

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 31932/2004

DATE: 22-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 22/01/2025

SIGNATURE [REDACTED]

10 In the matter between

PHINDIWE ELIZABETH N TSAPO

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

- - - - -

20 Matter number 40 on this week's roll is Phindiwe Elizabeth Ntsapo and the Road Accident Fund, case number 31932/2004. The accident from which this claim arose occurred on the 24th of January 2000. The plaintiff was born on the 2nd of October 1957. The plaintiffs claim as per the Particulars of Claim consists of the following:

1. future loss of earnings	R250000,
2. future medical expenses	R300000,
3. general damages	R300000,
Total	R850000.

Counsel was asked whether the particulars of claim had been amended, and the answer was in the negative. As far as the aspect of negligence and/or liability is concerned same had been conceded in favour of the plaintiff on or
10 about the 9th of June 2022, 22 years after the accident.

Summons in this matter was issued, according to the registrar's stamp on the front of the summons, on the 30th of December 2004.

Without having to consider and deal with the plaintiff's injuries in any detail, the injuries as per paragraph 7 of the Particulars of Claim consisted of the following: head injury, head and scalp laceration, a lumbar spine injury. Those
20 were the injuries which the plaintiff reported in 2004 when summons was issued.

The matter commenced with a debate between the bench and counsel on the applicability of the *Mvumvu* decision on the plaintiff's claim for general damages. Subsequent to a

discussion of that issue and in particular the Constitutional Court judgment, it was agreed that the matter must be dealt with in terms of the Transitional Provisions Act and after taking instructions, counsel advised that the aspect of general damages will be dealt with in accordance with the written offer of settlement that had been received from the defendant. This offer of settlement was made on or about the 3rd of June 2010 and it was for an amount of R25 000.

- 10 On the 22nd of January when the matter continued, counsel moved an application in terms of Rule 38(2.) This application dealt only with the evidence of the plaintiff's experts. The application was granted.

As far as the various heads of damage were concerned, the plaintiff did not claim any past hospital medical expenses, so that was not discussed. As far as future medical expenses are concerned, an Undertaking was tendered in 2010. The aspect of future medical expenses will
20 accordingly be dealt with on the basis of the awarding of an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act.

As I have indicated, the aspect of general damages is no longer in dispute as the plaintiff has accepted the tendered

amount of R25000.

What is left is the plaintiff's claim for loss of income. Effectively, the totality of the argument that was presented falls outside the ambit of the Particulars of Claim. The particulars of claim makes no provision for a claim for past loss of income, it only addresses a claim for future loss of income. The plaintiff is retired and receives a pension. In the circumstances there ought to be no future loss of
10 income.

Counsel was however provided with an opportunity to present argument in respect of loss of earnings. The difficulty in addressing the argument is that there is no documentation before Court setting out the plaintiff's employment history from the time of the accident to date. There is no evidence as to whether the plaintiff worked, and if so when and at what wage. To the extent that summons had been issued as far as back as 2004, 21 years ago, one
20 would have thought that the legal representative of the plaintiff would have asked her to keep a record of her employment to enable proper documentation to be placed before Court. The value of the actuarial calculation is solely dependent on the accuracy of the documentation on which it is based. That documentation is not before Court. There

is, therefore, no evidence as to how or where the actuaries obtained the time periods or figures used in their calculation. The claim for loss of income insofar as it is necessary to do so, is accordingly dismissed.

The order reads as follows:

- 1 The plaintiff is entitled to 100% of such damages as she may be able to substantiate.
- 2 In respect of the plaintiff's claim for future
10 medical expenses she is entitled to an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, for such future hospital, medical or ancillary expenses as she may require.
- 3 The plaintiff's claim for general damages is limited to the sum of R25000.
- 4 The plaintiff, having been substantially
20 successful is entitled to her party and party costs as taxed or agreed. Counsels' fees will be on scale A.

ORDER

In matter number 40, the matter was presented, and *ex tempore* ruling was given. That has now been reduced to writing. I have that order in front of me, I mark it X for identification.


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10 WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 22/01/2025
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