

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 133125/2023

DATE: 27-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 27/2/2025

SIGNATURE [REDACTED]

10 In the matter between

TLADI ZAKHELE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

When this matter was called on Tuesday, 25 February 2025,
20 both the aspects of liability and quantum were still in
dispute. The accident from which this claim arose occurred
on the 1st of August 2021 and at the time the plaintiff was a
pedestrian.

The information provided suggested that the accident

occurred on a bridge whilst the plaintiff and the vehicle were moving in the same direction with the vehicle colliding with the plaintiff from behind. However, some difficulty arose as a result of the sketch of the accident scene that formed part of the documentation that had been uploaded onto Caselines. In isolation, the sketch seems to suggest that there were two pedestrians and two points of impact with the vehicle, with the second point of impact not being on the bridge.

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With a bridge normally being built to arch over something lower than it, the second impact would therefore have had to occur somewhere in the air. Due to the uncertainty that was created by the sketch, it was agreed that the matter would stand down until this morning to allow counsel, with the assistance of his attorney, to endeavour to clarify the incongruity.

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I am indebted to counsel for the effort that had been put into trying to resolve the matter. I have received a bundle of documentation consisting of the same sketch, but now with a key to the various relevant points, as well as a number of photographs, some taken by counsel and his attorney at the scene with the assistance of the plaintiff and some having been downloaded from Google maps.

What is clear from the new information is that the bridge where the accident occurred does not arch over a lower lying area or a river, but that it is flanked by open veld on both sides. What is also clear, albeit faded over time and through lack of maintenance, was that there was a yellow line on the side of the road, creating a shoulder. This supports the plaintiff's contention that he was walking off the road surface, meaning in the area between the yellow
10 line and the edge of the road.

Whether it was intended to do so or not do not particularly matter, but the photographs further clearly indicate that the section of road where the accident occurred is frequently used by pedestrians and on a number of the photographs one can see pedestrians on both sides of the road, in what could be described as the yellow lane. It is equally clear that it would not be possible to walk off the tarred surface given the nature of the veld next to the road.

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The confusion caused by the sketch was simply because the key to the sketch was reflected to the right of the sketch and what was originally taken as a second point of impact and a second direction of a vehicle, was in fact a key for what occurred on the road surface next to the key.

I am satisfied that the accident occurred in the manner as described by the plaintiff. I am satisfied that the evidence is both probable and acceptable. There is no evidence of any nature to gainsay the plaintiff's version and as such, it is my finding that the defendant is liable for a 100% of such damages as the plaintiff may be able to substantiate.

I now turn to the quantum of the plaintiff's claim.

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The plaintiff was born on the 1st of April 1992, and according to paragraph 7 of the paragraph of claim, sustained the following injuries:

- a) A left tibial plato fracture;
- b) A right comminuted midshaft tibia and fibula fracture;
- c) A left Webber B3 ankle fracture;
- d) Soft tissue injury to the left shoulder;
- e) Various lacerations and abrasions.

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The plaintiff made a modest but honest income working as a labourer and a part - time painter. What the various medico-legal reports filed of record show is that the combination of the injuries had rendered the plaintiff incapable of continuing to perform the various trades that he did before

the accident. This does not automatically imply that the plaintiff has zero residual earning capacity and the possibility of a residual earning capacity, albeit very limited, is a factor which must be taken into account when considering contingencies.

I have had sight of the industrial psychologist's report and the actuarial calculation performed based on the information extracted from this report. Based on these reports, the
10 accrued loss is accepted in the sum of R58 184, which is the result of the gross pre-contingency figure of R61 246 less a 5% contingency deduction.

The court accepts the actuarial calculation in respect of future loss of income in the sum of R907 588. After the application of an appropriate contingency deduction of 1% per annum over the calculation period of 32 years, the total contingency deduction in respect of future loss of income is
32%.

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The value of the future loss is thus reduced to R617 159.84. Combined with the accrued loss the court accepts and awards the plaintiff in respect of his claim for past and future loss of income, the combined sum of R675 343.84.

In respect of general damages the cases to which counsel referred, and which reflect amounts in excess of R1 million all deal with injuries which have resulted in amputations. The non-amputation cases suggest that an appropriate award for general damages should be R850 000.

Having considered the plaintiff's injuries as well as the case law provided by counsel in his Heads of Argument, as well as my research using the electronic Quantum of Damages
10 confirms that the correct award, to both parties, would be the said amount of R850 000.

My order is therefore as follows:

1. The plaintiff's application in terms of Rule 38(2) to lead evidence by way of affidavit as read with section 3(1)(c) of the Law of Evidence Amendment Act in respect of the hearsay evidence of the other documentation is granted.
- 20 2. The defendant is liable for 100% of such damages as the plaintiff may be able to substantiate;
3. The defendant shall pay the plaintiff the amount of R675 343.84 in respect of loss of income;

4. The defendant shall pay the plaintiff the sum of R850 000 in respect of general damages;
5. The defendant shall provide the plaintiff with an Undertaking as is provided for in section 17(4)(a) of the Road Accident Fund Act for 100% of such future hospital, medical and ancillary expenses as the plaintiff may require;
6. The plaintiff is entitled to party-and-party costs as taxed or agreed. Counsels' fees to be on Scale B both for the 25th and the 27th of February 2025.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 27/2/2025