



**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO  
 (2) OF INTEREST TO OTHER JUDGES: YES/NO  
 (3) REVISED No

DATE: 5 February 2019.....

SIGNATURE: *eies*.....

**Case No. 3033/2017**

In the matter between:

**THEMBALETHU LUCAS PRUSENT**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---


MILLAR, A J

1. The plaintiff was injured in a motor collision on 1 April 2010. A claim was submitted to the defendant which is the statutory body established to deal with such claims.
2. The plaintiff and the defendant were able to resolve all issues between themselves save the quantum of the loss of income, past medical expense and general damages suffered as a result of the injuries sustained in the collision and their sequelae.
3. The parties briefed various medico-legal experts and those experts met and produced minutes. It was agreed between the parties that the issues for determination would be argued on the papers and that no *viva voce* evidence would be led. It was also agreed that the plaintiff had indeed suffered a loss as a result of his injuries and an actuarial report, which contained calculations reflecting the figures with illustrative contingencies, contended for by the industrial psychologists briefed by the respective parties was to form the basis for an award.
4. The claim for past medical expenses was in the sum of R28 254,87. These expenses were for treatment of injuries that were clearly collision related and corresponded with vouchers that the plaintiff had furnished to the defendant. The defendant, correctly in my view, conceded that the plaintiff was entitled to these.
5. In regard to the claim for loss of earnings, the experts and the parties were agreed as to the plaintiff's pre-injury likely career path and ceiling and his post-injury path. The only difference between them was the calculation of the post-injury contingency to be deducted.



6. The plaintiff initially argued for a contingency deduction of 5% for past loss of earnings, both pre and post-injury and 15% and 45% for the future loss of earnings respectively. This was the basis upon which the initial calculations had been obtained and resulted in the calculation of the loss of income, with the application of what was called a contingency spread of 30% in the sum of R2 221 555,00.
7. During argument the plaintiff's counsel indicated that having discussed the matter at length with his opponent before the matter was called, he was of the view that a more appropriate basis would be if the post-injury contingency were reduced to 30% resulting in a contingency spread of 15%. This was in consequence of consideration of the opinions of the experts and the plaintiff's particular post-injury employment circumstances. The consequence of this was that on a recalculation the quantum of the loss of earnings was reduced to R 1 371 883,80. The defendant made no submissions on this aspect save to record that he agreed with the 15% contingency spread as being appropriate in the present matter.
8. In regard to the claim for general damages, neither counsel was able to refer me to previous cases in which awards for similar injuries were made. The plaintiff suffered *inter alia* an injury to his eye which necessitated multiple surgeries which notwithstanding have left him with limited vision. He suffered a fractured femur which also necessitated surgeries and in respect of which he may in due course require further surgery to remove a fixing plate and screws.

9. I was referred to Mpondo v Road Accident Fund<sup>1</sup>, Phasha v Road Accident Fund<sup>2</sup>, Mills v Road Accident Fund<sup>3</sup> and Mashigo v Road Accident Fund<sup>4</sup>. It is trite that each case must be decided on its own facts. The plaintiff argued that an amount of general damages in the sum of R600 000,00 should be awarded. The defendant associated itself with this argument and in the circumstances of the matter I am also in agreement that an award in this sum for this head of damages is appropriate.
10. Accordingly, I intend to award to the plaintiff:
- 10.1 R28 254,87 for past medical expenses;
  - 10.2 R1 371 883,80 for loss of income, both past and future; and
  - 10.3 R600 000,00 for general damages.
11. The total award having regard to paragraph 10 above is in the sum of R2 000 138,67.
12. In the circumstances I made the draft marked "X" with the amendment to paragraph 1.1 by the insertion of the figure R2 000 138,67 an order of court.



---

**A MILLAR**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

---

<sup>1</sup> 2010 (6F2-4) QOD (EC)

<sup>2</sup> 2012 (6E4-21) QOD (GP)

<sup>3</sup> 2010 (6F2-1) QOD (KZN)

<sup>4</sup> [2018] ZAGPPHC 539 (13 June 2018)



HEARD ON: 5 FEBRUARY 2019

JUDGMENT DELIVERED ON: 5 FEBRUARY 2019

COUNSEL FOR THE PLAINTIFF: ADV C JORDAAN

INSTRUCTED BY: JOHAN VAN DER VYVER ATTORNEYS

REFERENCE: MS R GOUWS

COUNSEL FOR THE DEFENDANT: MR I STRYDOM

INSTRUCTED BY: NINGIZA HORNER INCORPORATED

REFERENCE: MS T GAOKGWATHE