



**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: 4 February 2019.....

SIGNATURE: .....

**Case No. 80333/2015**

In the matter between:

**ANDRIES PRETORIUS**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT**

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**MILLAR, A J**

1. The plaintiff was injured in a motor collision on 5 November 2013. 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 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 issue 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 obtained by the defendant, and which contained calculations reflecting the figures for the two scenarios contended for by the industrial psychologists briefed by the respective parties was to form the basis for an award.
4. I was called upon to decide which of the two scenarios was the more probable and to then make an award accordingly.
5. The first scenario was that the plaintiff would have continued working as the Head of Maintenance at a mine, a position he had held for many years prior to his injury. On this scenario his annual remuneration was R996 784.08 per annum. He would have worked in this capacity until retirement.
6. The second scenario was that having regard to the fact that the particular mine where the plaintiff had worked was closed down and he was retrenched from his employment there, he would have reverted to working as a fitter and turner which was his initial qualification. At the time of the hearing, the plaintiff was employed elsewhere but earning only R520 000,00 per annum, the income in this capacity.

7. The sequelae of the injuries suffered have rendered the plaintiff unlikely to ever secure employment in the formal mining sector again now that he has been retrenched. There is also some question as to whether he will be able to sustain his current level of income.
8. The calculation of the plaintiff's loss on the basis set out in the first scenario, net the apportionment and of a contingency deduction of 5% for past loss of earnings, both pre and post-accident and 15% and 20% for the future loss of earnings respectively was R3 296 502,00.
9. The calculation of the plaintiff's loss on the basis set out in the second scenario, net the apportionment and of a contingency deduction of 5% for past loss of earnings, both pre and post-accident and 15% and 20% for the future loss of earnings respectively was R1 548 203,00.
10. There are a number of imponderables in the consideration of this matter. Would the plaintiff have been able to secure equivalent employment in the mining sector notwithstanding the mine closure had he not been injured and would the plaintiff now that he is injured be able to sustain his current earnings until retirement?
11. Having regard to the fact that both scenarios are equally probable, and that there is no doubt that the plaintiff has and will indeed suffer a loss of income, it is for this reason that I made an award that represents the *via media* between the two scenarios i.e. R2 422 352,00.
12. In the circumstances I made the draft marked "X" with the amendment to paragraph 3 an order of court.

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**A MILLAR**  
**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

HEARD ON: 1 FEBRUARY 2019

JUDGMENT DELIVERED ON: 1 FEBRUARY 2019

RAESONS FOR JUDGMENT: 4 FEBRUARY 2019

COUNSEL FOR THE PLAINTIFF: ADV C DREDGE

INSTRUCTED BY: GERT NEL INC.

REFERENCE: MR P COETZEE

COUNSEL FOR THE DEFENDANT: MR A NTIMBANA

INSTRUCTED BY: FOURIE FISMER INCORPORATED

REFERENCE: MR A NTIMBANA