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

Reportable / Not reportable

Case no: 3174/2022

In the matter between

PATRICIA ZANELE MAVUSO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: Patricia Zanele Mavuso v Road Accident Fund (A52/2022) [2022] ZAFSHC (07 March 2025)

Coram: Mpama AJ

Heard: 25 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 **14H00** on **07 March 2025**

Summary: Road Accident Fund: Loss of earnings

ORDER

1. The Defendant to pay the plaintiff the amount of **R3 265 528.00 (THREE MILLION TWO HUNDRED SIXTY-FIVE THOUSAND AND FIVE HUNDRED AND TWENTY-EIGHT RAND)** for loss of earnings, being 85% of the plaintiff's proven damages.
2. The aforesaid amount is to be paid into the following bank account:

Symington & de Kok Attorneys
First National Bank
Account number: 625[...]
Branch code: 250 655
Reference: TR0706FXM3335
3. The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 1996, for payment of 85% of the costs of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supply of goods to her arising out of the injuries that she sustained in the motor vehicle collision which occurred on **19 February 2019** and the *sequelae* thereof, after such costs have been incurred and upon proof thereof.
4. The adjudication of the remaining aspect of past medical expenses and general damages are separated in terms of Rule 33(4) and postponed to a hearing date applied for by the Plaintiff upon receiving the outcome from the HPCSA.
5. The defendant shall pay the plaintiff's taxed party and party costs on a High Court scale to date of this order, which shall also include all the traveling costs for the plaintiff and AV Theron Swanepoel Attorneys, the translator fees and the reasonable qualifying, preparation fees, reservation fees and appearance fees of Counsel (on scale B) and the following experts (where applicable):

- 5.1 Dr. Ziervogel (orthopaedic surgeon);
 - 5.2 Susan van Jaarsveld (Industrial psychologist);
 - 5.3 Enid Kruger (Occupational therapist);
 - 5.4 Dr. Fischer (orthopaedic surgeon);
 - 5.5 Rikus van der Poel (Neuropsychologist) ;
 - 5.6 Human & Morris (Actuary).
6. Interest shall accrue at the prescribed statutory rate in respect of:
- 6.1 the capital amount of the claim, calculated 14 (fourteen) days from date of this order to date of final payment.
 - 6.2 the taxed costs, calculated from 14 (fourteen) days from date of taxation to date of final payment.

JUDGMENT

MPAMA AJ

[1] On 19 February 2019 the plaintiff was involved in a motor collision on the R57 road near Sasolburg. Resultantly, the plaintiff instituted action proceedings against the defendant for damages sustained in the motor vehicle accident.

[2] The defendant is the Road Accident Fund, a statutory body established in terms of s 2 of the Road Accident Fund Act 56 of 1996 (the Act). At the commencement of trial, Ms Booysen appeared for the defendant. She informed the court that she had no instructions from the defendant and requested to be excused from the proceedings. I acceded to her request. The plaintiff advised that merits have been settled on the basis that the defendant pays the plaintiff 85% of her proven or agreed damages, requested that the general damages and past medical costs be separated and the only issue for

adjudication be the plaintiff's loss of future income.

[3] Two witnesses, Ms Zanele Mavuso and Ms Van Jaarsveld testified for the plaintiff. An application was brought by the applicant in terms of rule 38(2) of the Uniform Rules of Court for the experts' evidence to be admitted by way of affidavits and, exercising my discretion, I granted application. Pursuant to my order, the following affidavits were handed in and I also deem it prudent to refer to some salient facts in the reports in order to explicate the condition of the plaintiff post-accident:

[4] (i) Dr PJ Fisher, an orthopedic surgeon examined the plaintiff on 7 June 2024, five years since the accident. He reported that the plaintiff complained of intermittent neck pain and stiffness with constant lower back pain. He had X-rays taken, which revealed that the plaintiff had cervical spine degeneration on C4/C5 and C5/C6 levels. Her lumbar spine X-rays showed endplate degeneration. There was a T11 anterior wedge compression fracture noted that would fit in with the history of a back injury in the accident. He concluded that the injuries sustained by the plaintiff had a definitive degeneration of the lumbar spine, and would in all probability undergo degeneration; her condition would probably worsen over the next 10-15 years and could end in surgical intervention. He estimated that the plaintiff's retirement age would probably be decreased by 10-15 years.

(ii) Dr JH Van Der Poel, a clinical psychologist, evaluated the plaintiff on 31 August 2024. He reported that the plaintiff suffered from chronic pain, psychological problems including moderately severe depression, reduced quality of life across multiple domains, inability to perform her pre-accident job duties with subsequent premature resignation and limited employment prospects due to physical limitations. According to him, the plaintiff's resignation seemed to have been made prematurely and in desperation due to the pains she suffered as she may have had a longer path if the necessary assistive devices and accommodations were implemented. The plaintiff's low mood and high levels of anxiety likely compromised her judgment at the time, as she viewed resignation as the only option to address her ongoing difficulties within the school environment. He recommended that the plaintiff consults with a psychiatrist at least every three-six months

to review her mood and medication regime.

(iii) Ms E Kruger, an occupational therapist, conducted an evaluation of the plaintiff on 24 April 2023 to determine the effect of the injuries on her functional abilities. She reported on her education and qualifications as follows: the plaintiff is a qualified teacher, and has been employed as such since 2009. Her highest level of qualification is a B. Ed (Hons) degree. At the time of the accident, as a teacher she held a position of Head of Department (HOD). The plaintiff reported that she struggled to bend forward at learners' desks in order to give individual attention to the learners, to stand or sit for a long time and experiences anxiety when in a car. She concluded that the physical abilities of the complainant do not meet the demands of her job since she can only stand or bear weight on lower limbs on an occasional basis, and her dynamic strength meets the demands of only sedentary work.

(v) Ms S van Jaarsveld, an industrial psychologist, conducted an evaluation of the plaintiff's earnings. I will, hereinafter, deal with the contents of the report when dealing with her *viva-voce* evidence.

(vi) Mr IW Morris is an actuary who did actuarial calculations for the plaintiff's loss of earnings claim, basing his calculations on the opinions of the industrial psychologist and the occupational therapist. He also considered a lump of R826 000.00 received by the plaintiff from her former employer. He concluded that with the application of 10% contingency deductions plus apportionment, the plaintiff's loss of income was an amount of R4 054 667.00.

[5] The plaintiff's evidence can be succinctly summarized as follows: On 19 February 2019 she was involved in an accident at Sasolburg and suffered injuries on her chest and back. She was taken to Vaal Park Hospital immediately after the accident. At the time of the accident she was employed by the Department of Education as a teacher and held an HOD post at Ipetlemeng School, Koppies. Her qualifications are a Junior Primary Teacher's Diploma, Advanced Certificate in Education and B. Ed (Hons). After the accident, she continued working as a teacher and was transferred to, a school in Sasolburg in order to be close to her family. At the new school, she experienced some challenges, though not related to the accident and she returned back to her previous school where she continued teaching until her resignation on 31 July 2024. She could no

longer cope at work due to back pain. During classes, she was expected to bend towards the learners' desks when offering lessons to help individual learners and this proved difficult due to her injuries. In addition to teaching, she performed some administrative duties as an HOD and supervised some teachers, but struggled to do so due to her injuries. She required supervision due to her injuries. She was expected to sit down for longer hours and analyse test and exam results, which proved to be a problem for her as she struggled to sit or stand for extended periods. All these were as a result of the accident as she had no such complaints before the accident.

[6] After resignation, she got temporarily employed as a teacher for 21 days, effective from 15 August 2024. She was only required to supervise children who were doing their own reading during this period as she could not handle teaching.

[7] Ms Van Jaarsveld testified that she has been an industrial psychologist since 2000. On 3 May 2023, she assessed the plaintiff and compiled a report. The objective of her assessment was to assess the impact of the accident on the plaintiff and to determine her loss of income. To compile the report, she considered the expert reports of Dr Fischer and the occupational therapist. She assessed the plaintiff's employment history and concluded that if it was not for the accident, the plaintiff would have worked as a teacher and HOD until she attained the age of 65 years. She further reported that the plaintiff would be entitled to salary hikes, bonuses, pension and medical subsidies from her employer. Her conclusion was that due to the plaintiff's physical condition post-accident she can no longer perform the duties of a teacher or any other similar position. The only work the plaintiff could do was sedentary work, but due to her age it would be difficult for her to secure alternative employment and the plaintiff needed to be compensated for loss of income. This concluded the case for the plaintiff.

