IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 448/2022

DATE: 19-02-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
DATE 19/02/2025
SIGNATURE [redacted]

In the matter between

MORATEHI GEORGE VILAKAZI — Plaintiff

and

ROAD ACCIDENT FUND — Defendant

JUDGMENT

WEIDEMAN, AJ:

The claim in this matter arose from an accident which occurred on 24 April 2021. The plaintiff was a passenger at the time of the accident. The plaintiff's date of birth is 19 November 1995, and which makes him approximately 30 years of age at present.

The matter proceeded by way of default. At the commencement of proceedings, plaintiff's counsel moved an application in terms of Rule 38(2). After some debate about the content thereof, the application, as it was uploaded on CaseLines, was granted.

Counsel indicated that the plaintiff will be proceeding with claims for future hospital and medical expenses and future loss of earnings or impairment of earning capacity. The aspect of general damages was to be postponed.

Before counsel commenced with submissions, his attention was drawn to the plaintiff's particulars of claim and in particular that fact that it did not make provision for a claim for past loss of income, whereas the actuarial calculations presented did make provision for a claim for past loss of income in the sum of R106 806.00.

Counsel indicated that the plaintiff would not be proceeding with a claim for past loss of income and that this head of damage was therefore abandoned as it had not been claimed in the pleadings.

The plaintiff's injuries consisted of the following:

1. A skull fracture
2. Rib fractures with a pneumothorax
3. Fractures of L1, L2 and T11
4. A rectal tear
5. General body pains

To the extent that the experts who prepared medico legal reports recorded different injuries from those listed above and those claimed in the plaintiff's particulars of claim, those injuries were not before Court and could not be taken into consideration in arriving at a decision on the plaintiff's claim for future loss of income.

The aspect of liability is not in dispute. The plaintiff was a passenger and his presence at the scene of the accident is confirmed in the OAR. The required degree of negligence for the plaintiff to succeed with his claim had therefore been substantiated.

As far as the plaintiff's employment history is concerned, it appears from the report of the industrial psychologist, Dr Strydom, that the plaintiff was unemployed for the period 2013 to 2018, whereafter, in 2019, he secured employment as a street sweeper. He worked in this capacity up to the date of the accident in April 2021.

Out of the approximately eight years which the plaintiff could have worked, he was employed for only two. The income as averred by the plaintiff and as accepted by the industrial psychologist is probable and the reporting appears to be accurate. The court accepts the evidence in this regard.

Based on the confirmed income, the calculation by the actuary of the plaintiff's future loss of income came to R1 522 665. The calculation however made no provision for income now that the plaintiff was injured and the Court was not persuaded that the plaintiff does not have any residual earning capacity.

Given the nature of the work that the plaintiff did pre-accident, his periods of unemployment and the length of period over which the calculation is to be done, a 1% per annum general contingency deduction is applied to the but-for-the-accident scenario, and which effectively implies a 35% contingency deduction.

The amount of R1 522 665 is then reduced to R989 732,25.

(R1 522 665 less 35%). In the having-regard-to-the-accident scenario, the Court accepts that even during those periods in future when the plaintiff may be able to secure employment, he would be impeded as the injuries undoubtedly will influence the opportunities available to him.

To that extent the contingency deduction, commencing from the same figure as pre-accident, will be 1.5% per annum, and which results in a contingency deduction of 52.5%. The nett result is a figure of R723 265,88, which must be deducted from the but for figure of R989 732,25 resulting in a figure of R373 272, 37 in respect of future impairment of earning capacity.

ORDER

1. The defendant is liable for 100% of such damages as the plaintiff may be able to substantiate.
2. The plaintiff's application in terms of Rule 38(2) is granted.
3. The defendant shall pay the plaintiff the sum of R373 272,37 in respect of the plaintiff's claim for future loss of income.
4. The defendant shall provide the plaintiff with an unlimited Undertaking in terms of Section 17(4)(a)

for the future hospital, medical and ancillary costs that the plaintiff may require, after the costs have been incurred and on submission of proof thereof.

5. The plaintiff's claim for general damages is separated from the other heads of damage in terms of Rule 33(4) and postponed *sine die*.
6. The plaintiff is entitled to his party and party costs as taxed or agreed. Counsel's fees will be on scale B.

[redacted]

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 19/02/2025