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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 1744/2007

(1) REPORTABLE: YES/NO

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

(3) REVISED: YES/NO

24/07/2025

In the matter between: -

SIMON MZWAKHE MATYENI

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

THERON AJ

INTRODUCTION

[1] The matter came before me on a default judgment basis. The Defendant's defence was struck out by an order dated 2 February 2024. The Plaintiff claims damages due to injuries he sustained in a type of pedestrian accident, although he was struck by a motor vehicle whilst sitting on a "Stoep". The Defendant conceded liability in relation to the merits.

[2] The Court is asked to adjudicate the quantum aspect of the claim. The Plaintiff applied in terms of Rule 38(2) for the affidavits and reports of the following

experts to be admitted as evidence, without the need to call these experts to testify:

- (a) Dr ND Thikhathali (Orthopaedic Surgeon);
- (b) M Molemi (Occupational Therapist);
- (c) O Sechudi (Industrial Psychologist);
- (d) JJC Sauer (Actuary).

The application was duly granted.

THE EVIDENCE

- [3] According to Plaintiff's ID document he is currently 49 years old. The accident occurred on the 1st of December 2005 (he was then 29 years old). From the hospital records it seems he suffered a fracture/dislocation of his left ankle. His ankle was later operated on where they did an open reduction and internal fixation of the left ankle fracture.
- [4] Dr ND Thikhathali (the Orthopaedic Surgeon) reported that he consulted with the Plaintiff on the 25th of August 2022. The Plaintiff was initially treated at Odi Hospital, where his fracture was reduced and stabilized in a back slab. He was given analgesia on arrival at the hospital and an intravenous line was inserted and intravenous analgesia and fluids were provided. He was later transferred to Dr George Mukhari Academic Hospital where he was managed surgically with an open reduction and internal fixation of the left ankle with plates and screws. He complains of left ankle pain on running or walking long distances.
- [5] The Plaintiff was a professional soccer player at Mabopane young masters first national division prior to the injury. He had no functional limitations prior to the injury. Since the accident he was unable to play soccer. He complains of being unable to run and walk long distances due to pain. He Completed matric in 1998 and then obtained a certificate in plumbing. He is currently working at City of Tshwane, where he has been working in the plumbing division for the past 15 years.
- [6] Dr ND Thikhathali examined the Plaintiff and confirmed some surgical scarring on his left ankle. In relation to his left ankle, he found no obvious deformity of the

ankle, no tenderness elicited on palpation and no crepitus on range of motion. He experiences stiffness of the ankle on flexion and extension and subtalar joint stiffness. X-rays taken on the day of examination showed there is a fracture at the junction of middle and distal thirds of the fibula. There is internal fixation with a metal plate and screws, where bony union has occurred. A metal screw is placed at the distal tibia and fibula for fixation of the syndesmosis. There are cortical irregularities and bony prominence at the interosseous membrane and syndesmosis at the distal thirds of the tibia and fibula in keeping with previous trauma in this area. There is also narrowing of the lateral joint space with periarticular sclerosis at the ankle joint, in keeping with degenerative change secondary to previous trauma.

- [7] The expert is of the opinion that the Plaintiff's injury and its outcomes have justifiably ended his football career. He has however managed to get employed as a plumber at City of Tshwane where he currently works. His activities of daily living have not been affected by this injury. He opines that the injury sustained has resulted in a serious long-term impairment and loss of body function. Therefore, the Plaintiff qualifies for compensation (general damages) under section 5 .1 of the RAF 4 guidelines and the Narrative test report.

- [8] Miyelani Molemi (the Occupational Therapist) assessed the Plaintiff on the 16th of August 2022. At the time of the accident, Mr. Matyeni reports that he was a professional football player for Mabopane Young Masters at National First Division. The Court took note of an employer's certificate from one O P Kugwane, who reported that the Plaintiff earned an annual salary of R 54,000 as a soccer player. In 2007, he secured work as a plumber at Odi water service. He indicated that he works from 7h00 to 16h00 Monday to Friday. Based on his described duties, his work appears to fall within the heavy strength demand. Although he continues to work, he reportedly experiences left ankle pain mainly with handling loads and squatting.

- [9] The expert concluded that he presented with functional strength and full range of movement of both lower limbs in all joints. He however reported left ankle pain with all movements of the ankle. The assessment results indicate adequate

ability to standing, squatting / crouching. These were however done with reports of pain to his left ankle which can be expected to have a negative effect on his tolerance of these postures in an 8 hour shift. Nonetheless, his performance on above manual tasks meets standards of open labour market. He was able to perform all mobility and agility skills. Limitations can be expected with sustained postures such as standing, stooping and squatting as well as mobility tasks such as walking. This is mainly as a result of experienced pain.

