

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 050897/2024

DATE: 28-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 28/1/2025

SIGNATURE [Redacted Signature]

10 In the matter between

SANDRA EDWARDS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

20 The plaintiff, an adult female, born on the 7th of June 1972,
was involved in an accident on the 25th of September 2022.
At the commencement of the hearing of the matter,
plaintiff's counsel moved an application in terms of Rule
38(2) for certain evidence to be led on affidavit and for
certain other collateral documentation to be allowed in
terms of the Law of Evidence Amendment Act. The
application was granted.

As far as the aspect of liability is concerned, the accident occurred in Trichardt Road in Boksburg and the version before court was that the plaintiff was travelling straight in the right-hand lane of Trichardt Road, which at that point in time must have carried two lanes of traffic in the same direction. At the time she was riding a motorcycle.

At a certain point she proceeded to pass a white Toyota Hilux motor vehicle and whilst in the process of doing so,
10 this vehicle suddenly and without warning, moved towards the right, encroaching into her lane of travel, and colliding with her motorcycle causing the accident.

There are no witnesses and no other evidence to support to the version presented by the plaintiff. However, it is a version that is not inherently improbable. With no evidence to contradict the plaintiff's version, it stands uncontested, and the defendant is liable for such damages as the plaintiff may be able to substantiate.

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If one then considers the aspect of quantum, then in the first instance cognisance should be taken of the injuries sustained in this matter. In the plaintiff's particulars of claim the injuries were modestly presented and consisted of a fracture of the shoulder, a head injury, permanent

scarring and psychological *sequelae*. However, according to the medico-legal reports filed of record, it appears that the injuries sustained went much further than what is contained in the particulars of claim.

In Professor Frey's report he, for example, added the following injuries, fractures of the cervical spine, C6 and C7, fracture of the first and second ribs on the right-hand side, a fracture of the left wrist and a complete brachial
10 plexus injury on the right-hand side and which correlates with the fracture of the shoulder referred to in the particulars of claim.

Given the Court's view on the aspect of loss of income, it is of no legal significance that the injuries referred to in Professor Frey's report, are not also reflected in the particulars of claim. If, on the other hand the claim for general damages was before court today, which it is not, then it would have been relevant.

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The injuries as set out in plaintiff's particulars of claim sufficed in persuading the court that the probabilities are that the plaintiff would have very limited future earning opportunities, which would be characterised by periods of unemployment, but that she would not be completely

unemployable.

Two actuarial reports had been uploaded. Given the court's view on the aspect of loss of income it does not matter that the second actuarial report did not come to the court's attention prior to the matter being called today.

Considering the medical evidence as is set out in the various medico legal reports and looking at the information
10 available to the industrial psychologist, the court accepts the gross amount calculated for past loss of earnings of R512 703. However, given the number of uncertainties surrounding the plaintiff's income, a 25% contingency deduction is to be applied to this amount which renders a net past loss of income award of R384 527.

As far as the plaintiff's claim for future loss of income is concerned, when looking at the first of the two actuarial reports, the court had no guidance as to which of the
20 scenarios are to be preferred. The approach adopted was accordingly as follows:

The amount of R2 452 935 was added to the amount of R2 045 814. The total thereof (R4 498 749) was then divided by two to average out the two scenarios. This rendered a

gross amount of R2 249 375. The uncertainties surrounding the plaintiff's income, the lack of substantiation of her income and the possibility of residual earning capacity motivated for an apportionment of 40% to be applied to this amount. The net award in respect of future loss of income, is therefore R1 349 625.

The plaintiff has a claim for pass medical expenses in the amount of R110 340.90 and there is the Undertaking in
10 respect of future hospital, medical ancillary expenses.

To summarise, my order is thus as follows:

1. The plaintiff's application in terms of rule 38(2) is granted.
2. The defendant is liable for 100% of such damages as the plaintiff may be able to substantiate.
3. The plaintiff's claim for general damages is separated out and postponed *sine die*.
- 20 4. The plaintiff is awarded R110 340.90 for past medical expenses is.
5. The claim for future medical expenses is to be dealt with the defendant providing an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for 100% of such

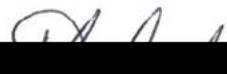
future hospital, medical and ancillary expenses as she may require as a result of the injuries sustained in the accident.

6. The plaintiff is awarded R384 527 for past loss of income.

7. The plaintiff is awarded R1 349 625 for future loss of income.

8. The plaintiff was substantially successful and therefore entitled to her party-and-party costs as taxed or agreed and as far as counsel's fees are concerned, such fees will be on Scale B.

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WEIDEMAN, AJ
JUDGE OF THE HIGH COURT
DATE: 28/1/2025