

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

CASE NO: 14548/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 24 FEBRUARY 2023

In the matter between:

NTOMBELA NOMASWAZI NOLUTHANDO

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Delivered: *By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 24 February 2023.*

JUDGMENT

SENYATSI J:

[1] This is an application for default judgment against RAF. The claim was launched by the plaintiff Ntombela Bella, on behalf of Nomaswazi Noluthando Ntombela, who at the time the summons was issued, was a minor.

[2] The child was a passenger in a bus that overturned on 3 October 2011 at about 00h30 on the N3, Harrismith following a collision with three other vehicles.

[3] RAF filed appearance to defend and plea to the claim. However, when ordered by Cajee AJ on 20 January 2021, to attend a pre-trial meeting within 10 days of the order, it failed to comply as a result of which its plea was struck out on 2 March 2022 by Mdalana-Mayisela J.

[4] The matter was set down for hearing on an undefended basis on 23 February 2023. The notice of set down was served on the RAF.

[5] As the matter was progressing the minor child reached the age of majority and she substituted the initial plaintiff and this was done in terms of the Rule 28 notice served on RAF on 13 January 2023.

[6] In the said Notice, paragraph 9 of the particulars of claim was amended to read as follows:

“7. As a result of the collision the Plaintiff sustained the following injuries

- (i) Future medical expenses: Under-taking
- (ii) Future loss of income R4 653 730.00
- (iii) General damages R1 200 000.00”

[7] No objection was filed on behalf of RAF for the proposed amendment and the subsequent amendment.

[8] On the hearing of the matter, Advocate Mabena (Ms) appeared for the Plaintiff and Mr Ngomana from the State Attorney, appeared for the RAF. The latter informed me that he received instruction three weeks prior to the hearing of the matter and conceded that the default judgment was unopposed. The only point he wanted to take was that since the general damages were rejected on the morning of the hearing, the court did not have jurisdiction to deal with the hearing of “general damages.”

[9] In opposing the submission by Mr Ngomane, Ms Mabena referred me to RAF 4 completed by Dr AN Mogotsi on 11 April 2014 which sets out the extent of the injuries sustained.

[10] I hold the view that the injuries sustained are supported by the expert reports filed of record. This is so having regard to the fact that RAF has failed to file its own experts reports to gainsay the expert reports submitted by the plaintiff.

[11] Regard being had to the heads or argument submitted on behalf of the plaintiff and more importantly, in exercise of the discretion of this court the order will be made as hereunder.

ORDER

[12] It is ordered that:

12.1. The Defendant is liable for 100% in favour of the plaintiff's proven damages as the result of the motor vehicle accident that occurred on the 03 October 2011.

12.2. The Defendant shall pay the Plaintiff the amount of **R 790 000.00** in respect of the issues of General Damages.

12.3. The Defendant shall pay the Plaintiff an amount of **R 2 510 000.00(two million five hundred and ten thousand rand)**. This amount is with respect to the future loss of earning capacity suffered as the result of the said motor vehicle accident.

12.4. Defendant shall pay the amount of **R 3 300 000.00** before the **03 April 2023** of into the following bank account;

·	NAME OF ACCOUNT:	N.T Mdlalose Incorporated Trust Account
·	BANK:	Nedbank

· **BRANCH CODE:** **198765**
· **ACCOUNT NO:** **[....]**

12.5. The Defendant shall furnish to the Plaintiff an 100% undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of service or supplying of goods to the plaintiff, arising out of the injuries sustained in a motor vehicle collision, and the *sequelae* thereof, after such costs have been incurred and upon proof thereof.

12.6. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs which shall including Counsel's fees for two days, on the applicable High Court Scale as well as the qualifying fees of experts if any.

12.7. In the event that the costs are not agreed, the parties agreed as follow:

(a) The Plaintiff shall serve the notice of taxation on the Defendant 's Attorney of Record; and

(b) The Plaintiff shall afford the Defendant seven (14) days to pay the taxed costs of suit.

12.8. The Plaintiff and his attorney have entered into a contingency fee agreement and it complies with the Contingency Fees Agreement Act 66 of 1997.]

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE JUDGMENT RESERVED: 23 February 2023

DATE JUDGMENT DELIVERED: 24 February 2023

APPEARANCES

Counsel for the Plaintiff:	Adv N Mabena
Instructed by:	Mdlalose Inc
Counsel for the Defendant:	Mr TH Ngomana
Instructed by:	State Attorney