- [10] According to the expert the Plaintiff remains unsuited for his premorbid job as a Professional Football Player as this is high impact in nature (requiring running) and can be expected to aggravate pain and hasten symptoms of reported arthritis. Furthermore, his current work is within the heavy strength demand and he only demonstrated the residual physical capacity to perform work up to medium strength demand. His reported limitations with performance of work associated tasks is justified. He thus will benefit from reasonable accommodation.
- [11] Having regard to his continued employment as plumber since 2007 to date (18 years) it is clear that his employer is either satisfied with his work performance or is accommodating him. Either way, it seems unlikely to the Court that he would lose his current employment. The expert has however opined that he has been rendered a vulnerable and an unequal competitor in the open labour market. In this regard the Court needs to consider the degree of loss of earning capacity suffered by the Plaintiff due to the injuries suffered in the accident in question.
- [12] O O Sechudi (the Industrial Psychologist) examined and assessed the Plaintiff on the 16th of August 2022. Mr. Matyeni reported that he passed Grade 12 in 1998 at Klipgat High School. Subsequently he obtained a Plumbing Trade Certificate from Brethel College prior to the accident date. No other vocational qualification was obtained by Mr. Matyeni post-accident. After the accident he could no longer play professional soccer and he remained unemployed until he was able to secure an alternative job in July 2007. The Court notes from the employer's certificate that he was paid his normal salary for two months after his injury of which one month was contractually obligated. From July 2007 he was employed

as plumber earning R 15,800 per month.

[13] The expert obtained collateral evidence in support of his earlier career as soccer player. During a telephonic discussion held with Mr. Kgomotso Phahladira (former manager at Mabopane Young Masters Football Club) on the 20th of April 2023, he reported that the claimant was a very talented player to the extent that he was attending training session with the premier league team at Wits. He also insisted that in his view, Mr. Matyeni had the potential to possibly be recruited by a PSL team before reaching his soccer career ceiling. The Court notes that no affidavit by Mr Phahladira was presented to Court to support the hearsay evidence presented by this expert witness. This aspect will be discussed later.

[14] According to the expert it was reported to him that the entry basic salary often offered to soccer players at the PSL level is about R20,000 per month. Furthermore, Mr Phahladira mentioned that most soccer players tend to discontinue playing professional football by the age of 35 years. If they acquire any other sports related training/qualification, they often secure jobs as a coach or join the management team at soccer clubs. This expert correctly indicated that deference is made to factual information in this regard. Such factual information or proof is however absent from the evidence before the Court.

[15] The expert then postulated a “scenario 1” regarding the Plaintiff’s possible pre-morbid career progression but fails to suggest any other scenarios.

Scenario 1: The expert incorrectly states that the Plaintiff earned a salary at the time of the accident from his soccer career in the amount of R 66,000 per annum. This is obviously incorrect, as the employer certificate clearly indicates he earned an annual salary of R 54,000 per annum. He then continues to postulate that he may have progressed within his chosen profession with the potential of eventually being recruited to a PSL first division club and/or even play for international teams. Therefore, his salary may have increased with his earnings subsequently ranging between R20,000 per month (entry level salary). Therefore, within the PSL league, he may have earned R240 000 per year. From the age of 36 years, he may have opted to secure better employment within the soccer/sporting profession as a coach or as part of the management team. This

would have allowed his career to further progress. As such, his earnings may have progressed towards Paterson D3 to the Upper Quartile [R430 000] per year on the scale for middle management workers (corporate survey earnings) (Koch, 2007). The claimant would have likely reached his ultimate career ceiling by the age of 45 years. From the age of 46 years, any increases in his earnings may have been attributed to additional inflationary increases until normal retirement age. He would have been expected to continue working until he retired at the age of 65 years, depending on his health and as per the employer's policy.

[16] The Court needs to consider the reasonableness of this postulation having regard to the evidence it was based on and such conclusions need to make logical sense. There is no acceptable proof that the Plaintiff would have progressed to playing professional soccer in the PSL league. There is also no evidence to support the conclusion that the Plaintiff's talents and proven performance as soccer player in the National First Division supports a conclusion that, on a balance of probability, he would have progressed to the PSL or international leagues. There is no evidence by way of supporting documents or affidavits that confirms the salaries of PSL or international league players. The figures mentioned in the expert's report seems to be random figures taken from hearsay evidence obtained through a phone call to a person who purports to be a former manager of the team where the Plaintiff played.

[17] The expert's view that the Plaintiff would then progress towards Paterson D3 to the Upper Quartile [R430 000] per year on the scale for middle management workers has no basis. There is no indication that the Plaintiff has or would have gained middle management skills if he proceeded with a soccer career and there is no explanation as to why we should accept that the Plaintiff could possibly have moved into that career path. The expert in fact confirms that "*Mr. Matyeni does not have education background and work experience nor the necessary vocational qualifications for work that is sedentary to light in nature*". This would inevitably support the notion that he was and is not suitable for any employment in middle management. For the reasons mentioned above the postulation made and termed "**scenario 1**" stands to be rejected.

[18] Post-morbid, the expert opines that the findings of the experts suggest that Mr. Matyeni has become less competitive and likely disadvantaged as a candidate in the open labour market. Should he for whatever reason lose his current job, he will find it difficult to secure the same or similar occupation in the open labour market as a result of residual physical limitations. The Court does agree with this sentiment and thus it can be accepted that the Plaintiff suffered a loss of earning capacity. In order to compensate the Plaintiff for this loss a higher post-morbid contingency should be applied to his post-morbid future earnings calculation.

