

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 04/29811

In the matter between:

THUSO MATHEWS MATSIPE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

MEYER, J

[1] On 10 August 2002, the plaintiff, who was a pedestrian at the time, was knocked down by a motor vehicle in Von Wielligh Street, Johannesburg. In this action the plaintiff claims payment of compensation for the damages suffered by him as a result of the bodily injuries sustained by him as a consequence of the accident.

[2] The issue of liability has been resolved between the parties. The plaintiff will be entitled to 70% of any proven damages suffered by him.

[3] It is common cause that the plaintiff sustained abrasions to the forehead and right maxilla, a whiplash injury to his cervical spine, lacerations of the right elbow, abrasions of the left elbow, abrasions of the right wrist, and a fracture of the 5th metacarpal of the left hand. It is in issue whether the plaintiff sustained a head injury with resultant epilepsy.

[4] The parties reached agreement in respect of most matters relating to the quantum of damages. It was agreed that the defendant will pay to the plaintiff the amount of R385, 000.00 if it were to be found that the plaintiff sustained a head injury with resultant epilepsy, and the amount of R130, 000.00 if such finding is not made. The agreed amounts represent the equivalent of 70% for of the plaintiff's past and future loss of earnings or reduced earning capacity and for his general damages. It was also agreed, in either event, that an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 will be provided by the defendant in respect of the plaintiff's future medical expenses, limited to 70% in respect of the plaintiff's injuries.

[5] The plaintiff called Prof Rasik Gopal, a specialist neurosurgeon, as an expert witness on the issue between the parties. He has been at the Chris Hani Baragwanath Hospital for the past 36 years, and is presently also the Head of Neurosurgery at the

University of the Witwatersrand. The plaintiff's mother, Mrs. Matsipe, also testified on his behalf. The defendant closed its case without calling any witnesses.

[6] Mrs. Matsipe arrived at the scene of the accident shortly after the accident had happened. She testified that she had found him lying down and that he had 'fainted'. He showed no signs of response. It is undisputed that the plaintiff was transferred by ambulance from the scene of the accident to the Johannesburg Hospital where he was admitted for a period of about four days. Mrs. Matsipe testified that she accompanied the plaintiff in the ambulance to the hospital. He only regained consciousness when they were about to enter the hospital. Mrs Matsipe testified that the plaintiff enjoyed good health before the accident and that he never suffered from epilepsy before the accident in issue. It is common cause that the plaintiff presently suffers from epilepsy.

[7] Prof Gopal expressed the view that the plaintiff's head injury was a moderate one. His opinion in this regard was *inter alia* based firstly on the nature of the pedestrian accident in which the plaintiff was involved, which he explained causes a typical acceleration – deceleration type of brain injury that is diffuse affecting most parts of the brain; secondly the nature of the other head injuries that were sustained by the plaintiff (the abrasions of the forehead and right maxilla), which indicates that the plaintiff's head must have hit a hard surface; thirdly the plaintiff's loss of consciousness, which he inferred from the plaintiff's history that had been conveyed to him; and fourthly the post accident symptoms with which the plaintiff presented three years after the accident when he was seen by Prof Gopal.

[8] Prof. Gopal referred to other possible causes for epilepsy, but, in his view, the brain injury sustained by the plaintiff as a result of the accident was the probable one since epilepsy was consistent with such trauma and the plaintiff had only presented with epilepsy symptoms after the accident.

[9] An evaluation of the evidence and the opinion advanced by Prof Gopal on the issue between the parties leads me to conclude that his opinion is founded on logical reasoning [see: Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another 2001 (3) SA 1188 (SCA), at pp 1200 – 1201 paras [34] – [40]], and should be accepted. It was not gainsaid and is supported by the facts and probabilities.

[10] I am accordingly of the view that the plaintiff has proved on a balance of probabilities that he sustained a head injury as a result of the accident and that the *sequelae* thereof includes epilepsy which he is presently suffering.

[11] In the result the following order is made:

1. The defendant is ordered to pay to the plaintiff the amount of R385,000.00 within fourteen days from the date of this order, failing which interest will start accruing on the aforesaid sum at the rate of 15,5% per annum until date of final payment.
2. The defendant is ordered to provide an undertaking in respect of the plaintiff's future medical expenses as envisaged in section 17(4)(a) of the

Road Accident Fund Act 56 of 1996, arising out of the injuries sustained by him in the motor vehicle accident which occurred on 10 August 2002, after such costs have been incurred and upon proof thereof, limited to 70%.

3. The defendant shall pay the plaintiff's taxed or agreed party and party costs of the action, which costs shall include the qualifying fees of Prof Rasik Gopal (specialist neurolosurgeon), Dr Ebrahim Ismael (orthopaedic surgeon), Ms Jeannie van Zyl (industrial psychologist), and Mr G.A. Whittaker (Algorithm Consultants & Actuaries).

P.A. MEYER
JUDGE OF THE HIGH COURT

20 August 2009