

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

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

CASE NO.: 7411/2017  
11/10/2019

In the matter between:

**KHUMALO NOSIPO**

**Plaintiff**

and

**ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT**

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- [1] The plaintiff instituted an action against the defendant for compensation in respect of damages suffered as a result of injuries sustained in a collision that occurred on 6 March 2016.
- [2] The issues to be decided relate to the issues of liability, general damages, past and future loss of earnings. In respect of the latter issue, the defendant has given an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 1996. The parties are in agreement regarding the seriousness of the injuries and only disagree on

the amount to be determined in respect of general damages. On the issue of loss of income, the issue to be determined relates to which of the two probable scenarios contained in the joint actuarial report that are premised upon the joint minutes of the Industrial Psychologists, is the appropriate one.

- [3] At the time of the collision, the plaintiff was 22 years old. She was a pedestrian and was waiting to cross the road to take a taxi when she was hit by a vehicle. In respect of the issue of liability, the only aspect in dispute is the point of impact. In this regard, the plaintiff testified on her own behalf. The defendant did not call any witnesses to gainsay the evidence led by the plaintiff. It relied on the cross-examination of the plaintiff and any advantage to be gained therefrom.
- [4] The plaintiff testified that she was from church on her way home with her family and friends when they were obliged to cross the road to a stationary taxi that would transport them to their destination. Some of her companions had already crossed the road and had boarded the taxi. She waited for an opportune time to cross the road to follow her companions. At that stage other people were waiting with her to cross and others were milling around. There were other vehicles in the vicinity. The vehicle that struck her came from behind the one she intended to board. It came from behind the stationary vehicle at a high speed, could not stop and veered in her direction, in the face of oncoming traffic, and struck her.
- [5] During her evidence in chief she was requested to draw a sketch to indicate her position and the point of impact. That sketch can be described as follows: a road that carries traffic from the left and the right in opposite directions is joined by a side road at a T-junction. The vehicle that she was to board was diagonally across from her to the left of her and at a point that is directly across the corner of the road that joins at the T-junction. The vehicle was stationary. The plaintiff was standing on the opposite corner of the road joining at the T-junction.
- [6] Cross-examination of the plaintiff did not elicit any material contradictory evidence. The plaintiff stuck with her version.

- [7] In my view, and in the absence of any evidence contrary to the plaintiff's version, the only evidence upon which the issue of liability can be determined is that presented on behalf of the plaintiff. She was a good witness and cannot be criticised for her demeanour when presenting her evidence.
- [8] It follows that on the only version before court, the defendant is 100% liable for the plaintiff's damages that she may prove.
- [9] On the issue of quantum, the plaintiff led the evidence of the Industrial Psychologist appointed on her behalf, namely Lowane Mayayise. The witness confirmed the report and addendum issued and the joint minutes prepared by the respective Industrial Psychologists appointed by the parties. This evidence of this witness was not challenged to any degree. The only real issue raised related to a statement by the defendant's Industrial Psychologist that with a matric qualification the plaintiff is likely to secure employment earnings in line with Patterson A3 median earnings, i.e. a basic monthly salary, and that she would reach her ceiling at Patterson 83/84 at 45 years of age. The plaintiff's Industrial Psychologist confirmed that that is the norm.
- [10] The defendant did not lead the evidence of its Industrial Psychologist, nor any other witness on the issues in respect of the quantum to be determined.
- [11] From the joint minutes of the respective Industrial Psychologists, it is gleaned that they are wholly in agreement. Those issues that appear to be disagreed upon are in substance not so far apart and are compatible with the respective opinions in the joint minutes of the two experts. In particular, the Industrial Psychologists are in agreement that pre-morbid the plaintiff would have likely obtained a National Diploma at an NQ level 6 and would have entered the open labour market with such diploma.
- [12] It follows that due to the head injury that is classified a Severe Diffuse and Focal Traumatic Brain Injury, the plaintiff will not be in a position post-morbid to obtain post-matric qualifications. Her future in respect of earning capacity is diminished and the Occupational Therapists agree that she

would be unable to complete any meaningful studies and as agreed between the Industrial Psychologists the plaintiff would only be able to rely on her matric qualifications. It is further agreed between the experts that the plaintiff's attempt at obtaining a Public Management Diploma will come to naught due to her neurocognitive and neuropsychological problems. The plaintiff has been, due to the injuries sustained in the collision and the *sequelae* thereof, rendered less favourable for competing in the open labour market.

