IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 24012/2019

DATE: 14-03-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE 14/3/2025
SIGNATURE [redacted]

In the matter between

NORTJE HENDRICK JOHANNES — Plaintiff

and

ROAD ACCIDENT FUND — Defendant

JUDGMENT

WEIDEMAN, AJ:

The accident from which this claim arose occurred on 30 January 2017. According to the plaintiff's particulars of claim he sustained the following injuries:

1. C6/7 disc herniation, spinal compression and spinal cord fusion;
2. Complex regional pain syndrome;
3. An injury to the right arm, including loss of sensation;
4. Intermittent neck pain.

Counsel moved an application in terms of Rule 38(2) and which may be found on CaseLines 010-234, for the tendering of evidence on affidavit and to allow certain hearsay evidence in terms of the Law of Evidence Amendment Act. The application was granted.

Counsel then moved an application to separate out and postpone the plaintiff's claims for past hospital and medical expenses and general damages. This application was also granted.

As far as the aspect of liability is concerned, the matter is not complex. The plaintiff was at a construction site next to the highway, and whilst in the process of directing trucks in and out of the construction site, a taxi stopped to offload passengers, colliding with the plaintiff when it pulled away.

Based on the available documentation, there is no doubt that the insured driver was negligent. Accordingly the defendant is liable for 100% of such damages as the plaintiff may be able to substantiate.

It is clear from the medico-legal reports filed of record that the plaintiff will require extensive medical treatment in future and the defendant shall accordingly provide the plaintiff with an undertaking in terms of 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.

The plaintiff's claim for loss of income remains. In this regard, it is noted that at the time of the accident the plaintiff was employed as a site manager and drill operator by CC15 Directional Drilling. He had commenced service in April 2010. According to the medico-legal report of the industrial psychologist, the plaintiff's earnings at the time of the accident should be taken as R319 857 per annum.

Following the accident the plaintiff was off work until 3 February 2017 and during this time he received his normal remuneration. Thereafter he continued in his premorbid capacity until 25 July 2017. With effect from 26 July 2017 until 20 March 2018 the plaintiff was off work due to accident-related surgery.

The plaintiff resumed work in his premorbid capacity on 1 April 2018 and continued working until 30 September 2020 when his services were terminated due to incapacity. At that stage his earnings were R22 852.34 per month.

Subsequent to the termination of his employment due to incapacity on 30 September 2020, the plaintiff succeeded in securing work at Rolkon Construction on or about June 2022. At that stage his basic income was R30 000 per month and which increased to R35 000 per month from May 2023.

The industrial psychologist was of the opinion that, but for the accident, the plaintiff would have progressed to his career ceiling at the age of 43 or 44, earning on par with the Patterson C2 or C3 upper quartile package. Thereafter he would only receive inflationary increases until retirement at age 65.

The information as set out above was used by the actuary to perform a series of calculations as the amounts exceeded the cap. Due to the cap finding application, it was not possible for the Court to perform its own calculations or adjust the existing calculations.

A series of alternatives were given to the actuary and the Court is indebted to the actuary for the quick turnaround in providing the various calculations.

Having considered all the evidence, as well as the plaintiff's stoicism and continued efforts to maintain and remain in employment, as well as the fact that his specific skillset is in demand and would provide income opportunities for him in future, the calculation under basis 2B sets out the Court's view of the plaintiff's claim for loss of income.

In this permutation the past losses are dealt with based on the factual data, with a 5% contingency deduction both in the "but for" and "having regard to" scenarios. The pre-cap figure, after the contingency deductions is R1 059 803. The cap adjusted figure for past loss of income is R1 013 819.

As far as future loss of income was concerned, and given my views of the plaintiff and his employability, as well as the modest calculation- for future income post-accident, the Court was of the view that the same contingency of 25% should be applied to the pre – and post-accident.

The result is that the plaintiff's claim for future loss of income was R5 639 700 before applying the cap and R5 267 176 after application of the cap. The plaintiff's combined claim for past and future loss of income amounted to R6 280 995 after the cap adjustment.

My order is as follows:

1. The plaintiff's applications to tender evidence on affidavit and to postpone general damages and past hospital and medical expenses *sine die* are both granted;

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 sum of R6 280 995 in respect of past and future loss of income;

4. The defendant shall provide the plaintiff with an unlimited undertaking in terms of section 17(4)(a) of the Road Accident Fund Act in respect of such future hospital, medical and ancillary expenses as the plaintiff may require;

5. The plaintiff is entitled to his party and party costs as taxed or agreed. Counsel's fees will be on scale B.

In this matter of Nortje, my *ex-tempore* oral ruling has been reduced to writing, I have marked it X for identification.

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[redacted]

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 14/03/2025