

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

**11/11/2016**

**CASE NO.: 11041/12**

**Revised**

**Reportable: No**

**Of interest to other judges: No**

**In the matter between:**

**L H C**

**Applicant/ Defendant**

and

**ROAD ACCIDENT FUND**

**Respondent/ Plaintiff**

---

**JUDGMENT**

---

**NOBANDA AJ**

**INTRODUCTION**

[1] The Plaintiff is a 34 year old man. Plaintiff instituted action against the Road Accident Fund for damages arising from an incident wherein the Plaintiff was a passenger in a motor vehicle with Reg. No. FFB [...] MP then driven by the insured driver, which had overturned on 2 October 2008 ("the accident").

[2] As a result of the accident, the Plaintiff sustained back injuries and four of his left hand fingers were crushed which led to their amputation.

[3] Plaintiff testified that he was admitted in Manteneng Hospital for two(2) months

and discharged on the third(3) month on 15 December 2010.

[4] As a result of the injuries sustained and their *sequelae* Plaintiff claims the following damages:

4.1. Past Hospital Expenses= R200 000.00

4.2 Estimated Future Medical Expenses = R200 000.00

4.3 Loss of Earnings Capacity = R4 145 837.00

4.4 General Damages= R750 000.00

TOTAL = R5 295 837.00

[5] At the beginning of the trial, I was advised that the issue of liability has been settled at 100% in favour of the Plaintiff's proven damages.

[6] I was further advised that part of the quantum of damages suffered by the Plaintiff has also been resolved between the parties as follows:

6.1 The Defendant has issued the Plaintiff with an Undertaking in terms section 17 (4) (a) of the Road Accident Fund Act 56 of 1996 for Future Medical Expenses;

6.2 The Defendant undertook to pay the Plaintiff General Damages in the amount of R400 000.00.

### **ISSUE IN DISPUTE**

[7] The only outstanding issue in dispute is the Plaintiff's estimated Future Earnings or Earnings Capacity. At the beginning of the trial, I was advised that the only issue that now sought to be determined was the amount that the Plaintiff was earning per month at the time of the accident. It became common cause that the Plaintiff was employed at the time of the accident.

[8] Both parties had filed their various expert reports. Plaintiff filed the following expert reports:

8.1 Orthopedic Surgeon by Dr P. Kumbirai

8.2 Radiologist by Ors Van Reinsburg & Partners

8.2 Industrial Psychologist by S Vos & Associates

[9] The Defendant filed the following experts reports:

9.1 Occupational Therapist by Dr B. Ngwako

9.2 Industrial Psychologist by Dr Ramusi

9.3 Orthopedic Surgeon's by Dr D.E. Gantz

[10] Only the joint minute of the Industrial Psychologist dated 10 June 2016 was filed.

## **EVIDENCE**

[11] The Plaintiff called only one witness, his former employer Mr King Shabangu to testify. The Defendant did not call any witnesses.

## **SUMMARY OF PLAINTIFF'S EVIDENCE**

[12] The Plaintiff testified that he was employed as a senior brick layer from 1 August 2010 by Intsaba Earth Works and Property Developers building houses at the time of the accident earning an amount of R10 000.00 per month at RS00.00 per day working for 5 days in a week.

[13] Plaintiff alleged that he was paid in cash every end of the month by Mr Shabangu (the Company's Director). Plaintiff further testified that he did not have a bank account. His expenses were school fees for his child, monthly installments for his bed, mattress and radio at Town Talk Furnishers, household expenses and groceries.

[14] It was further Plaintiff's evidence that during his admission in hospital, Mr Shabangu, in the presence of his sisters continued to pay him his salary in cash during the end of the month of October 2010. That he continued receiving his salary until January 2011 when it ceased. Plaintiff's evidence was that he returned to work after being discharged from hospital but was unable to perform his work as he could no longer hold things with his left hand after his left four (4) fingers were amputated.

[15] Under cross examination regarding his registration by the company and payment of income tax, the Plaintiff alleged that he was registered by the company and conceded that he was however not paying income tax because he was not receiving his salary through the bank. The Plaintiff further testified that he was not aware whether or not his employer paid UIF for him.

[16] On questioning of how he used to safe keep so much cash without utilizing a bank, the Plaintiff testified that he used to hide it in his house in a safe box underneath the floor. Plaintiff alleged his monthly savings amounted to approximately R4000.00 per month.

