

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 3488/2016

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE: 25 September 2025 SIGNATURE.....

In the matter between:

HARRY MANGANYE N.O.

APPLICANT / PLAINTIFF

LASTERINE MANGANYE N.O.

(Executor in the deceased estate of Samson Manganye)

-and-

THE ROAD ACCIDENT FUND

RESPONDENT / DEFENDANT

JUDGMENT
(LEAVE TO APPEAL)

BRESLER AJ:

[1] The Applicant (Plaintiff in the Main Action) applies for leave to Appeal against the judgment and order handed down by this Court on the 18th of November 2024 and in terms whereof the Applicant's claim for damages (in the form of loss of earnings) was dismissed with costs. The grounds for the application for leave to Appeal are briefly the following:

- 1.1 The Court erred in holding that the Executor is now claiming loss of earnings whilst the claim is merely a continuance of the existing litigation.
- 1.2 The Court erred in determining if the Deceased suffered any loss from the date of accident to the date of retirement. The correct issue that should have been determined is if the Deceased Estate suffered a loss from the date of the accident to the date of the passing of the Deceased.
- 1.3 The Court failed to apply the principle enunciated in ***Dippenaar v Shield Insurance CO Ltd***¹ by determining if there is an all-round loss of earning

¹ 1997 (2) SA 904 (A)

capacity. In this regard it should have been taken into consideration that the Deceased no longer worked overtime and went on retirement at the age of 60.

1.4 The Court erred in rejecting the opinion of the Industrial Psychologist who opined that the Deceased could have continued working until the age of 65. Cognisance should have been taken that although he was retired, he could have continued to earn through self-employment.

1.5 The Court erred by finding that there was no loss after the date of retirement and up to the date of his passing as the loss of income was not due to his injuries. The Applicants submits that the testimony of the Executor shows that the early retirement was as a direct result of his injuries.

1.6 The Court should have found in favour of the Applicant and consequently awarded an amount in respect of loss of income.

[2] The matter initially came before Court on the 12th of August 2024 for determination of the question of loss of earnings only. The merits were previously settled on the basis of a 90% / 10% apportionment in favour of the Plaintiff.

[3] The Applicant in the matter is the Executor in the Deceased estate of Manganye Samson Timoti, who passed away on or about the 2nd day of March 2019 (hereinafter referred to as the 'Deceased'). The Executor is persisting with the claim for the Deceased's loss of earnings from the Road Accident Fund (the Defendant in the Main Action).

- [1] An application for leave to appeal is governed by section 17(1) of the **Superior Courts Act**, Act 10 of 2013 which provides:

‘17 Leave to appeal

(1) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that -*

(a)(i) *the appeal would have a reasonable prospect of success; or*
 (ii) *there is some other compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration,*

(b) *the decision sought on appeal does not fall within the ambit of section 16*

(2) (a), and

(c) *where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’*

- [2] In **MEC Health, Eastern Cape v Mkhitha**² the Supreme Court of Appeal said the following (reference to other authorities omitted):

‘[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes

² **MEC Health, Eastern Cape v Mkhitha** (1221/15) [2016] ZASCA 176 (25 November 2016)

it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

- [4] Where, as a result of his or her injuries, a person has been precluded from earning income, or has earned less income than normal, he or she is entitled to damages representing the income the injured person would have earned but for his or her incapacity.³
- [5] It is incumbent on the plaintiff to prove what his or her income would have been had the person not been injured and what his or her actual earnings were for the duration of the injuries (where applicable). The damages suffered is directly attributable to the injury or delictual incident.
- [6] On the other hand, a plaintiff may claim for loss of earning capacity where bodily injuries result in a person being unable in future (after the trial or settlement) to earn income he or she would have earned but for those injuries. This inability may be

³ *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194

temporary or permanent.⁴

[7] This Court therefore had to consider:

7.1 Was the Applicant precluded from working as a result of his injuries or earned less income than normal;

7.1 From the date of the delict to date of trial / settlement (in this instance the date of passing of the Deceased).

[8] It is common cause that the Deceased continued working after the incident and was remunerated in full by his Employer up to the date of his retirement. During testimony by Mr. Harry Manganye, the son of the deceased, he conceded that the Deceased had no prospect of promotion and that he had reached his career ceiling. Considering the documents presented to court, it was evident that the Deceased seized employment as he reached retirement age according to his employer. This was not an 'early retirement' but rather the retirement age predetermined by the Employer.

[9] There was no definite indication from the employer that the Deceased could have extended his retirement date at will.

⁴ *Santam Bpk v Byleveld* 1973 (2) SA 146 (A) at 150; *Dippenaar v Shield Ins Co Ltd* 1979 (2) SA 904 (A) at 917

- [10] Likewise, contrary to the submissions made in the application for leave to Appeal, there was no concrete evidence that his failure to work overtime was as a direct result of the injuries sustained. A close scrutiny of the salary advices presented in evidence shows that the overtime was not predictable and / or guaranteed. No evidence was presented as to the employer's overtime or retirement policy. It may very well mean that the Deceased did not earn overtime because no overtime was available.
- [11] It follows that for this period between the date of the accident and the date of retirement there was no loss of income because of the injuries sustained during the accident. The Deceased was not precluded from working nor did he earn less income than normal. There was simply no evidence in this regard.
- [12] The Court was presented with various medico-legal reports to assist in determining if the Plaintiff is entitled to a claim for loss of earnings. These reports were considered holistically in determining if his deteriorating health could be attributed to his injuries sustained during the accident. The judgment consequently analysis the acceptability and validity of this expert testimony.
- [13] The Deceased's prevailing heart condition was identified as a contributing factor to his early retirement as opposed to his injuries sustained during the accident. This Court therefore remains of the view that the Applicant has not shown, on a balance of probabilities, that he would have continued earning an income from his existing employer after his actual retirement age or that the accident was the cause of his alleged diminished capacity. No evidence was presented that the Applicant would

have earned any other form of income similar in value to the income that he earned whilst being employed.

[14] The Applicant therefore has no claim for loss of earning capacity for the period after retirement and up to the date of the passing of the Deceased as no actual loss or reduction in income was experienced directly resulting from his injuries.

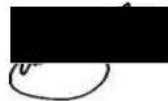
[15] This Court therefore do not foresee any reasonable prospect of success on Appeal, nor is there any compelling reason for the Appeal to be heard.

[16] Leave to appeal must accordingly be refused.

Order:

[17] **In the result the following order is made:**

17.1 Leave to appeal is dismissed with costs including costs to counsel on Scale A.



**M BRESLER
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

FOR THE PLAINTIFF / : Adv TM Malatji

APPLICANT

INSTRUCTED BY : Maloka & Sebola Inc
info@malokasebolainc.co.za

FOR THE DEFENDANT : Mr. R Mudau

INSTRUCTED BY : Road Accident Fund
C/o The Office of the State Attorney
Polokwane
tmasete@justice.gov.za

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