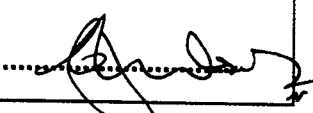


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

1/6/2016
CASE NO.: 45540/2015

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
1/6/2016	
	

In the matter between:

MUNDALAMO, NYILO BRIGHT

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

VAN DER WESTHUIZEN, A J

1. The plaintiff is a young man, 30 years of age and of slender build. He is presently employed as a general worker at Chesanyama, Giyani.
2. The defendant is the Road Accident Fund.
3. The plaintiff was a passenger in his brother's motor vehicle on 25 July 2013 when it was involved in a collision with another vehicle and sustained injuries that will be dealt with below.
4. The defendant has conceded the merits. There is an agreement between the parties in respect of the rubrics: loss of past income; future hospital and medical expenses.

5. When the matter was called, there remained two rubrics. These are: future loss of income; general damages. In respect of the latter, it was agreed between counsel representing the plaintiff and the defendant respectively that the issue of general damages be postponed *sine die*, pending a possible deferral thereof by the defendant to the appropriate tribunal appointed in terms of the Road Accident Fund Act, No. 56 of 1996.
6. The only remaining issue to be decided relates to future loss of earnings. In this regard, only the plaintiff testified and then only about his present employment and the circumstances surrounding it. Both counsel were content to rely on the reports by the orthopaedic surgeon Dr. Ntlopi Mogoru, the Occupational Therapist Mabongi Zondo and the Industrial Psychologist Ms Manoko Ratala that were handed into evidence by agreement. By agreement, the actuarial report prepared by Munro Forensic Actuaries was also handed into evidence.
7. The plaintiff alleges that he suffered the following injuries as a result of the said accident:
 - (a) Chest injury;
 - (b) Injury to the right hand;
 - (c) Injury to the throat; and
 - (d) Injury to the spinal cord.
8. The injuries mentioned under (a), (b) and (c) have left permanent scarring.
9. The plaintiff complains of head- and backache since the accident that apparently interferes with his ability to work.
10. The orthopaedic surgeon reports that on examination of the plaintiff, no abnormalities were detected in respect of:

- (a) Cardiovascular system;
 - (b) Respiratory system;
 - (c) Central nervous system;
 - (d) Musculoskeletal system;
 - (e) Upper limbs;
 - (f) Shoulders and arms;
 - (g) Cervical spine;
 - (h) Thoracolumbar spine
 - (i) Lower limbs;
 - (j) Hips and thighs;
 - (k) Knees and legs;
 - (l) Ankles and feet.
11. In respect of the abdomen it is reported that the abdomen is soft, non-tender and no organomegaly was detected.
12. Dr. Mogoru reports that the only positive findings are the scars referred to and that those scars are considered permanent and serious in terms of section 5.2 of the narrative test. These are the only injuries listed in the Serious Injury Assessment Report prepared by Dr. Mogoru and submitted to the defendant.
13. He concludes that the plaintiff will be an equal competitor in the unskilled labour market.
14. The occupational therapist reports that according to the hospital records submitted:
- (a) The requested x-rays of the plaintiff's back and neck were normal;
 - (b) On arrival at the hospital after the accident, the plaintiff was managed with analgesics, non-steroidal and anti-inflammatory drugs and dressing; and

- (c) Was issued with a soft collar.
15. It is further recorded by the occupational therapist that the plaintiff's current accident-related complaints are:
- (a) Back pain with heavy load handling;
 - (b) Difficulties with heavy load handling; and
 - (c) Headache, especially in hot weather, occasionally managed with grandpa sachets or it comes and goes on its own.
16. The occupational therapist reports in respect of the assessment of physical function of the plaintiff as follows:
- (a) The upper limbs and lower limbs range of motion are within functional limitations;
 - (b) The plaintiff, in respect of the neck, back and sitting tolerance, sat on a chair with no armrests for three hours with no postural difficulties and no pain or fatigue reported during the assessment;
 - (c) The plaintiff stood in an upright posture and with symmetry of the shoulders and hips with no postural difficulties or pain or fatigue reported;
 - (d) The plaintiff was able to walk with ease and with a normal gait, trunk rotation, arm-swing and equal strides. No difficulties were reported with walking endurance.
17. It is further reported by the occupational therapist that the plaintiff did not meet the criteria set for the open labour market on manual dexterity tasks, but was able to handle medium to heavy loads for short duration. It is reported that the plaintiff may experience difficulties in future in obtaining employment in the open labour market falling within heavy to very heavy physical demands.


