

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 028776/2024

DATE: 31-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 31/01/2025

SIGNATURE [REDACTED]

10 In the matter between

ALEXIOUS METHA MOJI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: Number 17 on this week's roll, case number 028776/2024, is the matter of AM Moji and the Road
20 Accident Fund. This matter was enrolled for the week of 28 January 2025 and was presented by counsel on Thursday 30 January 2025.

The accident from which this claim arose occurred on 13 December 2020. The plaintiff was a passenger.

As per the plaintiff's particulars of claim, his injuries were the following:

- a fracture of the right humerus;
- a fracture of the left radius;
- compression fractures of T7 and T9 vertebrae;
- a subacromial impingement of the right shoulder;
- a degeneration of the right AC joint and wrist.

10 Before the commencement of argument, counsel moved an application in terms of Rule 38(2) to present evidence on affidavit in respect of his medical experts and an application in terms of section 3 of the Law of Evidence Amendment Act in respect of the hearsay evidence relating to the aspect of liability.

As far as liability is concerned, three documents contain a description of the accident; being the plaintiff's section 19(f) affidavit, the officer's accident report form and a
20 version reported to the industrial psychologist.

Having considered the documentation filed of record, and having debated the matter at length with counsel, I am satisfied that the required degree of negligence is present and that the defendant is liable for 100% of such damages

as the plaintiff may be able to substantiate.

As far as the plaintiff's claim in respect of quantum is concerned, his claim for past medical expenses, contained in paragraph 9 of his particulars of claim had been abandoned. The claim for general damages is to be separated and postponed *sine die*.

What is before Court are the claims for future hospital,
10 medical and ancillary expenses and the plaintiff's claim for past and future loss of income.

As far as the claim for future hospital, medical and ancillary expenses is concerned, there is sufficient information contained in the medico legal reports filed of record to justify the awarding of an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act and the plaintiff accordingly succeeds with this head of damage.

20 The plaintiff's claim in respect of past loss of income was effectively also abandoned in that the actuarial report confirms that the plaintiff suffered no past or accrued loss of income. This then narrowed the scope of discussion to whether the plaintiff will suffer any direct future loss of income and/or whether there might be any impairment of

earning capacity.

As far as the plaintiff's employment record is concerned, it appears from the employment document's filed of record that he commenced employment at his current employer on or about 6 October 2002 and has therefore been employed by the same employer for approximately 23 years.

10 In fact, he qualifies for and receives, according to his payslips, a long service allowance every month. It is further evident, from his salary advices, that he is a member of NUM and a member of the Metal Workers' Provident Fund. The report of the orthopaedic specialist, Dr Breytenbach did not mention early retirement or any other significant impediment to the plaintiff's future employment and defers to the occupational therapist in this regard.

20 The occupational therapist, in her report, indicates that she believed that the plaintiff would be able to continue in his present occupation but that he will, in all probability, need to retire earlier than what would have been the case, had the accident not occurred.

The nature of the orthopaedic injuries suffered by the plaintiff, and in particular the wrist and upper arm fractures

combined with the spinal fractures, lends credibility to a suggestion that the nature of the plaintiff's work, which includes bending, picking things up and walking, may lead to early retirement.

I am not persuaded that, given the plaintiff's long service at the same employer, his position would be at risk prior to the point where he throws in the towel and proceeds to take early retirement. That being the case, I see no reason why
10 different contingencies should apply to the 'but for' and 'having regard' calculations as contained in the actuarial report.

The actuarial report makes provision for early retirement as suggested by the occupational therapist. According to the actuarial report the plaintiff's projected future income, but for the accident would have been R1 229 844. Given the relatively short period over which the calculation is to be done, a 5% contingency had been deducted, leaving a nett
20 amount, but for the accident, of R1 045 367.

Making provision now for the early retirement, the 'having regard' calculated figure is R548 386. If the same 5% contingency deduction is applied to this amount, then the 'having regard to' projected future income is R520 960. The

nett effect of this calculation is an accepted claim for future loss of income in the amount of R524 400.

The plaintiff has uploaded a draft order and which is to be found on case lines 005-1. Following the layout of that draft order, my order may be summarised as follows.

ORDER

1. The defendant is ordered to pay the plaintiff an
10 amount of R524 400 in respect of future loss of earnings.
2. The above-mentioned amount should be paid within fourteen court days of this order.
3. The defendant shall pay interest at the prescribed rate from date when payment of the above becomes due to date of actual payment.
4. The defendant shall furnish the plaintiff with an Undertaking as contemplated in section 17(4)(a) of the Road Accident Fund Act 56/1996, as amended, in
20 respect of the plaintiff's future hospital, medical and ancillary expenses.
5. Paragraph five of the uploaded order contains the trust account details of the plaintiff's attorneys of record.
6. Paragraph six of the above draft order is not part of

my order and is deleted.

7. The plaintiff's claim for general damages is postponed *sine die*; and

8. The defendant shall pay the plaintiff's party and party costs as taxed or agreed. Counsel's fees to be on scale B.

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WEIDEMAN, AJ

10 JUDGE OF THE HIGH COURT

DATE: ..31/01/2025..