

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 26128/2015

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

In the matter between:

MALIBA SEMENYA DAVID

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MALINDI J

Introduction

- [1] This matter came before me on 5 June 2024. It proceeded on the issue of quantum only on the two heads of claim under general damages and future loss of earnings. Liability of the defendant was settled on an 80/20% basis in favour of the plaintiff.
- [2] The whole matter had to be adjudicated upon the plaintiff's expert reports only which were handed in as part of the evidence without calling them to give oral evidence in court.

The issue for consideration

- [3] Both the practice notes and pre-trial minutes dated 24 May 2024 recorded that the issue of liability has been settled on an 80/20% basis in favour of the plaintiff.
- [4] An interim payment of R500 000.00 (Five Hundred Thousand Rand) was made earlier.
- [5] I have had consideration of the actuarial calculations and taken note of paragraph 2.1 thereof. Essentially, the claimed income of the plaintiff's company is not substantiated and the plaintiff suffered the injuries shortly after the company had started. I take judicial notice further that the plaintiff's business was in the very precarious business scope of tendering services to government departments or entities. Both these factors call for higher than usual contingencies to be applied.
- [6] I adopt the Basis 2 scenario that the plaintiff would probably had continued working in his business up to age 70. I apply a 60% contingency on the future loss of earnings. The total amounts to R1 636 019.60. That R1 636 019.60 is a total of R1 036 976.00 for past income and R599 043.60 for future income.
- [7] For general damages I make an award of R300 00.00. I have had regard to his orthopaedic injuries and the neuropsychologist report which concludes that the plaintiff has a moderate level of depression. His expressed complaints and the clinical observations during testing and interview are consistent with a mild brain injury which requires psychological therapy. Some of these impulsive and aggressive behaviour is consistent with his pre-accident behaviour which, it seems, led to the loss of his previous job.
- [8] There are no long-term *sequelae* to the plaintiff's injuries.

Conclusion

- [9] Having regard to the injury suffered by the plaintiff the prognosis of all experts and the nature of the business that earned him an income shortly before the incident, I am of the view that the order below is fair to all the parties.
- [10] Therefore the following order is made:

1. The Defendant is ordered to pay the Plaintiff an amount in the sum of R1 636 019.60 (One Million Six Hundred and Thirty-Six Thousand, Nineteen Rand and Sixty Cents) in respect of Loss of Earnings.
2. The Defendant is ordered to pay the Plaintiff an amount in the sum of R300 000.00 (Three Hundred Thousand Rand) in respect of general damages.
3. From the total of the above amounts R500 000.00 which was paid as an interim amount is subtracted and a total amount of R1 436 019.60 (One Million Four Hundred and Thirty-Six Thousand, Nineteen Rand and Sixty Cents) is to be paid to the Plaintiff.
4. The Defendant shall pay the aforementioned amounts within thirty (30) calendar days from the date of this order. The amount will attract interest from the expiring of the thirty (30) days if not paid to date of payment.
5. The aforesaid sum shall be paid directly into the Trust Account of Plaintiff's attorney of record MAFORI LESUFI INCORPORATED, details of which are as follows:

Account name	:	M[...] L[...] I[...]
Bank	:	A[...] B[...]
Account number	:	4[...]
Branch	:	6[...] (E[...]).

6. The Defendant shall Provide the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, for the costs of future accommodation of the Plaintiff in a hospital or a nursing home or treatment of or rendering of a service to Plaintiff or supplying of goods to the Plaintiff, arising out of injuries sustained by Plaintiff in a motor vehicle collision, after such costs have been incurred and upon proof thereof;
7. The Defendant shall pay the plaintiff's taxed or agreed party and party costs on High Court Scale B up and including the trial dates of the 5th and 06th of June 2024, which costs shall include, but not limited to the following:

- 7.1. The fees of Counsel on Scale B, including but not limited to the perusal, consultation, preparation for hearing, and a day fee in respect of the hearing date of the 05th and 06th of June 2024 and the date when this order is made an order of court.
- 7.2. The reservation and preparation fees of experts, if any, as well as the costs attendant in attending and obtaining to medico-legal experts, were so deployed.
8. The above payment with regard to costs shall be subject to the following conditions:
- 8.1. The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorneys of record; and
- 8.2. The plaintiff shall allow the defendant thirty (30) calendar days to make payment of the taxed and/or agreed costs.

G MALINDI, J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

APPEARANCES

For the Plaintiff: L Jona
Instructed by: Mafori Lesufi Incorporated

For the Defendant:
Instructed by: State Attorney - Johannesburg

Date of hearing: 5 June 2024
Date of judgment: 21 November 2025