18. The occupational therapist concludes that the plaintiff retains the physical capacity to participate in his current occupation till normal retirement age.
19. The industrial psychologist echoes the findings of the occupational therapist.
20. It is recorded by the industrial psychologist that the plaintiff indeed had obtained a certificate in Human Resources from a FET College. This would place the plaintiff in the semi-skilled labour market.
21. From the industrial psychologist's report, it is gleaned that the plaintiff's pre-accident employment history is as follows:
 - (a) Security guard employed by GS Security during 2010 a contract based employment;
 - (b) Employed by Jet Stores during 2012 – 2013 firstly for canvassing and thereafter as customer recruiter.
22. Both the aforesaid occupations are classified under light physical demands.
23. The plaintiff's present occupation falls under the category light to medium physical demands.
24. In his evidence, the plaintiff faintly explained that he did not return to his pre-accident employment, as the work he was doing required him to be on his feet most of the time. He testified that his current employer has taken pity on him and has thus employed him. Under cross-examination he testified that he had received oral warnings, the gist of which was not explained.
25. There is no direct evidence that the plaintiff is at risk losing his current employment. No submissions were put forward why it would be a

possibility or even a probability that plaintiff stands to lose his current employment.

26. Considering that the plaintiff holds some other qualification that puts him in the semi-skilled open market, no evidence was led by the plaintiff that he would have any difficulty in obtaining employment in that sector of the labour market or in the category light to medium physical demands.
27. Neither the orthopaedic surgeon, nor the occupational therapist, nor the industrial psychologist reported on any difficulty in that regard. The latter two only reported that possibly difficulties may be experienced in future in respect of the category heavy to very heavy physical demands, should the plaintiff lose his current employment. There is no direct evidence that this would be a possibility or a probability for the plaintiff to exercise. As mentioned above, there exists on the evidence no possibility or even a probability that the plaintiff stands to lose his current employment.
28. Counsel for the plaintiff submitted that the orthopaedic surgeon is not the appropriate person, nor is he so qualified, to comment on the plaintiff's employment capabilities. The orthopaedic surgeon has in his report recorded that the plaintiff will be an equal competitor in the unskilled labour market. There is no merit in the aforesaid submission of counsel for the plaintiff. It is indeed the orthopaedic surgeon's duty to comment on the plaintiff's ability to participate in the open labour market in view of the accident-related injuries and/or *sequelae* thereof.
29. It was further submitted by counsel for the plaintiff that it is clear from the reports of the occupational therapist and that of the industrial psychologist that plaintiff may suffer future loss of earnings and hence the plaintiff is entitled to an award in that regard.

30. As I have indicated above, the comments by the occupational therapist and the industrial psychologist in respect of possible loss of future earnings, are made with reference to employment in the category heavy to very heavy physical demands, a category which the plaintiff's previous and current employment does not fall. I have also indicated that no direct evidence or otherwise has been put forward that such is a possibility or even a probability. There is no merit in that argument of counsel for the plaintiff.
31. The actuarial report presented by the plaintiff makes no mention of any loss of future earnings. None appears to have been foreseen.
32. It follows that the plaintiff has failed to prove an actual future loss of earnings or earning capacity or a real probability thereof.
33. I grant the following order:
 - (a) Defendant shall pay to Plaintiff the amount of R98 400.00 (Ninety eight thousand four hundred rand) in respect of past loss of earnings;
 - (b) Defendant shall provide an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for the costs of the future accommodation of the patient in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him after such costs have been incurred and upon proof thereof and where such costs relate to the injuries sustained by the patient in the collision of 25 July 2013;
 - (c) The issue of general damages is postponed *sine die*;

- (d) Defendant shall pay 75% of the Plaintiff's party and party costs on the High Court scale;
- (e) The Plaintiff shall, in the event that costs are not agreed between the Defendant and the Plaintiff's attorneys, serve a notice of taxation on the Defendant's attorney of record and shall allow the Defendant 14 (FOURTEEN) court days within which to make payment of such costs.
- (f) Following agreement on or taxation of the party and party costs, the Plaintiff shall allow the Defendant 14 (FOURTEEN) court days after allocator has been made available to the Defendant, to make payment of the taxed or agreed party and party costs.
- (g) The parties may submit further written submissions on the aforesaid cost orders within 10 days of this order, failing which, the cost orders shall stand.


C J VANDER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION

On behalf of Plaintiff:
Instructed by:

T Chauke
Mashambo Inc.

On behalf of Defendant:
Instructed by:

N Mhlongo
T.M Chauke