

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

**CASE NUMBER: 24251/2013**

29/1/16

In the matter between:

(1) Reportable: No
(2) Of interest to other Judges: No

**TSABEDZE, MT**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT:**

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**STRIJDOM AJ:**

**A. INTRODUCTION**

1. The Plaintiff sues under the Motor Vehicle Insurance Act for damages for personal injuries sustained in a motor vehicle accident on 12 June 2009. At the time of the collision, the Plaintiff was a passenger in vehicle [...].

2. The Plaintiff suffered the following injuries as a result of the accident:

2.1. Moderate to severe head injury;

2.2. Fracture of the parietal region skull with subarachnoid acute haemorrhage.

3. Defendant has conceded the merits of the action on the basis that it is liable for 100% of Plaintiff's proven and/or agreed damages.

4. Defendant has tendered an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act which will subject to the provisions of the Act, take care of any possible future medical and hospital related expenses.

5. The Defendant was ordered on 10 September 2015 to pay Plaintiff a capital amount of R550,000.00 (Five Hundred and Fifty Thousand Rands) as payment in respect of general damages.

6. The Plaintiff absconded his claim for past medical expenses.

## **B. ISSUES IN DISPUTE**

7. The only issue that remains for determination is the claim for future loss of earnings.

## **C. EXAMINATION BY MEDICAL EXPERTS**

8. The following expert reports were obtained by the Plaintiff:

8.1. Dr T Enslin Independent Medical Examiner;

8.2. Dr DA Birrell, Orthopaedic Surgeon;

8.3. Dr JJ du Plessis, Neurosurgeon;

8.4. Dr K Truter, Clinical Psychologist;

8.5. Dr M Mazabow, Neuropsychologist; and

8.6. Ms A Greef, Occupational Therapist.

9. Defendant admitted the contents of Plaintiff's medico-legal reports. Save for an Orthopaedic Surgeon, the Defendant did not appoint any experts.

10. The Plaintiff called two expert witnesses, to wit. Ms Prinsloo (Educational Psychologist) and Mr Prinsloo (Industrial Psychologist).

11. Plaintiff suffered an isolated injury to the brain.

12. He has suffered a moderate to severe diffuse brain injury from which intellectual difficulties could be expected.

13. He struggled with his vision and his short term memory was poor.

14. He also suffered an injury, which aggravated the diffuse injury.

15. He had a skull base fracture with leakage of sub-arachnoid fluid.

16. Given the severity of the brain injury, he will not be able to fulfill his pre-morbid potential.

### **MS A GREEFF**

17. Ms Greeff concluded that the Plaintiff's aptitude scores which were secured during assessment indicated that he has the ability to apply common sense while understanding and carrying out instructions of written, oral or diagrammatic nature. The occupation of a telemarketer falls within this reasoning. Other marketing positions indicate the need for mathematics, language and reasoning skills.

18. The Plaintiff was unable to select certain subjects at school. He would in all probability have had difficulty to cope due to the neuropsychological profile identified by Dr Mazabow.

19. His capacity for learning new information is compromised.

### **DR MAZABOW**

20. He concluded that the Plaintiff has a period of dense post-traumatic amnesia for more than 24 hours.

21. Plaintiff suffered a head injury including a right parietal skull fracture and a traumatic sub-arachnoid haemorrhage.

22. Plaintiff sustained a moderate brain injury.

23. Plaintiff has reduced insight into his own difficulties and he has an unreliable memory and cognitive difficulties. His neuropsychological status is permanent.

24. Plaintiff is likely to experience difficulty in the context of tertiary studies and he will also struggle to perform efficiently in vocational positions with high clerical / administrative requirements.

#### **DR TRUTER**

25. Dr Truter stated that there was a decline in the Plaintiffs school marks. He aspired to enrol at Tshwane University of Technology to study Marketing Management. His poor results in accountancy prevent him from qualifying for a bursary and resulted in him not being accepted.

26. He has a depressed mood and the contribution to his WPI as a result of psychological condition is 12%.

27. He suffered from an adjustment disorder with depressed mood and anxiety.

#### **DR BIRRELL**

28. Dr Birrell concluded that the Plaintiff did not sustain a loss of work capacity from an orthopaedic point of view and he will not have to retire early.

#### **MS E PRINSLOO**

29. Ms Prinsloo testified that the Plaintiff will suffer to process information and his working memory has been affected. Under cross-examination, Ms Prinsloo testified that the Plaintiff aspires to become a Marketing Manager. Although he has a Grade 12 qualification with degree exemption, she expressed her concern regarding the lower level of mathematics and the poor achievement of accountancy. She is doubtful that the Plaintiff will obtain a degree.

