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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 096870/2023

DATE: 28-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

DATE

SIGNATURE

In the matter between

J[...] F[...] S[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WEIDEMAN, AJ:

This claim arose as a result of an accident which occurred on the 19th of May 2019 and at which stage the plaintiff was a passenger in a vehicle on his way to a church service in Fochville.

The plaintiff alleged in his section 19(f) statutory affidavit that the driver of the vehicle in which he was a passenger was driving at an excessive speed, but that he fell asleep and only woke up in the hospital.

The OAR indicates that the vehicle left the road as a result of a burst tyre and refers to 12 people who were injured in the accident, and two who had passed on. I asked counsel to address the Court on whether the burst tyre would not constitute a sudden emergency. In response counsel argued that it had to have been pleaded and to the extent that it had not been pleaded, it falls by the wayside.

The plaintiff requires 1% negligence on the part of either the driver or owner of the vehicle to succeed with his claim on liability and that degree of negligence is clearly present. The defendant is accordingly liable for a 100% of such damages as the plaintiff may be able to substantiate.

Before presenting the plaintiff's case on liability there were two applications. The first application was in terms of Rule 38(2), which application was granted. The second application was in terms of Rule 33(4). This was to separate the aspect of general damages and to postpone same *sine die*. This application was also granted.

The plaintiff, according to the particulars of claim, sustained a moderate brain injury with a depressed skull fracture, soft tissue injuries to the spine and multiple abrasions and lacerations. The difficulty here was that this moderate brain injury was supra imposed on a brain that had already been struggling to keep pace with the demands made on it. This is clear from the number of years that the plaintiff repeated grades in school prior to the

Given the plaintiff's apparent modest pre – accident intellectual ability, I have difficulty to accept the expert statement that, had the accident not occurred, the plaintiff would have been able to successfully complete Grade 12. I do not think that the available facts, which predate the accident, support the opinion that the plaintiff would have been able to achieve a Grade 12 qualification pre - accident.

The basis on which loss of income was calculated is set out in the report of the industrial psychologist, Mr Peverett. Mr Peverett give his opinion on what the plaintiff would have been able to do with a Grade 12 level of education but for the accident. This includes employment in the non-corporate sector on an income basis as per StatsSA. The 'having regard to the accident' income is given as zero.

The uncertainties about the plaintiff's ability to progress academically pre - accident, combined with the sector within which he would have had to compete for employment, had the accident not occurred and in particular the high levels of known unemployment in those sectors, suggest that a high contingency deduction should be made from the actuarially calculated figure which is premised on the opinion that the plaintiff would have achieved Grade 12, but for the accident.

As far as past loss of income is concerned, the court has no quarrel with the sum of R10 500 as calculated. As far as future loss of income or impairment of earning capacity is concerned, the actuarial calculated figure of R2 344 700, is accepted only for the basis of the calculation. From this amount a 50 percent contingency is deducted, leaving a net amount of R1 172 350 which is a reasonable reflection of plaintiff's earnings, but for the

accident – and accepting that he is now unemployable.

To summarise: I order that:

- 1.The plaintiff's application in terms of section 38(2) is granted.
- 2.The plaintiff's application in terms of rule 33(4) to separate out the claim for general damages and postpone same *sine die* is granted.
- 3.The defendant is liable for 100% of such damages as the plaintiff may be able to substantiate.
- 4.The defendant is liable to provide the plaintiff with an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for 100% of all such future hospital, medical and ancillary expenses that the plaintiff may incur as a result of injuries sustained in the accident.
- 5.The defendant shall pay the plaintiff in respect of past loss of earnings the sum of R10 500.
- 6.The defendant shall pay the plaintiff in respect of the claim of future loss of earnings the sum of R1 172 350.
- 7.The defendant shall pay the plaintiff's party-and-pay costs as taxed or agreed. All costs subject to the discretion of the taxing master and counsel's fees to be on Scale B.

WEIDEMAN, AJ
JUDGE OF THE HIGH COURT

DATE: