




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

CASE NO: 26112/13

DATE: 01 APRIL 2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
11/4/2016	
DATE	SIGNATURE

In the matter between:

DANIEL STEPHANUS DU TOIT HARTZEN BERG

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NKOSI AJ:

INTRODUCTION

1. Plaintiff issued summons against the Defendant following a motor-vehicle in February 2009, whereof he sustained some injuries.
2. He claims an amount of R1 058 112.00 with interests at the rate of 15.5% p.a from 14 days of the date of judgement or settlement.
3. The action was defended and the parties later settled on the merits at 90% against the Defendant.
4. The only outstanding issue is quantum, past and future loss of income and general damages.

Issues to be Determined

5. Whether the Plaintiff qualifies to compensate for general damages or past and future loss of income.
6. The evidential value of the admitted expert reports.

Facts raised by the Plaintiff

7. It is common cause that Plaintiff was admitted to Kalafong Hospital, after the motor vehicle accident, for treatment on the 1st of October 2009 and September 2011.
8. He went to the same Hospital for check up as he could not walk properly and had some pins implanted in both legs. He complained of neck swelling and painful femur.

9. Prior to the accident he was employed in an environment where he supervised workers on construction of concrete walls which required physical assistance of a team of workers.
10. He was earning a monthly salary of R6500.00 in 2009. He resigned in 2010 after six weeks of a paid leave. He could not work properly due to the leg's incessant pains.
11. He was then employed by a telecommunications company as a sales consultant and subsequently promoted to a store manager at a salary rate of R18 500 per month with commission and R3000 car allowance. The daily chores were then totally different from the construction of concrete walls which often required physical work.
12. On cross-examination it was put to him that the physical work at the construction did not form part of his job description of which he agreed. He only helped the labourers to get their work done.
13. It was further put to him that the reason for his resignation was that he did not reach his sales target and could not make more money for the precious employer.
14. He was asked of his daily tasks with the present employer which he stated that he is assisting events forecast for business year ahead etc.
15. It was his testimony that his future plans were to continue with the present employer though he loved the construction work.
16. He further disputed his own medico-legal report's content that it is wrong at some point

2nd WITNESS: Hendrica T Kraehmer

17. She testified under oath that she examined the Plaintiff as an occupational therapist. She conceded that the accident had no career impact between the period of 2009 to 2014 on the Plaintiff. She further indicated that Plaintiff is still very young and has full prospects of career progression of 3 to 5 years. And that there are no risks of injury in the present employment. On a question of fluctuating or reduced productivity she could only say what she heard from the Plaintiff that the accident caused a continuous pain.
18. No further witnesses were called by the Plaintiff as all the expert reports were admitted and accepted by the defendant. That was his case.

19. The Defendant closed its case.

CLOSING ARGUMENTS

20. Adv Theron for the Plaintiff referred to different court decisions on general damages and for future medical costs. That the Defendant offered a certificate in terms of Section 17 of the Road Accident Fund Act which was accepted by the Plaintiff.
21. It was his submission that the Plaintiff suffered severe injuries which requires further treatment. He had suffered a leg shortening due to this accident and had to give-up rugby as his sport ad the persistent neck and backpain.
22. It was further submitted that he is no longer the same person. It was presupposed that should he lose his present job it will be difficult for him to find

a suitable one and this will be a post accident possibility of employability and this would justify, it was submitted, an application of a higher contingency deduction on future income: 5% pre and post accident

10% pre morbid

15% post morbid

He therefore claims an amount of R337 892.00 and at least R500 000 for the general damages. These amounts would be a fair compensation given the fact that he had internal fracture of the femur which required internal fixation. His pains still intact and need corrective surgery to remove pins and plates in another operation.

23. Advocate Strauss for the Defendant argued that they have accepted the expert reports except for their evidential value thereof. He conceded that the femur has been corrected resulting in slight leg shortening made better to 12mm. He had healed and can participate in heavy work tasks.

24. He submitted that Plaintiff started testifying contrary to what his occupational therapist said and said her report was wrong.

24. It was further submitted that he had only passed grade 12 at school and was earning about R6500.00 when the accident occurred post accident income rose to R27 000 or more. He is satisfied with his current work and this serves as an indication, it was submitted, of career improvement and he is now in a better position after the accident.

25. It was further submitted that what needs to be compensated is loss of earning capacity not loss of earnings for which I agree. There was no evidence that his estate has been diminished and it doubled instead. Plaintiff did not lead any evidence on his future career path. Counsel argued further that the premise on which the industrial psychologist's calculation was started on a wrong footing

and requested the court to take its own fair calculation having considered the evidence in totality.

26. There was no evidence that the accident had any restrictive impact on his career thus far except that he had pains; cannot compete equally with others for job positions as he gets older which is a loss of employability which is a loss of income. I am of the different view on this cost aspect as it is based on speculation that on facts.

Consideration of all Submissions

27. The court was referred to different cases which are all relevant to this matter. The only difference is that the court had an opportunity to consider the whole evidence accepted the concession of liability of 90% in favour of the Plaintiff.

On quantum the court will not have mathematical comparison of proposed calculations as supported by the both submissions.

The court is guided by its own wisdom and taking into consideration the merits of each case confronted with without blindly accepting a particular one. The court's discretion is exercised judiciously having considered both submissions and the case law referred to as it is on record.


The court is of the view that Plaintiff had not suffered a diminished prospect of earning capacity as his position was better off as compared to the pre-accident situation.

The only issue to be decided is at what level or amount can he be compensated and at what level of contingency deductions can be considered.

As the consequent of the above the court finds that the Plaintiff's case succeeds and it is ordered as follows:-

- a) Defendant to compensate the Plaintiff in the amount of R500 000 less 10%
- b) Contingency deduction in the amount of 15%
- c) Costs of suit on party and party scale including the expert reports fees.

Signed and dated on this 01 day of April 2016.



V.R.S.N NKOSI

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA**