junction, he heard a loud crash as the truck collided with his vehicle on the left side. After the collision, he was trapped in the wreck. He lost consciousness and next regained it when he was admitted at St Helena Hospital.

[9] The plaintiff sustained multiple injuries, scalp abrasions, head and face injuries, left hip and upper leg injuries, a shoulder injury and sustained visible disfigurement and scarring to his head, face, shoulder and legs. When the plaintiff was called to testify, I observed that he walked with a pronounced limp and with the use of a crutch.

[10] At the time of the collision he was employed at Tshepong Mine, working underground as a development team leader and earned approximately R15 200.00 per month. Subsequent to the collision, he was laid off at work.

[11] The plaintiff was in cross-examination and quizzed on the condition of his vehicle pre-collision – he testified that it was in good condition. He was also quizzed on the speed he drove in relation to the speed at which the truck drove. He maintained that he drove lower than the speed limit and could not say at which speed the truck drove. He further maintained that there was a stop sign at the intersection signaling to traffic on the R34 to stop before joining the R30.

[12] The second witness to testify was Sgt Mahlatsi, a police officer employed by the South African Police Service as a detective at Odendaalsrus. He testified that he received a call regarding an accident on the R30 at approximately 02h35. He made his way to the scene, where he found the plaintiff's badly damaged vehicle on the passenger side. He observed that the plaintiff was still trapped inside, badly injured.

[13] He testified that the R30 is well known to him; at the T-junction there is a stop

sign and across from it, a chevron road sign. During cross-examination his evidence was not seriously taken issue with, save to probe whether he observed anything which might indicate the plaintiff's vehicle may have overturned and rolled. He responded in the negative and testified that upon his arrival, the vehicle was on its wheels. He was also quizzed on the presence of the stop sign and he testified that he could not recall whether there were times when the stop sign was absent, he was however certain that there is a stop sign at the T-junction.

[14] In addition to the *viva voce* evidence the plaintiff submitted into evidence, the following expert reports in terms of Rule 38(2)[1] were tendered;

15.1. Dr LF Oelofse – Orthopaedic Surgeon

15.2. Ms AM Kunz – Occupational therapist

15.3. Dr AC Strydom – Industrial Psychologist

15.4. Dr MB Huth – Neurologist

15.5. Dr S Van Heerden – Plastic Surgeon

15.6. Mr JJC Sauer – Actuary

15.7. Dr J Desai – Maxillofacial and Oral Surgeon

15.8. Ms M Kok – Neuropsychologist

[15] The plaintiff hereafter closed his case. The defendant closed its case without tendering any evidence.

[16] Section 17 of the Act provides for the liability of the defendant and states that;

'(1) The Fund or an agent shall –

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(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee:'

[17] It is established law that the plaintiff has to prove its claim against the defendant on a preponderance of probabilities.[2] The preponderance of probabilities standard requires that the court must be satisfied that an incident or event happened if the court considers that, on all the evidence before it, the occurrence of the event is more likely than not. Thus, for the plaintiff to succeed, the court must be satisfied that it is more likely than not that the incident happened as recounted by him.[3]

[18] Whether the pre-requisites for liability have been met or not, the court in *Wells v Shield Insurance*[4] stated that such a determination involved two separate enquiries. The first being concerned essentially with the cause of the bodily injury, whereas the second is concerned with legally blameworthy conduct on the part of certain persons as being the cause of the bodily injury.

[19] On the evidence before me, the first pre-requisite need not detain this court any further, it has been met. There is no doubt that the plaintiff sustained the injuries he did

[2] *Sardi and Others v Standard and General Insurance* 1977 (3) SA 776 (A).
[3] *Chauke v RAF* [2023] ZAFSHC 214.
[4] *Wells and Another v Shield Insurance Co and Others* 1965 (2) SA 865 (C).

as a result of a motor vehicle collision. The defendant did not present any evidence gainsaying the plaintiff's version on this aspect.

[20] In my view, similarly, the second pre-requisite has been met as well. The court only has the version of the plaintiff with regards to the alleged negligence of the unknown insured driver and must therefore decide this aspect on that version alone, as the defendant did not tender any gainsaying evidence. Furthermore, if regard is had to the admitted evidence – the photographs of the R30 and R34 layout – it becomes evident to any licenced driver that traffic driving on the R34 joining the R30 must stop at the intersection, that is the ordinary, orderly and legal manner of driving. Accordingly, in the absence of any other gainsaying evidence, it must follow, as testified by the plaintiff, that a vehicle travelling on the R34 joined the R30 without stopping at the intersection and collided with the vehicle driven by the plaintiff.

[21] What now remains for decision is the quantum of damages to be awarded to the plaintiff for the bodily injuries he sustained. Towards the tail-end of these proceedings, the defendant made a tender in terms of s 17(4) of the Act in respect of future medical expenses. The plaintiff accepted the tender. Where the parties are at odds with each other is with regards to the remaining heads of damages.

[22] The plaintiff submitted in argument that a fair and reasonable amount to award in respect of general damages was R1 200 000 whereas the defendant submitted that amount to be R500 000. In respect of future loss of future earning capacity, the plaintiff submitted that a fair and reasonable amount would be an amount of R2 644 688, making provision for a 5% contingency deduction as per the actuary's expert report. The defendant, in turn, submitted that this amount should be an amount of R1 184 557.20, after applying a 50% contingency deduction on the actuarial calculations.

[23] It needs no restating that a person is entitled to be compensated to the extent his or her patrimony has been diminished in consequence of another's negligence.[5] It further

[5] *RAF v Guedes* [2006] ZASCA 19; 2006 (5) 583 (SCA) para 8.

needs no restating that such damages include loss of future earning capacity. However, the calculation of the quantum of a future amount, such as loss of earning capacity, is not a matter of mathematical calculation. By its nature such an enquiry is speculative and a court can, therefore, only make an estimate of the present value of the loss which is often a very rough estimate. The court necessarily exercises a wide discretion when it assesses the quantum of damages due to the loss of earning capacity and has a large discretion to award what it considers just. Courts have adopted the approach that, in order to assist in such a determination, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just.[6]

[24] It is trite that the determination of allowances for contingencies involves, by its very nature, a process of subjective impression or estimation rather than an objective calculation. The question of the contingencies deductions to be applied, as is the issue of the calculation of the quantum of a future amount, such as loss of capacity, are often difficult matters.

[25] There are no hard and fast rules of mathematical logic in the determination of a contingency discount. One has to make a value judgment in determining a rate of contingent discount. The court has a wide discretion based upon a consideration abysm of all the relevant facts and circumstances. Contingencies of whatever nature generally serve as a control mechanism to adjust the loss to the circumstances of the individual case in order to achieve justice and fairness to the parties.[7]

[26] With regard to loss of income the plaintiff must adduce evidence of his income in order to enable the court to assess his loss of past and future earnings. In *Mvundle v RAF*[8] the court held that '[i]t is trite that damages for loss of income can be granted where a person **has in fact suffered** or will suffer a true patrimonial loss in that his or her

[6] Ibid para 8. See also *AA Mutual Assurance Association Ltd v Maqula* 1978 (1) SA 805 (A) at 809B.
[7] *Hall v Road Accident Fund* [2013] ZAGPJHC 129 para 52.
[8] *Mvundle v Road Accident Fund* [2012] ZAGPPHC 57.

employment situation has manifestly changed.'[9]

[27] In the present matter, the plaintiff suffered a loss of his earning capacity post the collision. He was retrenched; however, he was not left totally out of pocket as, prior to being retrenched, he received his basic salary and, post retrenchment, his severance package as well as a disability grant from the government, which bolstered his income. With these facts in mind, I hold the view that for general damages, an amount of R500 000 is fair and reasonable compensation.

[28] In respect of future loss of earning capacity, I see no reason to deviate from the accepted actuary report. The defendant agreed to have the reports tendered in terms of s 38(2) of the Act, it would therefore not be proper to now question same in the heads of argument. The factual allegations in the affidavit stand unchallenged and, accordingly, no dispute of fact in respect thereof arises. I consequently conclude that the defendant is to pay the plaintiff the amount of R2 644 688.00 in respect of the future loss of earnings.

Costs

[29] The general rule with regard to costs is that the same follows the result. Although counsel for the defendant submitted that I make a costs order on scale C, I am not persuaded. This was a rather run-of-the mill case with nothing complex justifying costs on scale C.

Order

[30] Resultantly, I make the following order:

1. The defendant shall pay the plaintiff the total sum of R3 144 688.00 in

[9] Ibid para 42 with my emphasis added.

respect of general damages and future loss of earnings.

2. The defendant is ordered to furnish to the plaintiff with an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.

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4. Payment of the capital amounts shall be made without set-off or deduction, within 180 (hundred and eighty) calendar days from the date of granting of this order,

directly into the trust account of the plaintiff's attorneys of record by means of electronic transfer, the details of which shall be furnished to the defendant by the plaintiff's attorneys of record.

5. The plaintiff's claim for past hospital and medical expenses is separated in term of the provisions of rule 33(4) of the Uniform Rules of Court and postponed for later adjudication.

NG GUSHA, AJ

Appearances

For the Plaintiff:	Adv. D.J Marx
Instructed by:	Du Plooy Attorneys
	Bloemfontein
For the Excipients:	Mrs. J Gouws
Instructed by:	Office of the State Attorney
	Bloemfontein