

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

Not reportable

Case no: 5146/2017

In the matter between:

D SCHWARTZ

PLAINTIFF

[Identity No. 9[...]]

and

ROAD ACCIDENT FUND

DEFENDANT

[Claim No. 560/12531088/329/0]

[Link No. 4144288]

Neutral citation: *Schwartz v Road Accident Fund* (5146/2017) [2026] ZAFSHC
225 (27 March 2026)

Coram: VAN ZYL J

Heard: 14 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 9h30 on 27 March 2026.

Summary: Motor vehicle accident – claim for damages — liability and causation – quantum – loss of earning capacity.

ORDER

1 In terms of rule 33(4) of the Uniform Rules the issue of the merits of the action is separated from the quantum thereof and the merits is to be adjudicated first.

2 The defendant is liable to pay 100% (one hundred percent) of the plaintiff's proven or agreed damages.

3 The plaintiff's attorney of record is to obtain an updated actuarial calculation, updated to the date of this order, which actuarial calculation is to take into consideration the passing of the plaintiff on 25 May 2025.

4 The attorney of the plaintiff is to effect any and/or all necessary amendments to the plaintiff's actions as he may deem fit.

5 Once the action is ripe for further hearing, be that with the inclusion or the exclusion of the issue of general damages, the action is to be re-enrolled for further argument before Van Zyl J on a suitable date, which date is to be arranged in conjunction with the secretary of Van Zyl J.

6 The defendant is ordered to pay the costs of the plaintiff to date, excluding the costs of the plaintiff's experts and other costs which have already been provided for in the court order of 14 May 2025, but including:

6.1 The trial costs of 13 and 14 May 2025.

6.2 The costs of the heads of argument.

6.3 Costs of counsel on scale B.

JUDGMENT

Van Zyl J

[1] In this action the plaintiff is claiming damages which he suffered as a result of a motor vehicle accident which occurred on 6 March 2017.

[2] According to the pleadings the issues to be determined are the merits of the action, loss of earnings, general damages and medical expenses.

[3] The trial was set down for 13 and 14 May 2025. The matter stood down for possible settlement until 14 May 2025. At the commencement of the trial on 14 May

2025, the plaintiff was represented by Mr Sander and the defendant was represented by Ms Booysen. Ms Booysen indicated that she does not hold any instructions in relation to the matter and can consequently not continue defending the defendant in the action. She indicated that she withdraws from the further proceedings. I consequently excused her from further attendance and the matter continued on a default basis.

[4] The plaintiff brought an application for leave to present his evidence in respect of the issues of liability and quantum in terms of rule 38(2) of the Uniform Rules, read with section 3(1)(c) of the Law of Evidence Act, 45 of 1988. I granted an order in terms of the said application, which order is contained in a typed court order which forms part of the court file. I consequently do not consider it necessary to repeat the contents thereof.

[5] The plaintiff was called to testify. He presented evidence in respect of the occurrence of the motor vehicle accident, the injuries he suffered as a result thereof, his employment history and the impact the injuries he suffered as a result of the accident had on his career. For reasons which will become evident later herein, I, at this stage, intend to only deal with the plaintiff's evidence in relation to the occurrence of the motor vehicle accident.

The merits

[6] The plaintiff testified that on the day of the accident he was traveling on the R57 road between Petrus Steyn and Reitz. It was between 6h00 and 7h00. He was not speeding and driving conditions were good.

[7] At a certain stage, the plaintiff saw a truck approaching from the front. The headlights of the plaintiff's vehicle, as well as those of the truck, were switched on. As the truck was approaching, the truck moved towards the right lane of the road; hence, into the lane in which the plaintiff was traveling. The plaintiff moved towards the left of his own lane onto the tarred shoulder of the road, which shoulder was approximately half a metre to a metre wide. Because of the conditions on the left side of the road, the plaintiff could not move to the left completely off the shoulder of the road. As he was moving towards the left shoulder of the road, the truck kept moving into the right lane of the road. There were no reasonable steps which the

plaintiff could have taken to avoid a collision. The truck collided with the plaintiff's vehicle on the right front thereof, on the driver's side. The point of impact was between the left lane and the left shoulder of the road, with the truck in the lane in which the plaintiff was initially travelling.