[17] On being cross-examined on the place where the Plaintiff used to receive his salary prior to the accident, the Plaintiff testified that he received his salary in cash together with other employees of the company from the company's offices every month end. The Plaintiff was questioned on how much the other employees were paid to which he responded between R4 500 - R5000.00 per month.

[18] It was put to the Plaintiff that he was not earning R10 000.00 per month as certified by his employer, to which the Plaintiff persisted that he was. It was further put to the Plaintiff that he was not a senior brick-layer because he was not qualified to which again the Plaintiff persisted and alleged that he was qualified as he had a lot of experience in the work he was doing then. Plaintiff alleged he has been a brick-layer since the year 2002.

**PLAINTIFF'S WITNESS:**

**MR KING SHABANGU**

[19] Mr. King Shabangu testified that he owns a construction company that builds houses, schools and clinics under the registered name Intsaba Earth Works and Properties Developers that has been trading as such since 1998 with physical address at Stand No. 256 Tintswalo Village, Mpumalanga.

[20] Mr. Shabangu confirmed that the Plaintiff was under his employment as a brick-layer and a foreman earning R10 000.00 per month since 1 August 2010. He testified that the Plaintiff was appointed foreman as he could read a plan and set up the foundation. That Plaintiff's duties also included supervising other workers and checking whether they were doing a proper job. He considered Plaintiff a 100% competent and fit to do that job.

[21] Mr. Shabangu further confirmed that he used to pay the Plaintiff in cash and that at the time of the accident they were building another house in Slimstone. He further

confirmed that he personally paid the Plaintiff his salary in cash whilst the Plaintiff was still admitted in hospital in October 2010.

[22] It was Mr. Shabangu's evidence that he compiled and signed the Plaintiff's Employment Certificate. Under cross examination Mr. Shabangu testified that the company never had a cheque book, deducted tax from its employees nor paid any UIF for its employees. He however testified that the company paid tax to the South African Revenue Services ("SARS") and has a tax clearance certificate to that effect.

[23] On being crossed-examined on whether or not the company has a bank account, Mr. Shabangu testified that it did with ABSA but was closed for inactivity after the company became dormant in 2014. As a result, he could not obtain the bank statements from ABSA after he had requested them on 6 September 2016. ABSA advised him that it was impossible to obtain them as the account was closed.

[24] Mr. Shabangu was further cross examined on the reasons why the Plaintiff's Employment Certificate did not reflect the date the Plaintiff commenced work with the company and the number of days that Plaintiff worked. His response was that he made a mistake.

[25] Mr. Shabangu was also cross examined on whether or not the company included its employees' salaries when it submitted tax returns. Mr. Shabangu's response was that they (I assume the Directors) submitted expenditure receipts and some of the company's records to the company's Accountant who had a duty to submit same to SARS.

[26] Upon further questioning on whether or not the company declared to SARS that it has employees, Mr Shabangu testified that the company's Accountant never requested their names and they never declared to SARS that the company was paying salaries to employees. According to Mr Shabangu, the company only declared petrol expenses.

[27] The Defendant's Counsel put it to Mr Shabangu that the arrangement of paying the Plaintiff in cash was illegal. In response, Mr Shabangu stated that that is how the company's employees were paid then and that is still the position.

## **ANALYSIS OF THE EVIDENCE**

[28] I found Mr Shabangu's testimony on how the company conducted its business especially with regard to its tax returns and declarations or lack thereof to SARS disturbing to say the least. It is further disconcerting that the company that has been in existence since 1998 didn't seem to have declared that it has employees, provided its employees with pay slips and made no deductions for its employees' income tax or UIF at least during the year 2010. I however desist from making further comments on this issue lest I make findings that are beyond the scope of the issues at hand.

[29] In any event, I was advised by Plaintiff's Counsel that some of the documents requested at a pre-trial conference on 12 September 2016 to wit:

29.1 the company's registration documents;

29.2 the company's Tax Clearance Certificate for 2015 were made available to the Defendant but the Defendant never requested copies thereof from the Plaintiff.

[30] With regard to the Plaintiff, I found him to be an honest witness. His evidence that he was earning R10 000.00 per month was corroborated not only by the Employment Certificate but also his employer Mr Shabangu who signed it.

[31] The Defendant did not call any witness nor produce any documentary proof to refute the Plaintiff's testimony other than to put it to the Plaintiff that he was not earning that amount.

