

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 28083/2011

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	
DATE	SIGNATURE

In the matter between

MOHLOUWA JAMES MOHAKA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 1 July 2025

INTRODUCTION

[1] This is a claim by the plaintiff against the Road Accident Fund for damages arising from a motor vehicle collision. The plaintiff who was 6 years old at the time, was injured in a motor vehicle collision that occurred on 28 May 2002, while he was a pedestrian. On 15 October 2014, the Court granted an order in terms of which the defendant is held liable for 100% of the plaintiff's proven and/or agreed damages. The issue of liability is, therefore, no longer in dispute and the matter proceeded on quantum only.

[2] The plaintiff is claiming damages for loss of earnings and an order to the effect that the defendant should furnish to the plaintiff an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for payment of 100% of treatment related to the accident.

[3] The plaintiff's attorneys brought an application in terms of Rule 38(2) of the Uniform Rules of Court to admit the plaintiff's medico-legal reports as evidence. The application was granted and the reports were admitted accordingly. The defendant did not file any expert reports.

EXPERT EVIDENCE

Orthopaedic surgeon – Dr Senske

[4] Dr Senske stated that according to the plaintiff, he sustained the following injuries: laceration on the forehead, fracture on both forearms, fracture on both lower legs and pelvic fracture. He recorded that the hospital records reflect a right femur fracture.

[5] The orthopaedic surgeon reported the plaintiff's injuries as right femur fracture, soft tissue injury right and left forearm and soft tissue injury to the right and left lower legs. Current complaints include an inability to stand for long periods, lift heavy objects, and squat, as well as painful ankles and forearms that are aggravated by cold weather.

[6] The orthopaedic surgeon further reported that the plaintiff experiences constant pain and discomfort. He stated that the pain symptoms will improve with successful conservative treatment, NSAIDS and analgesics coupled with physiotherapy. He concluded that there is no evidence that the plaintiff will experience loss of work ability because of the orthopaedic injuries sustained in

the accident. Further that there will be no early retirement due to orthopaedic injuries sustained in the accident.

Occupational therapist – Mattie Peach

[7] Ms Peach recorded that the plaintiff stated that he experiences pain in the lower back and pain and stiffness in his left ankle. Further that he did not report any pain symptoms related to the right femur. It is recorded that the abovementioned difficulties affect his general mobility, ability to handle weights and his performance in daily tasks. Ms Peach concluded that the plaintiff does not exhibit any accident-related cognitive impairment.

[8] The occupational therapist noted that the plaintiff was very young at the time of the accident and could therefore not indicate whether there had been a change in his mood, social skills or interpersonal relationships following the accident. She further recorded that the plaintiff indicated that he had no complaints related to his current mood, social skills or interpersonal relationships. She concluded that there was no evidence that the accident affected the plaintiff's mood.

[9] According to the occupational therapist the plaintiff is currently capable of handling occupations that fall within the medium range. She indicated that she did not foresee any significant physical restrictions with regard to the plaintiff executing his current occupation. She recommended future treatment in the form of occupational therapy.

Industrial psychologist – Aimee Esterhuyzen

[10] Ms Esterhuyzen noted that the occupational therapist stated that the plaintiff was suited for occupations falling within the medium range. She stated that given that the plaintiff's highest educational level is grade 9, the plaintiff was generally limited to unskilled positions for the remainder of his career. She indicated that should the plaintiff search for alternative employment, it will probably be one that is dependent on his physical strength. Further that should the position exceed medium range work, the plaintiff will probably decline such offer or alternatively work with pain and discomfort, which will affect his work performance and productivity. She stated that the plaintiff was considered an unequal competitor in the open labour market.

Actuary – Nilene Kambaran

[11] Ms Kambaran noted that: The plaintiff was 7 years old in grade R at the time of the accident. After the accident the plaintiff was able to resume attending school, Grade 1 in 2004. He progressed to Grade 10 in 2013 after repeating Grade 9 in 2012. He dropped out of school in 2013 and started working as a cook for Samuel Oros earning R400 per week until he secured work as a General Worker at Thamza Butchery. He was incarcerated between in 2014 (sentenced in November 2015) and was released during February 2019. He returned to Thamza Butchery and was promoted to supervisor during 2019. He was working at the butchery earning R3 800 per month during 2022. She further noted the industrial psychologist's opinion that the plaintiff would have progressed as he had done after the accident and that he had not suffered any past loss of earnings as a result of the accident.

INJURIES AND TREATMENT

[12] According to the clinical records and radiographic reports, the plaintiff sustained the following injuries as a result of the motor vehicle accident on 28 May 2002: (a) A right femur fracture (upper leg); (c) Soft tissue injuries to the left and right lower legs; (d) A laceration on the forehead.

[13] The plaintiff was admitted to the paediatric ward at Sasolburg Hospital for approximately two weeks following the accident. The treatment administered included: Suturing of the facial lacerations; Application of Plaster of Paris to the right leg; Application of a Thomas splint for leg immobilisation and Surgical intervention, specifically the insertion of a K-wire in the right femur, which remains in situ to date. Post-hospitalisation, the plaintiff was required to mobilise with crutches for a period of 8 months.

