

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 072835/2024

DATE: 23-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 23/1/2025

SIGNATURE [Redacted Signature]

10 In the matter between

MAYENZEKE XULU

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: The matter of MM Xulu and the Road Accident Fund, case number 072835/2024. This matter was
20 called and dealt with on 22 January 2025. As the matter took up quite some time, I indicated that I shall hand down my ruling this morning.

The date of accident from which this claim arose occurred on 23 September 2021. The plaintiff was a pedestrian at

the time of the accident and was born on 23 January 2003.

The plaintiff's Particulars of Claim had been amended and in paragraph 5 of the Amended Particulars of Claim, CaseLine 02-22, the injuries were set out as follows:

‘Head injury: laceration/haematoma, forehead.

Comminuted midshaft fracture, right tibia and fibula.

10 Left thumb injury.

Scarring.’

It should be noted that there is no reference, in the Amended Particulars of Claim, to a brain injury. The head injury is described as a laceration or a haematoma to the forehead.

The claim as formulated in the Amended Particulars of Claim consisted of the following:

1. Future hospital medical expenses: R183 750.
- 20 2. Loss of future earning capacity: R7 million.
3. General damages: R2 million.

The total, as per the Amended Particulars of Claim is R9 193 750. This is incorrect and it should in fact be R9 183 750.

Under the heading of loss of future earning capacity, in the Amended Particulars of Claim, the following statements were included:

'The plaintiff was a tertiary student and is now unemployable.'

'The plaintiff will be restricted in all manual and ambulatory type of work in future.'

She will not be able to compete successfully in the open labour market.'

- 10 'The plaintiff is now permanently disadvantaged as a result of the accident.'

When the matter was first called, a lengthy debate took place between the Court and plaintiff's counsel in respect of the aspect of negligence. However, when the matter was recalled later in the day, the Court was advised that the aspect of negligence had been previously settled on the basis of a 90/10 apportionment in favour of the plaintiff.

- 20 From counsel's argument on the alleged impairment of earning capacity one may deduce the following:

The plaintiff wrote her Grade 12 examination in 2020. This was the year before the accident and her results were reflected in the National Senior Certificate and which is included in the court bundle at case lines 25-1:

1. IsiZulu as her home language 72%.
2. English, first additional language, 57%.
3. Life orientation 75%.
4. Business studies 57%.
5. Economics 33%.
6. Physical science 34%

The National Senior Certificate further recorded that the candidate had met the minimum requirements for the admission to higher certificate studies, subject to the admission requirements of the higher education institution concerned.

The plaintiff did not qualify for admission to university degree studies based on the National Senior Certificate.

The plaintiff did not study and did not seek employment during the period 2021 and 2022. The accident occurred in September 2021. No explanation can be deduced from the reports available as to the reason for this two-year hiatus. There is no information available to indicate why the plaintiff neither studied nor attempted to find employment.

In 2023 she enrolled at a TVET college for a N4 course in Human Resources Management. This was successfully

completed with academic results better than what she obtained in Grade 12.

In 2024 she again enrolled at the TVET College for N5 in the same field of study and the indication is that she was also successful in completed this course.

At CaseLines 08-45, in the educational psychologist's report, the allegation is that, had the accident not occurred, she would have completed at least an N6 certificate at the TVET college.

It is difficult to understand this statement as all studies that she embarked upon commenced after the accident and she had certainly, at the time when the educational psychologist was involved in the matter, successfully completed N4 and N5. Why would she suddenly not be able to do N6?

The basis for the educational psychologist's statement that she will not succeed with N6, given her proven track record in studying post-accident, is not grounded in fact nor is there any logic involved that could give it credibility.

The educational psychologist's opinion is rejected. It makes no sense. For her conclusions to stand a factual

basis must be provided and which is absent the report, given the plaintiff's proved academic track record post-accident.

Much was made, during the hearing in court, about physical limitations. However, one notes from CaseLines, at 08-53, that she was unequivocal in her aspiration that she wants to be a human resources manager and this was also the direction in which she was studying. This is by its very
10 nature a sedentary career.

We further gather from the industrial psychologist report, at CaseLine 08-54, that she had in fact done the N6 human resources management qualification, albeit that at the time when that report was prepared, the N6 is marked as "in progress" as the results were not yet available. This again flies in the face of the educational psychologist's assertion that she is not capable of undertaking N6 studies.

20 It is regrettable that the academic results for the N5 and N6 studies had not been made available to Court, albeit that the information contained in the educational and industrial psychologist reports suggests that those results should be available and therefore ought to have been uploaded. An adverse inference has to be drawn by the fact that it had

not been uploaded.

The medico legal reports of the educational psychologist and industrial psychologist contains opinions bereft of fact to underpin the opinions expressed and both the reports are rejected. From this it follows that the plaintiff's claim for impairment of earning capacity is rejected.

Counsel advised the court from the bar that general
10 damages is to be postponed *sine die*. However, at CaseLines 26-55 is a "without prejudice" offer uploaded for the settlement of general damages in the sum of R500 000, pre-apportionment. Post apportionment, the amount tendered is R450 000.

Rule 34(10) contains a prohibition against the disclosure of a without prejudice offer. Rule 34(13) contains a sanction in the event that a without prejudice offer is disclosed to a court before judgment is handed down. Rule 34(13)
20 indicates that any person who discloses an offer or tender before judgment is handed down shall be liable to have costs given against him even if he is successful in the action.

The above offer of settlement dated 24 January 2024 also

contains an offer of settlement in respect of future medical expenses. *De facto*, this head of damage was settled on 24 January 2024, yet it formed part of counsel's heads of argument and counsel argued future medical expenses in court and asked for an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act.

The Court's time had been wasted first in having to prepare on all issues. Secondly, to have to listen to counsel
10 presenting argument on liability when this aspect had already been settled at least two years ago. Further, to listen to submissions on future medical costs when this had been resolved, and another court's time is going to be wasted at some point in the future to resolve general damages, whereas it could have been done now, given the fact that there is, as a result of the tender, an admission by the defendant that the injuries are serious. The fact that counsel asked the Court to postpone general damages suggests that the documentation uploaded on CaseLine
20 have not been considered by counsel in his preparation.

The disclosure of the without prejudice offer, combined with the above issues, justifies an adverse costs order, not against the plaintiff, but against her legal representatives.

My order is as follows:

1. The defendant is liable for 90% of such damages as the plaintiff may be able to substantiate.
2. The plaintiff is entitled to an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, limited to 90% for such future hospital, medical and ancillary expenses as she may incur, after having incurred the expenses and on submission of proof thereof.
3. The plaintiff's claim for general damages is postponed
10 *sine die*
4. The plaintiff's claim for future impairment of earning capacity is dismissed.
5. The defendant is liable for plaintiffs party and party costs up to and including 24 January 2024.
6. Neither the plaintiff's attorney nor counsel may recover any legal fees, either from the plaintiff or the defendant, for the period 24 January 2024 to 23 January 2025.

20


.....

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 23/01/2025

CASE NUMBER-initials
YEAR-MONTH-DAY

0

JUDGMENT