30. She is of the view that the Plaintiff would have been able to complete his first degree (NQF7) if he had the financial support by way of a bursary.

31. Due to Plaintiffs poor results he did not get a bursary. He will not be able to obtain a degree from a University but rather from a college (NQF5) / courses.

### **MR PRINSLOO**

32. Mr Prinsloo testified and concluded as follows:

#### **Pre-morbid**

32.1. Plaintiff would obtain NQF4 and enter the labour market in 2014. He would be unemployed for some time, obtain temporary work, migrating to the non-corporate sector.

32.2. He would start with his tertiary studies - migrated to the corporate sector in 2019.

32.3. He would have completed his studies over 8 years reaching B2 and plateau at D1/D2 at age 45, inflationary increases to age 65.

32.4. He recommended that normal pre-morbid contingency deductions be applied.

#### **Post-accident**

32.5. Plaintiff would be unemployed for some time, will commence with temporary work (January 2016 to December 2018), migrate to the non-corporate sector in 2019.

32.6. Plaintiff will obtain NQF5 over 5 years, enter B2 progressing to C2 until retirement age, age 65.

32.7. He suggested that significantly higher post-morbid contingency deductions should be applied.

33. Defendant's counsel submitted that Plaintiff has achieved well scholastically in his progression pre- and post-morbidly, with the exception of his changing of mathematics to mathematics literacy. He further submitted that it was not established with certainty that the Plaintiffs pre- morbid and post-morbid ambitions have been altered as a consequence of the accident.

34. Counsel for the Defendant submitted that higher contingencies of 15% and 35% be applied.

35. It is postulated by Dr Du Plessis (neurosurgeon) that Plaintiffs severe injuries and the *sequelae* thereof have a direct effect on the earning capacity of the Plaintiff.

36. The Plaintiff has in my view discharged the onus of proving on a balance of probabilities that as a result of the injuries he sustained in the collision, his academic results have decreased and he will not be able to reach his full pre-accident potential and that his career choices have been limited.

### **ACTUARIAL CALCULATIONS (HUMAN & MORRIS)**

37. The summary of the actuarial results are as follows:

#### **Summary of results:**

	<b><u>Uninjured</u></b>	<b><u>Injured</u></b>	<b><u>Net</u></b>
Future Loss	R6,427,511	R3,999,130	R2,428,381

### **CONTINGENCY DEDUCTIONS**

38. There is no consensus between Plaintiff and Defendant regarding contingency deductions. The court has to take cognisance of the view expressed in the expert reports, with particular reference to those of the Industrial Psychologist and the Actuary.

39. The approach which a court should adopt is found in a judgment by Nicolas AJ in **Southern Insurance Association v Bailey N.O. 1984 (1) SA 98 A at 113 G - 114 A:**

*"It has open to possible approaches. One is for a judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations on the basis of assumptions resting on the evidence. The validity of his approach depends of course upon the soundness of the assumption and they may vary from the strongly probable to the speculative. It is manifest that whether approach involves guesswork to greater or lesser extent. But the court cannot for this reason adopt a non-possumus attitude and make no award."*

40. Having considered the various medico-legal reports, the different legal approaches and the submissions by both counsel for the Plaintiff and Defendant, I am persuaded that:

- 40.1. A 20% pre-morbid contingency be applied;
- 40.2. A 30% post-morbid deduction be applied;
- 40.3. The total loss of earnings/income suffered by the Plaintiff is R2,342,618.

41. In the result:

The Draft Order annexed hereto marked "X" is made an Order of Court.



**JJ STRIJDOM**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

**HEARD ON:**

**DELIVERED ON:**

**APPEARANCES:**

Counsel for Plaintiff: Adv M van Rooyen  
Attorneys for Plaintiff: RG Hayes

Counsel for Defendant: Adv PP Monama  
Attorneys for Defendant: Savage Jooste  
E Adams



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION (PRETORIA)**

On this the 29 th day of January 2016  
Before his Lordship Mr Justice Strijdom (AJ)

**CASE NO.: 24251/2013**

In the matter between:

**M T TSABEDZE**

PLAINTIFF

and

**ROAD ACCIDENT FUND**

DEFENDANT

**DRAFT COURT ORDER**

**This Court Order must be read in conjunction with the previous Court Order dated 10 September 2015 and stamped 7 October 2015. attached hereto.**

**AFTER HAVING HEARD COUNSEL FOR BOTH PARTIES**, the following is ordered:

1. In addition to the amount stipulated in the Court Order attached hereto, the Defendant is further ordered to pay an amount of R2, 342, 618 (Two million three hundred and forty thousand six hundred and eighteen rand) In respect of the Plaintiff's claim for loss of earnings/earning capacity, which amount shall be paid to the credit of the trust account of the Plaintiff's Attorneys of record, Savage Jooste & Adams Inc, Pretoria, whose trust account details are as follows:  
Nedbank name: NEDCOR - ARCADIA                      Account type: Trust account  
Branch code: 16-33-45-07                                  Account no: [...]  
Reference no.: RP2872/RGH
2. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs of the action on the High Court scale. The costs will include the following
  - 2.1.        The costs of counsel, including the costs of attending on the pre-

trial conference.

- 2.2. The reasonable travelling and accommodation costs for Plaintiff to attend on the Defendant's medico-legal expert appointments as well as on Court on 2 November 2015.
- 2.3. The reasonable travelling costs of Plaintiff's instructing attorney of record, Mr G van den Berg, Podbielski Mhlambi Inc. - Carletonville) to attend Court on 2 November 2015.
3. No interest will be payable on the capital sum in respect of general damages, provided that payment is made 14 days after the Court Order. Should payment not be made timeously, the Defendant will pay interest at the rate of 9% per annum from due date to date of payment.
4. The party and party costs are payable within 14 days of date of settlement/taxation, whereafter interest will be charged at 9% from the aforementioned date to date of payment.
5. Following agreement on or taxation of the costs, the Plaintiff shall allow the Defendant fourteen (14) Court days after the allocator has been made available to the Defendant's Attorneys, to make payment of the taxed or agreed party and party costs, whereafter interest will be charged at 9% per annum from date of the stamped allocator to date of payment.
6. There is no Contingency Fee Agreement applicable.

BY ORDER

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**REGISTRAR**

COUNSEL FOR PLAINTIFF: ADV M VAN ROOYEN (082 897 1260)

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION (PRETORIA)**

On this the 10<sup>th</sup> day of September 2015

Before his Lordship Mr Justice Ledwaba (DJP)

**CASE NO.: 24251/2013**

In the matter between:

**M T TSABEDZE**

PLAINTIFF

and

**ROAD ACCIDENT FUND**

DEFENDANT

**DRAFT COURT ORDER**

BY AGREEMENT between parties:

1. The Defendant is liable for all of the Plaintiff's proven or agreed damages.
2. The Defendant is ordered to pay an amount of **R550 000.00** (Five Hundred Thousand Rand) **in respect of the Plaintiff's claim for general damages**, which amount shall be paid to the credit of the trust account of the Plaintiff's Attorneys of record, Savage Jooste & Adams Inc, Pretoria, whose trust account details are as follows:  
  

Nedbank name: NEDCOR - ARCADIA	Account type: Trust account
Branch code: 16-33-45-07	Account no: [...]
Reference no.: RP2872/RGH	
3. The Plaintiff's claim in respect of past medical expenses and loss of earnings I earning capacity is postponed until the- **2<sup>nd</sup> of November 2015** for allocation to proceed on trial for 2 days.

4. The Defendant is ordered to furnish the Plaintiff with an Undertaking in terms of 5.4 The reasonable travelling costs of Plaintiff's instructing attorney of record, Mr G van den Berg, Podbielski Mhlambi Inc. - Carletonville) to attend Court on 10 September 2015.

6. No interest will be payable on the capital sum in respect of general damages, provided that payment is made 14 days after the Court Order. Should payment not be made timeously, the Defendant will pay interest at the rate of 9% per annum from due date to date of payment.

7. The party and party costs are payable within 14 days of date of settlement/taxation, whereafter interest will be charged at 9% from the aforementioned date to date of payment.

8. Following agreement on or taxation of the costs, the Plaintiff shall allow the Defendant fourteen (14) Court days after the allocator has been made available to the Defendant's Attorneys, to make payment of the taxed or agreed party and party costs, whereafter interest will be charged at 9% per annum from date of the stamped allocator to date of payment.

9. There is no Contingency Fee Agreement applicable.

BY ORDER

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**REGISTRAR**

COUNSEL FOR PLAINTIFF: ADVOCATE M VAN ROOYEN  
(082 897 1260)