

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 4411/2018

In the matter between

MM MOSIA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *MM Mosia v Road Accident Fund (4411/2018)*

Coram: Mpama AJ

Heard: **29 October 2024**
18 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be on 24 February 2025 at 12H00.

Summary:

ORDER

1. The Defendant is liable to pay **100% (hundred percent)** of the Plaintiff's proven or agreed damages;
2. The issue of past medical expenses, as set forth in paragraph 7.1 of the particulars of claim, is separated from the plaintiff's quantum claim in terms of Rule 33(4) and postponed to the pre-trial roll of 7 April 2025.

3. The Defendant shall pay the Plaintiff the sum of **R2 150 000.00 (TWO MILLION, ONE HUNDRED AND FIFTY THOUSAND RAND)** in respect of loss of earnings and general damages, set out below:

Loss of Earnings	:	R1 500 000.00
General damages	:	R650 000.00
Total	:	<u>R2 150 000.00</u>

4. The Defendant shall pay the abovementioned amount into the Plaintiff's Attorneys trust account.

The Plaintiff's Attorney's trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]
REFERENCE:	MAT117216

5. In the event that the Defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the Defendant will be liable for payment of interest on such amount at 11.50% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.
6. The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **13 December 2016**.

2.1 The Defendant shall pay the Plaintiff's taxed or agreed party and party cost, for the trial dates of 29 October 2024 and 18 November 2024, which cost shall include:

2.1.1 The fees of Counsel in terms of amended Uniform Rule 67A(3)(a) read with Rule 69(7) on scale B, which costs shall include but not be limited to the trial dates 29 October 2024 and 18 November 2024.

2.1.2 The reasonable qualification, reservation and attendance fees of all the Plaintiff's experts of whose reports had been furnished to the Defendant and / or its experts:

- | | |
|---------------|---------------------------|
| • Dr Oelofse | - Orthopaedic Surgeon |
| • Hanri Meyer | - Occupational Therapist |
| • Ben Moodie | - Industrial Psychologist |
| • Johan Sauer | - Actuary |

2.2 In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory mora rate on the date of taxation / settlement of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

JUDGMENT

Mpama AJ

[1] The plaintiff instituted an action against the defendant claiming damages for injuries sustained in a motor vehicle collision on 13 December 2016. The plaintiff is a female person born on 19 May 1989. The defendant is a juristic person established in terms of s 2 of the of the Road Accident Act 56 of 1996 (the Act).

[2] The plaintiff and defendant settled the general damages at R650 000.00 and the

defendant made an undertaking for the plaintiff's future medical costs in terms of s 17(4) of the Act. The parties agreed that the head of past medical costs be separated and postponed to 7 April 2025. I ordered separation of the past medical costs in terms of rule 33(4) of the Uniform Rules of the Court. The only issue before me for determination is the plaintiff's loss of earnings.

[3] The plaintiff testified and called two witnesses, to wit Mr Mofokeng and Mr Ben Moodie, an industrial psychologist.

[4] An application in terms of rule 38(2) was made. It was not opposed by the defendant and exercising my discretion, I granted the application. The following expert witnesses' reports were handed in: Dr Oelofse, an orthopaedic surgeon; Ms Hanri Meyer, an occupational therapist; and Mr Johan Sauer, an actuary.

[5] The defendant called no witnesses.

[6] The evidence of the plaintiff is as follows: She is 35 years old but at the time of the accident she was 27 years old. She was employed as a seasonal worker at the time of the collision and has been employed as such since 2009. Her duties as a seasonal worker covered harvesting cabbage and beans during the winter season and potatoes during the summer season. She generated R150.00 per day and worked for five days a week over a period of 7-8 months a year.

[7] Her highest level of education is Grade 12 obtained in 2006. She aspired to be a nurse, but for the accident. Her other plan was to move to Bethlehem in order to find a job as a domestic worker so that she can save money to finance her nursing studies. Her cousin moved to Bethlehem in 2015 and her intentions were to move in with her at Bethlehem so that she can search for a domestic worker's job or that of a shop assistant.

[8] The plaintiff could not fulfil her dreams as she got injured in this accident and was unable to move to Bethlehem. As a result of her injuries, she cannot carry heavy items and could no longer return to her job as a seasonal farm worker. She can no longer do laundry or cleaning, carry heavy objects, do her hair and struggles to walk long distances.

[9] During cross-examination, she testified that she could not move immediately to Bethlehem as she was waiting for her cousin to first settle in. It was put to her that with her Grade 12 results she would never qualify to study nursing and she conceded. She

also testified that she tried to apply at the Department of Correctional Services as well as the South African Police Service, but was unsuccessful.

[10] Mr Ben Moodie is an industrial psychologist with more than 30 years' experience. On 5 August 2019 he evaluated the plaintiff and compiled a report about her possible earnings. He postulated that the plaintiff's earnings as a seasonal farm worker between the lower and median quartile earnings of unskilled worker and that if she were to succeed in securing a job as a domestic worker, her earnings would reach the earnings of semi-skilled worker. He also testified that it was reasonable to assume that the plaintiff would succeed in securing a job as a domestic worker but for the accident as she was relatively young and would have earned R5000.00 a month as a domestic worker. Lastly, he testified that the upper quartile of semi-skilled worker discussed in his report should be disregarded as it is not applicable in the plaintiff's circumstances.

[11] Mr Mofokeng is part of a Sekgutlong's Trust involved in job placement of seasonal farm workers. The plaintiff was one of the workers he worked with. The seasonal workers worked for between 7-8 months per annum and earned R150.00 per day.

[12] I now turn to deal with the evidence of the experts;

(i) Dr Oelofse examined the plaintiff on 13 August 2019. He examined the plaintiff's X-rays and CT scans done immediately after the accident and brought by the plaintiff. These showed that the plaintiff suffered a C6-C7 spinous process fractures and T4-T5 compression fractures. His physical examination of the plaintiff showed some tenderness on palpitation over C3-T1 of the cervical spine and para-spinal muscle spasms. There was pain on palpitation over T1-T8 and paraspinal muscle spasms. His diagnosis was that the plaintiff suffered from a non-union of C6 and C7 spinous process fractures with chronic headaches, pain and spasms, exaggerated lordosis and spondylosis at C5-C6, united T4 and T5 compression fractures with more than 50% loss of vertebral height, significant kyphosis and chronic pain and spasms. He further opined that the plaintiff had a definite probability of degeneration in the cervical spine to progress to end-stage spondylosis. There was also a 50% probability of kyphosis progression. He concluded that the plaintiff must be accommodated in a permanent light duty and spine-friendly working environment and that the plaintiff has become an unfair competitor in the labour market due to her injuries.

(ii) Ms Hanri Meyer assessed the plaintiff on 06 August 2019. She opined that due to the plaintiff's injuries her capacity for light work is restricted by her standing and walking limitations. She concluded that the plaintiff is not suited to perform manual physical labour including the work she did prior the accident, is now a vulnerable employee and an unequal competitor in the open market.

(iii) Mr Johan Sauer compiled two actuarial reports dated 16 October and 4 November 2024. The first report was, firstly, calculated on the basis of what the plaintiff earned as a seasonal worker working seven months a year. The second scenario was based on the upper quartile income of semi-skilled which Mr Moodie admitted found no application in the plaintiff's circumstances. At the request of the defendant, the November report was compiled to cater for two possibilities, to wit, that of the plaintiff finding work as a domestic worker and remaining a seasonal farm worker. This concluded evidence for the plaintiff.

[13] The plaintiff argued that the experts agree that the plaintiff can no longer do physical labour as a result of her injuries and is unable to return to her previous job. There is a high probability that the plaintiff would have secured a job as a domestic worker as she intended to move to a bigger town, Bethlehem. Lastly, it was submitted that the plaintiff, with her Grade 12, would have been able to find a job as a shop assistant or cashier but there were great uncertainties regarding her qualifying as a nurse. It was argued that the plaintiff's loss of earnings was probably between a domestic worker scenario and the cashier or shop assistant scenario and therefore within the region of R1 946 390.00 as per actuarial calculations after the application of contingency deductions.

[14] The defendant argued that if the court finds that the plaintiff would have remained a seasonal farm worker or domestic worker, an amount ranging between R1 142 832.45 and R1 219 075.05 would be fair and reasonable compensation to the plaintiff. The defendant implored me to find that the probabilities of plaintiff qualifying as a nurse or shop assistant were very remote and unfounded.

[15] Most issues are common cause between the parties. The plaintiff and defendant differ on whether the plaintiff would have remained a seasonal worker or progressed to be a domestic worker or a shop assistant. The evidence of the plaintiff is that she can no longer perform any physical work. This finds corroboration in the evidence of the experts who evaluated her and no evidence was presented by the defendant to controvert this

evidence. It is also common cause that at the time of the accident, the plaintiff worked as a seasonal farm worker and could not return to her previous work due to the injuries she sustained.

[16] The plaintiff is in possession of Grade 12 certificate. She is well spoken and she testified without the assistance of an interpreter. Her undisputed evidence was that she tried to apply at the Department of Correctional Services and South African Police Service without any luck before the accident and she qualified for vacancies in these departments. With Grade 12, this is not implausible. The accident has compromised the plaintiff's ability to keep work and find work. Even her ability to advance career wise has been impacted. Without any inch of doubt, my view is that a reasonable possibility existed that the plaintiff would secure a job as a domestic worker, a shop assistant and even advance more, but for the accident.

[17] The plaintiff's Grade 12 results reveal that she would not meet the requirements to study towards a nursing qualification. She reluctantly conceded this in her evidence and it is not surprising that this argument was abandoned.

[18] In *Southern Insurance Association Ltd v Bailey NO*¹ Nicholas JA held:

'Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considered right". One of the elements in exercising that discretion is the making of a discount for "contingencies" or "vicissitudes of life". These include matters such as the possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic condition. The amount of any discount may vary, depending upon the circumstances of the case.'²

In *Road Accident Fund v Guedes*³ where the Supreme Court of Appeal held:

'It is trite that the person is entitled to be compensated to the extent that the person's

¹ *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A).

² *Ibid* at 99E-F.

³ *Road Accident Fund v Guedes* [2006] ZASCA 19; 2006 (5) SA 583 (SCA).

patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for example *President Insurance Co Ltd v Mathews*). The calculation of the quantum of a future amount, such as loss of earnings, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example *Southern Insurance Association Ltd v Bailey NO*). The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such calculation, an actuarial computation is a useful basis to establish the quantum of damages.⁴

[19] Having considered the evidence presented and the submissions made by the plaintiff and the defendant, I am satisfied that a fair and reasonable award for loss of earnings in the circumstances of the plaintiff is an amount of R1 500 000.00.

[20] In the circumstances I order as follows

1. The Defendant is liable to pay **100% (hundred percent)** of the Plaintiff's proven or agreed damages;
2. The issue of past medical expenses, as set forth in paragraph 7.1 of the particulars of claim, is separated from the plaintiff's quantum claim in terms of Rule 33(4) and postponed to the pre-trial roll of 7 April 2025.
3. The Defendant shall pay the Plaintiff the sum of **R2 150 000.00 (TWO MILLION, ONE HUNDRED AND FIFTY THOUSAND RAND)** in respect of loss of earnings and general damages, set out below:

⁴ Ibid para 8.

Loss of Earnings	:	R1 500 000.00
General damages	:	R650 000.00
Total	:	<u>R2 150 000.00</u>

4. The Defendant shall pay the abovementioned amount into the Plaintiff's Attorneys trust account.

The Plaintiff's Attorney's trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]
REFERENCE:	MAT117216

5. In the event that the Defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the Defendant will be liable for payment of interest on such amount at 11.50% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.
6. The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **13 December 2016**.

2.

- 2.1 The Defendant shall pay the Plaintiff's taxed or agreed party and party cost, for the trial dates of 29 October 2024 and 18 November 2024, which cost shall include:

2.1.3 The fees of Counsel in terms of amended Uniform Rule 67A(3)(a) read with Rule 69(7) on scale B, which costs shall include but not be limited to the trial dates 29 October 2024 and 18 November 2024.

2.1.4 The reasonable qualification, reservation and attendance fees of all the Plaintiff's experts of whose reports had been furnished to the Defendant and / or its experts:

- | | |
|---------------|---------------------------|
| • Dr Oelofse | - Orthopaedic Surgeon |
| • Hanri Meyer | - Occupational Therapist |
| • Ben Moodie | - Industrial Psychologist |
| • Johan Sauer | - Actuary |

2.2 In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory mora rate on the date of taxation / settlement of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

L. MPAMA AJ

Appearances:

For the plaintiff: Adv M Steenkamp

Instructed by: VZLR Inc.
c/o DU PLOOY ATTORNEYS
Bloemfontein

For the defendant: Ms C Bornman

Instructed by: State Attorney
Bloemfontein