

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 050565/2022

DATE: 2025-01-30

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 30/1/2025

SIGNATURE [Redacted Signature]

10 In the matter between

MBHEMI MASIBULELE

Applicant

and

ROAD ACCIDENT FUND

Respondent

J U D G M E N T

WEIDEMAN, AJ: Matter 46 on this week's roll is case number 050565/2022, the matter of Masibulele Mbhemis and
20 the Road Accident Fund.

The accident from which this claim arose occurred on or about the 25th of January 2022 and at which time the plaintiff, at that stage a pedestrian, was injured in a so-called hit and run accident. The plaintiff was born on the

22nd of January 2001.

The matter proceeded on a default basis. At the commencement of his address, counsel moved an application in terms of Rule 38(2) to enable the plaintiff to lead his evidence, both in respect of liability and quantum on affidavits filed of record. The application was granted.

10 Plaintiff's counsel indicated that the claim for past hospital and medical expenses was abandoned and that the plaintiff will move an application in terms of Rule 33(4) to separate out the claim for general damages and to postpone same *sine die*. That application was also granted.

In addition to liability, the two heads of damage remaining before Court were future hospital and medical expenses and future loss of earnings.

20 Dealing first with the aspect of negligence, three documents are relevant. The first is the plaintiff's statutory section 19(f) affidavit and which is to be found on CaseLines at 009-76. This document reads as follows:

"On or about the 25th of January 2022 at 11am, I was involved in a motor vehicle collision. I was a pedestrian crossing the

road along Barry Marais, Alpine Street, Protea South, Soweto, when a motor vehicle with registration numbers and letters unknown (insured vehicle) knocked me down."

The next document of relevance is the plaintiff's statement as contained in the documentation of the South African Police Service and which is to be found on CaseLines at
10 009-19. This is a hand drafted statement of which the relevant section reads as follows:

*"On 25 January 2022 at about 11am I was walking alone along Alpine Street from Protea South shack to Protea Police View and as I was crossing Alpine Street then the motor vehicle, which was driving from behind, bumped me and I fell down on the pavement, fainted and when I wake up I realised that my left leg was seriously
20 injured."*

The third document of relevance is the sketch that accompanied the Police documentation and which is to be found on CaseLines at 009-18. This sketch suggests that the plaintiff, and on discussing the matter with counsel, the

pedestrian was crossing from east to west with the vehicle travelling from south to north. The pedestrian and the point of impact was shown on the western side of the street, just inside the road surface with the plaintiff being shown, *ex post facto* the accident, just off the road.

In the ordinary cause with the pedestrian crossing the road from right to left across the driver's path of travel, there ought to be an apportionment which significantly favours the
10 plaintiff.

However, in *casu* it is clear from the sketch that the incident occurred on a pedestrian crossing and as such I believe that it would be inappropriate to apply any apportionment against the plaintiff. It is accordingly my view that the plaintiff is entitled to 100% of such damages as he may be able to substantiate.

Turning to the aspect of quantum, the medico-legal reports
20 filed of record contain sufficient information to enable an Undertaking in respect of future hospital, medical, and ancillary expenses to be awarded.

That leaves the plaintiff's claim for loss of income. In this regard, the Court had significant difficulty with the claim as

presented. The documentation uploaded does not all seem to promote the same scenario and none of it is based on any evidence other than the plaintiff's verbal reporting. There was simply no collateral evidence of any nature made available to any of the experts which could lend credibility to any of the statements made by the plaintiff.

There are a number of cases in this Court and in this Division in which, under these circumstances, the claims for
10 loss of income have either been dismissed or where default judgment had been refused. I intend to take neither approach.

In this matter the plaintiff's claim, as contained in his particulars of claim, consisted of the following:

1. Past hospital and medical expenses: R100. This claim was abandoned from the Bar.
 2. Future hospital and medical expenses in respect of which an Undertaking was claimed and which I have
20 indicated will be awarded.
 3. General damages: R700 000 is being claimed. This head of damage has been separated out in terms of Rule 33(4) and postponed *sine die*.
 4. Future loss of earnings: R700 000.00
- Counsel was specifically asked whether the summons

had been amended and the response was that it had not been. The Supreme Court of Appeal, in various judgments, clearly stipulates that the dispute between the parties are defined by what is contained in the pleadings, and that it is neither possible nor proper for any party to argue a case not presented in the pleadings. A Court ought also not to venture outside the pleadings.

If it is not possible to move outside the pleadings, the
10 maximum amount open to the Court to award to the plaintiff for the claim for future loss of income is R700 000.00 and that is then also the amount that the Court awards.

My order is therefore as follows:

1. The plaintiff's application in terms of rule 38(2) is granted.
2. The plaintiff's application in terms of Rule 33(4) to separate out the claim for general damages and for same to postpone *sine die* is granted.
- 20 3. The defendant shall be liable for a 100% of the plaintiff's damages, as substantiated.
4. The defendant shall provide the plaintiff with an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act in respect of all future hospital, medical and ancillary expenses as and when the

plaintiff incur same and on submission of proof.

5. The plaintiff's claim for future loss of earnings is disposed of on the basis that the defendant shall pay the plaintiff the sum of R700 000.

6. The plaintiff had been substantially successful and is entitled to his party and party costs as taxed or agreed. Counsel's fees to on scale A.

That is my order.

COURT ADJOURNS

[10:26]

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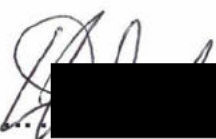
COURT RESUMES

[10:50]

In matter 46, that is the matter of Mbhemu and the Road Accident Fund, case 050565/2022, I have in front of me an order which is the typed version of the *ex-tempore* ruling that I gave earlier today.

I have made two manuscript amendments, I have changed the date to today's date, the 30th and the case number as reflected is wrong, there is too many sixes in it, I have
20 deleted the one six. I have initialled both manuscript amendments and mark the order X for identification.

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050565/2022-adj
2025-01-30

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JUDGMENT

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 30/1/2025