[8] The court is called to determine the plaintiff's loss of earnings. The onus lies on the plaintiff to prove that her earning capacity has been negatively impacted because of the injuries. Once that is established, then the quantification process may be assessed and determined.

[9] In *Rudman V Road Accident Fund*¹ Jones AJA at para 11 said:

'I believe that this conclusion is correct. The fallacy in Mr *Eksteen's* criticism is that it assumes that Rudman suffers loss once he proves that his physical disabilities bring about a reduction in his earning capacity; thereafter all that remains is to quantify the loss. This assumption cannot be made. A physical disability which impacts upon capacity to earn does not necessarily reduce the estate or patrimony of the person injured. It may in some cases follow quite readily that it does, but not on the facts of this case. There must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss.'²

[10] The evidence of the plaintiff is that she sustained injuries from the collision in 2019. She continued to work for a period of five years as a teacher post-accident and resigned in August 2024 due to her injuries. Her resignation was occasioned by the fact that she could no longer cope at work due to her injuries. The plaintiff's evidence is corroborated by that of the orthopedic surgeon who reported that the plaintiff's injuries would, in all probability, undergo further degeneration and lead to future problems for her. The occupational therapist opined that due to her injuries, the plaintiff can no longer perform her duties as a teacher. It is so that after resignation, she took a 21-day job as a teacher. However, she testified that due to her condition, she only supervised the learners as she could not perform as a teacher. There is no evidence to controvert the plaintiff's evidence. I am satisfied that the plaintiff has proven her case for loss of future earnings.

[11] The next issue is the quantification of loss of earnings including contingency deduction. It is customary for a court to make a contingency deduction from the plaintiff's proven loss of earnings.

[12] The plaintiff's actuary calculated the loss of future earnings at R4 036 419.00 having applied 10% contingency deduction. The plaintiff proposed that an appropriate rate of deduction was 10% since there were no negative contingency factors present to

¹ *Rudman v Road Accident Fund* [2002] ZASCA 129; 2003 (2) SA 234 (SCA).

² *Ibid* para 11.

warrant a higher percentage deduction. There was no contradicting view.

[13] In *Goodall V President Insurance Co Ltd*³ per Margo J the court held:

‘In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practised by ancient prophets and soothsayers, and by modern authors of certain type of almanack, is not numbered among the qualifications for judicial office.’⁴

[13] In *Southern Insurance Association Ltd v Bailey NO*⁵ it was said:

‘Any enquiry into damages for loss of earning capacity is to its nature speculative, because it involves a prediction as to the future without the benefit of crystal balls, soothsayers, augers or oracles. All that the court can do is to make an estimate, which is often a very rough estimate of the present value of a loss.’⁶

[14] The plaintiff resigned from work at the age of 52 years. She had a pre-existing condition and suffered from depression prior the accident. Immediately after resignation, she was able to work for 21 days in another school and remained in that school until the expiry of her contract. Except for her inability to render proper services as a teacher there were no other challenges. This tends to suggest that she can still secure work from sympathetic employers and there are reasonable prospects for such. Considering the aforementioned, my view is that a high contingency deduction should be applied in the circumstances of the plaintiff. As such, a 25% deduction is appropriate. Therefore, an amount of R3 265 528.00 is a fair and reasonable amount (apportionment also taken into consideration).

[16] Accordingly, I make the following order:

1. The Defendant to pay the plaintiff the amount of **R3 265 528.00 (THREE MILLION**

³ *Goodall V President Insurance Co Ltd* 1978 (1) SA 389 (W).

⁴ *Ibid* at 392H-393A.

⁵ *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98.

⁶ *Ibid* at 113F.

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- 6.4 the taxed costs, calculated from 14 (fourteen) days from date of taxation to date of final payment.

L MPAMA, AJ

Appearances

For the plaintiff:

Adv H.J. van der Merwe

Instructed by:

Symington & de Kok Attorneys
Bloemfontein

For the defendant:

Ms M. Booysen-Molina

Instructed by:

Office of the State Attorney
Bloemfontein