

**REPUBLIC OF SOUTH AFRICA**



**SOUTH GAUTENG HIGH COURT, JOHANNESBURG**

**CASE NO: 19395/07**

**DATE:20/04/2011**

**NOT REPORTABLE**

In the matter between:

**BRITS JOHANNES**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**REASONS FOR JUDGMENT**

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**TSOKA, J:**

[1] On 18 February 2011 the parties approached the Court on what they described a stated case.

[2] In terms of the stated case, the parties agreed that the Court should only determine the issue of Plaintiff's future loss of income or earning capacity

and the general damages. The court was informed that the parties have settled the merits in favour of the plaintiff as well as the other heads of plaintiff's damages. The evidence relied upon by the Plaintiff was that of his expert witnesses. The expert evidence was admitted into the record by consent. The defendant did not lead any evidence. It however, contended that the Plaintiff, on his own evidence, had suffered no loss of income. A draft order in this regard had already been prepared. It was for the Court to only fill in the appropriate globular award having heard argument from the parties.

[3] Having heard Counsel on both sides, I made an order in terms of the draft order which I marked "X", initialled and dated 18 February 2011. In terms of the draft order, amongst other things, I ordered the defendant to pay to the plaintiff the sum of R 150 000 in respect of the general damages. I made no order in respect of future loss of income, as on the evidence before me, the plaintiff failed to prove any loss of income.

[4] The following facts are common cause –

4.1 The plaintiff sustained soft tissue injuries to his neck, back and right shoulder. He had lacerations, two above his right elbow, one behind the left elbow and one on the left hand;

4.2 He was admitted to hospital where the wounds were cleaned and the right and left elbows, as well as the left hand, were

sutured and dressed. He was given anti-inflammatories and analgesics and referred for physiotherapy;

4.3 Only the plaintiff submitted medico-legal reports which were, by consent, handed in as evidence for the plaintiff;

4.4 The medico-legal reports are that of Dr. P.F.B. Von Bormann, an Orthopedic Surgeon ("*Dr. Von Bormann*"); Megan Spawns, Occupation Therapist ("*Megan Spawns*"); G. Mitchells, Clinical Psychologist ("*G Mitchells*"); Dr A.C. Strydom, Industrial Psychologist ("Dr. Strydom") and Ivan Kramer, a consulting Actuary ("Ivan Kramer").

[5] From the evidence gleaned from the various reports, Plaintiff is a Creative Director with an Advertising Agency. He is also a shareholder in the Agency. At the time of the accident, he was earning a monthly salary of R25 000. After the accident he was promoted as Head of the Creative Department. His salary was increased to R35 000 per month. Presently his monthly salary is R45 000.

[6] According to Dr. Von Bormann, the Orthopaedic Surgeon, who consulted with the plaintiff on 21 February 2007, the plaintiff's complaints, at the time, were –

- 6.1 painful movement of the right shoulder, painful enough to wake him up in the evening;
- 6.2 painful right elbow movements with exertion at playing sport;
- 6.3 a historical chronic low backache which has become more persistent and acute.

In conclusion, Dr. Von Bormann states that 'Healthy, active Mr Brits is still plagued by pains in his limbs and back, all dating from this accident. However, with further treatment, great improvement can still be expected.'

[7] From Dr. Von Bormann's medico-legal report, it is apparent that the plaintiff suffered soft tissue injury of right shoulder and right elbow.

[8] On 11 December 2010, Dr. Von Bormann consulted further with the plaintiff. He prepared an Addendum to his report. In the Addendum, he concludes that the plaintiff's symptoms, with vigorous formal treatment, would improve. He is, however, of the opinion that the chronic low backache is notoriously difficult to eradicate completely.

[9] According to Ms Megan Spawns, the Occupation Therapist, the restricted shoulder movements and slightly reduced muscle strength, would not restrict the plaintiff to walk, stand, crouch and climb stairs. She concludes by saying that –

*'Given this he meets most physical requirements expected of a creative director. He is however limited in terms of his weight handling abilities and would require reasonable accommodation with regard to lifting and carrying weight in excess of light classification. Fortunately the tasks that demand this level of ability are not essential job tasks and will not hinder his ability to work in his current capacity'*

[10] On 31 January 2011, the plaintiff consulted with Dr. A.C. Strydom, Industrial Psychologist, whom he informed that he is still able to perform his current job tasks in spite of the continuous pain in his shoulder.

[11] The totality of the evidence reveals that the sequelae of the injuries sustained by the plaintiff do not interfere with his work performance. He is still employed by the same employer in whom he is a shareholder. Since the accident, in spite of his injuries, he received two salary increases, which increases, suggest that plaintiff's work performance is more than satisfactory. The plaintiff plans to start his own Agency in future. His plans suggest that the *sequelae* of his injuries are not of such a serious nature that they would interfere with his earning capacity. In the result I found nothing in plaintiff's evidence that suggests that the plaintiff is less competitive in the labour market or suffers, or would suffer any loss of employment ability deserving compensation by the defendant.

[12] Although the Clinical Psychologist, Mr G.J. Mitchell diagnosed the plaintiff with Adjustment Disorder and some features of Post Traumatic Stress Disorder, these appear not to be related to the accident as prior to the accident, the plaintiff suffered from depression as a result of abuse. The depression resulted in plaintiff attempting to commit suicide. In any event, Mr.

Mitchell is of the opinion that plaintiff's Adjustment Disorder and the Post-Traumatic Stress Disorder will require psychotherapy which will significantly lessen his symptoms to the extent that the symptoms would no longer impact on his daily functioning.

[13] With regard to General Damages, it must be borne in mind that the plaintiff did not sustain any serious bodily injuries. In the accident, the plaintiff sustained soft-tissue injuries to his neck and back. His treatment was conservative. It is only when the conservative treatment being unsuccessful that there is a 60% possibility of him requiring surgery by way of arthroscopic debridement and decompression of the shoulder. Should he follow his conservative treatment for the next two years, by taking anti-inflammatories and analgesics and by receiving three courses of local cortisone injections into his left elbow, he would be cured.

[14] Having regard to plaintiff's injuries, their *sequelae*, the previous awards, I awarded the plaintiff the amount of R 150 000 in respect of general damages, hence the draft order, marked "X" which I initialled and dated 18 February 2011 was made an order of court. I made no order in respect of loss of earnings as the evidence on record fell short of proving such loss on a balance of probabilities.

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**M TSOKA**  
**JUDGE OF THE SOUTH GAUTENG**  
**HIGH COURT, JOHANNESBURG**

COUNSEL FOR PLAINTIFF	:	ADV. E. DOS SANTOS SOARES
INSTRUCTED BY	:	HOUGHTON HARPER INC
COUNSEL FOR DEFENDANT	:	ADV. E. SWARTZ
INSTRUCTED BY	:	SWARTZ INC