CURRENT COMPLAINTS AND SEQUELAE

[14] The plaintiff currently complains of lower back pain, pain and stiffness in his lower ankle.

THE LAW

[15] In *Southern Insurance Association Ltd v Bailey* NO. 1984(1) SA 98 AD 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”.

ANALYSIS

[16] According to the orthopaedic surgeon the plaintiff sustained a right femur fracture, with additional soft tissue injuries to both forearms and both lower legs. Although the plaintiff alleged more extensive injuries like fracture of the hip, arms and ankle, hospital records confirm only the right femur fracture. He noted the plaintiff's complaints of difficulty standing for prolonged periods, lifting heavy objects, squatting, and experiencing pain in his ankles and forearms, exacerbated by cold weather. The orthopaedic surgeon concluded that the pain is manageable with conservative treatment and physiotherapy. Importantly, he opined that there is no medical basis to suggest the plaintiff will suffer any loss of work ability or be forced into early retirement due to the injuries sustained in the accident.

[17] The occupational therapist reported that the plaintiff's functional limitations affect his mobility, ability to handle weights, and daily functioning. She, however, found the plaintiff suitable for occupations within the medium physical demand category and indicated that he is not significantly restricted in performing his current job. She recommended continued occupational therapy for optimal recovery.

[18] Regarding the plaintiff's complaint of lower back pain and mood changes, the occupational therapist recorded that it is difficult to causally link the plaintiff's lower back pain and mood changes directly to the accident, due to the plaintiff's young age at the time the injuries were sustained. She nonetheless considered the symptoms to form part of the holistic assessment of functional and emotional sequelae post-accident.

[19] After considering the reports by the orthopaedic surgeon and the occupational therapist, the industrial psychologist accepted the findings of the occupational therapist that the plaintiff remains capable of medium-level physical work. The industrial psychologist highlighted that, given his

Grade 9 education, the plaintiff's employment prospects are limited to unskilled and semi-skilled positions, often reliant on physical labour. Further, that while the plaintiff was capable of current work, any occupation exceeding medium physical demands would likely aggravate the plaintiff's symptoms, thereby affecting productivity. She opined that the plaintiff was an unequal competitor in the open labour market due to his limited qualifications and physical constraints.

[20] Ms Kambaran considered the plaintiff's educational and employment history, noting that he dropped out of school in 2013 (Grade 10), worked intermittently, and was incarcerated from 2014 to early 2019. Post-release, he resumed employment at Thamza Butchery, later being promoted to supervisor, earning R3,800 per month in 2022. She also noted the industrial psychologist's opinion that the plaintiff would likely have followed the same employment trajectory regardless of the accident and found no quantifiable past loss of income.

[21] Regarding the plaintiff's future loss of income, Ms Kambaran, the actuary considered Ms the industrial psychologist's opinion that the occurrence of loss is more likely because he is suited for medium-range physical work. At the same time, his level of education may require physical work. The actuary calculated the plaintiff's loss of earnings to be R2 026 365.00 both pre-morbid and post-morbid.

[22] It is not in dispute that the plaintiff's career trajectory has not been affected by the accident. The court accepts the actuarial calculation of R2 026 365.00 pre- and post-morbid earnings. The plaintiff remains employed even after his incarceration between 2014 and 2019. What is also undisputed is the fact that the plaintiff still experiences pain more than 10 years after the accident, as noted by the orthopaedic surgeon and the occupational therapist's report. Although there are questions regarding the plaintiff's back pain and ankle pain, the defendant did not file any opposing medico-legal reports and did not call any expert witnesses to rebut the plaintiff's evidence.

[23] There is no dispute that the plaintiff is reliant on his physical aptitude, which has become restricted. Having accepted the plaintiff's pre- and post-accident earnings as the same, what remains is the contingencies applicable. I have applied the contingencies as follows:

Pre-morbid		Post-Morbid		Loss after contingencies
R2 026 365.00		R2 026 365.00		R0
20%	R405 273.00	15%	R303 954.75	R101 318.25
R1 621 092.00		R1 519 767.00		R 101 318.25

[24] In my view, the plaintiff's loss in this regard amounts to R 101 318.25.

CONCLUSION

[25] Having considered the evidence and the submissions on behalf of both parties I am satisfied that the plaintiff has proved on a balance of probabilities that (a) he will require future medical treatment as confirmed by Dr Senske and Ms Peach; (b) he has suffered loss of future income as a result of the accident.

In the results, I make the following order:

1. Application in terms of rule 38(2) is granted.
2. The defendant shall pay to the plaintiff an amount of R101 318.25 in respect of plaintiff's loss of earnings.
3. Defendant shall provide the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 to compensate the plaintiff for 100% the costs relating to future accommodation in a hospital or nursing home or treatment of or the rendering of service or supplying of goods to the plaintiff after the costs have been incurred and on proof thereof, as a result of the injuries sustained by the plaintiff in the motor vehicle accident which had occurred on 28 May 2002.

4. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on High Court Scale B.



P D KEKANA
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 14 February 2025

Date of judgement: 1st July 2025