[19] **Past loss of income:** It is clear from the evidence that the Plaintiff suffered a loss of earnings from one month after his injury (having received one month's salary as contractually obliged by the employer) to the date he secured employment in July 2007. Thereafter there is no proof of loss of earnings to date of trial.

[20] The actuary prepared calculations for the Plaintiff's pre-morbid earnings based on the incorrect figure of R 5,500 per month as mentioned earlier in my judgment. Furthermore the actuary incorrectly accepted that the Plaintiff would have earned the income of a professional soccer player in the PSL league up to age 45, where the Industrial Psychologist confirmed that a professional soccer player will only play professionally to age 35. It is the Court's view that the calculation in relation to the Plaintiff's future loss of earnings should be done by comparing his current earnings, as projected into the future, with the same figure, but with a higher post-morbid contingency deduction.

[21] The actuary further calculated the past loss of earnings based on the incorrect assumption that the Plaintiff was not paid at all after the date of accident. This does not correspond with the evidence before the Court. In the result, the Court will grant damages in relation to the past loss of earnings based on a nominal figure arrived at considering the information available to the Court.

THE CALCULATION

[22] Considering the acceptable evidence before the Court the Plaintiff's loss is calculated as follows:

Past loss:

Plaintiff remained unemployed and without an income from 1 January 2006 to 30 June 2007 (18 months at a salary of R 4,500 per month). In this regard a reasonable amount to be awarded for his past loss of earnings is the amount of R 81,000 (in 2006 monetary terms). To bring this amount in line with the current monetary value, the amount is adjusted to **R 231,985**.

Future loss:

Projected future earnings as plumber to retirement: R 2,268,496.

Less 10% contingency: *pre-morbid* – R 2,041,646.

Less 25% contingency: *post-morbid* – R 1,701,372.

Future loss of earnings is thus R 2,041,646 less R 1,701,372 and equals an amount of **R 340,274**.

GENERAL DAMAGES

[23] The Defendant made an offer to settle the Plaintiff's claim for general damages, which inevitably confirms that the Defendant accepts the fact that the Plaintiff qualifies for general damages and concedes the serious injury assessment by the Plaintiff's expert.

[24] The Plaintiff amended his particulars of claim to increase his claim for loss of earnings to an amount of R 5,558,186 and general damages to an amount of R 350,000 (CaseLines 03-9). Although counsel for the Plaintiff argued for an award of R1,300,000, the Court cannot award a higher amount of damages than is claimed in the pleadings. Having regard to the injuries suffered and comparable caselaw the Court is satisfied that the maximum amount claimed can be awarded and as such awards the amount of R 350,000 for general damages.

FUTURE MEDICAL EXPENSES

[25] The experts indicated the need for future treatment in relation to the injuries suffered in the accident. Therefore the Court instructs the Defendant to provide the Plaintiff with an undertaking in terms of Section 17(4) (a) of the Road Accident Fund Act, 56 of 1996 for the reasonable costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment or rendering of a service or supplying of goods to him resulting from the motor

vehicle accident related injuries sustained by the Plaintiff, as a result of the motor vehicle collision which occurred on the 1st day of December 2005 after such costs have been incurred and upon proof thereof.

ORDER

The court therefore orders as follows:

1. The Defendant is liable for 100% of the Plaintiff's proven damages.
2. The Plaintiff's Rule 38(2) application is granted, with costs.
3. The Defendant is ordered to provide the Plaintiff with an undertaking in terms of Section 17(4) (a) of the Road Accident Fund Act, 56 of 1996 for the reasonable costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment or rendering of a service or supplying of goods to him resulting from the motor vehicle accident related injuries sustained by the Plaintiff, as a result of the motor vehicle collision which occurred on the 1st day of December 2005 after such costs have been incurred and upon proof thereof.
4. The Defendant is ordered to pay the Plaintiff an amount of **R 922,259** (nine hundred and twenty-two thousand two hundred and fifty-nine rand) consisting of the following:

(a)	Past loss of earnings	R 231,985
(b)	Future loss of earnings	R 340,274
(c)	General damages	R 350,000
5. Payment of the judgment amount as well as taxed or agreed costs shall be made into the trust account of Plaintiff's Attorneys, Toohey Nyezi Rambau Incorporated, by direct transfer, details of which are the following:

Bank: First National Bank

Account number: 6[...]

Branch: Pretoria

Branch code: 2[...]

Reference number: T[...]
6. In the event that the aforesaid amount is not paid timeously, the Defendant shall be liable for interest on the amount at a rate of 10.75% per annum, calculated from 14 days after date of this order to the date of payment.
7. The Defendant shall pay the Plaintiff's costs on the High Court party and party scale including counsel fees on scale A.

**H W THERON
ACTING JUDGE OF THE HIGH
COURT OF SOUTH AFRICA**

Appearances:

Attorney for the Plaintiff: Toohey Nyezi Rambau Attorneys
Counsel for the Plaintiff: Adv M Pienaar / Adv Mulibana

Date heard: 25 June 2025

Date of judgment: 24 July 2025