[8] The plaintiff lost consciousness and only regained his consciousness after he had been admitted to the Medi-Clinic Hospital, Bethlehem, in the intensive care unit thereof.

[9] The plaintiff testified that he, *inter alia*, suffered the following injuries:

- a) A light head injury.
- b) A neck injury.
- c) A dislocated right shoulder.
- d) Right forearm fracture.
- e) Right hip fracture.
- f) Injuries to both knees.
- g) Left leg fracture.
- h) Trashed right ankle.

Consideration of the merits

[10] After consideration of the evidence in respect of the occurrence of the motor vehicle accident, I am satisfied that the negligence of the truck driver was the sole cause of the accident which resulted in the injuries suffered by the plaintiff.

[11] The defendant is therefore 100% liable for the damages suffered by the plaintiff as a result of the accident.

The passing of the plaintiff

[12] Subsequent to the hearing of the trial and whilst judgment was still pending, the plaintiff's attorney of record addressed a letter to the Registrar of the Court, dated 30 July 2025, in which it was indicated that the plaintiff had passed away on 25 May 2025.

[13] As also indicated in the said letter, the passing of the plaintiff will probably substantially influence the claim for future loss of earnings. A new and updated actuarial calculation in respect of the plaintiff's future loss of earnings will probably also be necessary. In my view the passing of the plaintiff it will or may also have a substantial influence on the plaintiff's claim for future medical expenses.

[14] The plaintiff will probably also have to consider amending its summons and particulars of claim accordingly and/or also substitute the plaintiff with the executor of the estate. These aspects ought to be dealt with by the plaintiff's attorney of record as he deems fit.

[15] In addition to the aforesaid, it seems that the plaintiff's claim for general damages is in any event not yet ripe for hearing.

[16] In view of the aforesaid circumstances, I deem it necessary that an order be made in terms of rule 33(4) of the Uniform Rules that the merits of the action be separated from the quantum thereof and that the merits be adjudicated first.

The way forward

[17] Considering that I have already heard evidence of the plaintiff in respect of his employment history and the impact his injuries had on his career, this action is to be considered to be part heard before me.

[18] Once the action is ripe to be continued with, even if that excludes the issue of general damages, the matter is to be enrolled before Van Zyl J for further argument, which enrolment date is to be arranged in conjunction with the secretary of Van Zyl J.

Costs

[18] The plaintiff is entitled to the costs of the action to date, excluding the costs which have already been dealt with in the court order of 14 May 2025.

[19] Since the quantum of the damages which the plaintiff suffered has not yet been adjudicated, the aforesaid costs, in my view, are not to include the costs of any of the expert witnesses.

Order

[20] The following is made:

1 In terms of rule 33(4) of the Uniform Rules the issue of the merits of the action is separated from the quantum thereof and the merits is to be adjudicated first.

2 The defendant is liable to pay 100% (one hundred percent) of the plaintiff's proven or agreed damages.

3 The plaintiff's attorney of record is to obtain an updated actuarial calculation, updated to the date of this order, which actuarial calculation is to take into consideration the passing of the plaintiff on 25 May 2025.

4 The attorney of the plaintiff is to effect any and/or all necessary amendments to the plaintiff's action s as he may deem fit.

5 Once the action is ripe for further hearing, be that with the inclusion or the exclusion of the issue of general damages, the action is to be re-enrolled for further argument before Van Zyl J on a suitable date, which date is to be arranged in conjunction with the secretary of Van Zyl J.

6 The defendant is ordered to pay the costs of the plaintiff to date, excluding the costs of the plaintiff's experts and other costs which have already been provided for in the court order of 14 May 2025, but including:

6.1 The trial costs of 13 and 14 May 2025.

6.2 The costs of the heads of argument.

6.3 Costs of counsel on scale B.

C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff:

A Sander

Instructed by:

Du Plooy Attorneys, Bloemfontein

For the Defendant:

No appearance