[32] Furthermore, it was the Plaintiff's evidence corroborated by his employer Mr Shabangu that Plaintiff was paid in cash. There was no evidence placed before court that paying the Plaintiff's salary in cash was illegal as put to Mr Shabangu during cross examination by the Defendant's Counsel.

## **CONCLUSION**

[33] In the light thereof, I find that the Plaintiff has proven on a balance of probabilities that he was indeed earning an amount of R10 000.00 per month at the time of the accident.

## **ORDER**

In the premises I hereby make the Draft as amended an order of court marked "X".

**P.L NOBANDA**

**Acting Judge of the High Court, Pretoria**

DATE OF HEARING: 11 November 2016

DATE OF JUDGMENT: 11 November 2016

LEGAL REPRESENTATIVES:

Counsel for the Appellant/ Plaintiff: Adv. J.T. Zitha

Instructed by: Brazington & McConnell

Counsel for the Respondent/ Defendant: Adv. Z. Mashigo

Instructed by: Tsebane Molaba Attorneys

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Before the Honourable Justice Nobanda AJ in Court 6F on 11 November 2016**

**Case No: 11041/2012**

In the matter between:

CHILDAN LUCKY HENDRICK

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

**DRAFT ORDER**

**IT IS ORDERED THAT:**

1. The Merits was already settled on the basis that the Defendant shall pay 100% of

the Plaintiff's proven or agreed damages;

2. The Defendant shall pay to the Plaintiff the sum of R400.000.00 (Four Hundred Thousand rand) in respect of general damages.

3. The Defendant shall pay to the Plaintiff the sum of R3552215, 62 Three Million Five Hundred and Fifty Two Thousand Two hundred and fifteen rand sixty two cents in respect of past and future loss of earnings/earning capacity.

4. The amounts mentioned in paragraph 2 and 3 in the sum of R3952215, 62 Three million nine hundred and fifty two thousand two hundred and fifteen rand and sixty two cents

5. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 9% per annum, calculated from the 15th calendar day after the date of this Order to date of payment.

6 The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4) (a) of Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him resulting the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on **02 October 2010**, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof.

7. The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale, subject thereto that:

7.1 In the event that the costs are not agreed:

7.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

7.1.2 The Plaintiff shall allow the Defendant 7 (SEVEN) Court days from date of allocator to make payment of the taxed costs.

7.1.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 0.9% per annum on the taxed or agreed costs from date of allocator to date of final payment.



7.2 Such costs shall include but not be limited to:

7.2.1 The costs incurred in obtaining payment of the amounts mentioned in paragraphs 2,3 and 7 above;

7.2.2 The costs of and consequent to the employment of Counsel, including counsel's charges in respect of his full day fee for 19 April 2016, as well as reasonable preparation;

7.2.3 The costs of all medico-legal, radiological, actuarial, accident reconstruction, pathologist and addendum reports obtained by the Plaintiff, as well as such reports furnished to the Defendant and/or its attorneys, as well as all reports in their possession and all reports contained in the Plaintiffs bundles, including, but not limited to the following:

7.2.3.1. .Dr. Kumbirai, Orthopaedic surgeon;

7.2.3.2. .Ors Van Rensburg and partners, Radiologist;

7.2.3.3. .Ms. Vos, Industrial Psychologist;

7.2.3.4. Mr. Koch, Actuary

8.2.5 The reasonable costs incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico- legal examinations of both parties.

8.2.6. The costs consequent to the Plaintiffs trial bundles and witness bundles, if any;

8.2.7 The cost of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the Plaintiff and the Defendant, including counsel's charges in respect thereof;

8.2.8. The cost of and consequent to compiling all minutes in respect of pre-trial conferences;

8.2.9. The reasonable travelling costs of the Plaintiff, who is hereby declared a necessary witness:

9. The amounts referred to above will be paid to the Plaintiffs attorneys, EE Sethole Attorneys by direct transfer into their trust account, details of which are the following:  
Standard Bank

Account number: [...]

Branch: Hazyview

REF: MMF/C53/2011

10. There is no contingency fee agreement applicable

BY ORDER OF THE COURT

---

REGISTRAR OF THE HIGH COURT PRETORIA

---

Adv. J .T ZITHA  
(PLANTIFF'S ADVOCATE)

---

Adv MASHEGO  
(DEFENDANT'S ADVOCATE)