- [13] The plaintiff's Industrial Psychologist conceded to the possibility that the plaintiff can continue to do what she was doing at the time of the collision, namely that of a freelance sales person at a furniture store. However, the overall opinion of the plaintiff's Industrial Psychologist that the plaintiff would in all likelihood not enjoy favourable employment and, in that respect, does not have a fair chance in the open labour market, was not challenged by the defendant.
- [14] It is to be gleaned from the joint Actuarial report that calculations were done in respect of the two scenarios sketched by the respective Industrial Psychologists. In view of my finding that in substance there is no real difference between the two Industrial Psychologists, and where the norm does not find application in the present instance, the calculations on the plaintiff's scenario is the more likely position in respect of the plaintiff's future earning capacity.
- [15] It follows that the plaintiff, as a direct result of her injuries sustained in the collision, should be compensated as determined in scenario one of the joint Actuarial report. Thus, the plaintiff's future loss of earnings, after applying the suggested contingencies and after applying the RAF cap, suffered the loss of future earnings in the amount of R7 968 460.00
- [16] On the remaining issue of general damages, the parties are agreed on the injuries and the *sequelae* thereof and proceeded from the same premises, namely that the plaintiff suffered a debilitating head injury.
- [17] The parties relied on what they deem to be comparable authorities. In this regard, the plaintiff submits that an amount of R1 600 000.00 would be fair

and reasonable in respect of the issue of general damages. That amount is derived from comparing the following matters:

- (a) *ME v Road Accident Fund* (12601/2017) ZAGP JHC 438 (18 June 2018), here an amount of R1 900 000.00 was awarded;
- (b) *Bhekisisa Simon Dlamini v Road Accident Fund* 59188/13 (GNP) (date 03/09/2015), here an amount of R1 350 000.00 was awarded;
- (c) *Anthony v Road Accident Fund* (27454/2013) [2017] ZAGPPHC 161 (date 15/02/2017, here an amount of R 1 600 000.00 was awarded.

[18] The defendant submitted that an amount of R1 100 000.00 will suffice as general damages in view of the matters of:

- (a) *Hurter v Road Accident Fund et al* 2010 (6A4) QOD 12 (ECP), here an amount of R803 000.00 at 2019 calculations was awarded;
- (b) *Khumalo v Road Accident Fund* 2010 (6A4) QOD 26 (KZD), here an amount of R674 000.00 at 2018 calculations was awarded;
- (c) *Kerridge v Road Accident Fund* 2016 (7A4) QOD 46 (ECP), here an amount of R812 000.00 at 2019 calculations was awarded;
- (d) *Potgieter v Road Accident Fund* 2013 (6A4) QOD 195 (ECP), here an amount of R908 000.00 at 2019 calculation was awarded;
- (e) *Mngani v Road Accident Fund* 2011 (684) QOD 41 (ECM), here an amount of R803 000.00 at 2019 calculations was awarded;
- (f) *van Zyk NO v Road Accident Fund* 2012 (6A4) QOD 138 (WCC), here an amount of R 1 233 000.00 at 2019 calculations was awarded.

- [19] In my view, the relevant injuries in matters relied on and the amounts awarded are off the mark with reference to the present matter. The matters and the related injuries in them relied upon by the plaintiff are more to the point.
- [20] It follows that the plaintiff is entitled to an amount of R1 400 000.00 in respect of general damages.
- [21] There is no dispute that in respect of the issue of costs, the norm that costs follow the issue is appropriate.

I grant the following order.

- (a) The draft order marked XYZ and attached hereto is made an order of court.

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**C J VAN DER WESTHUIZEN**  
**JUDGE OF THE HIGH COURT**

On behalf of Applicant: R Maphutha

Instructed by: Baloyi Attorneys

On behalf of Respondent: M Kgware

Instructed by: Diale Mogashoa Attorneys

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

On this the 11 October 2019 before the Honourable Justice Van Der Westhuizen  
in Court 6G

**CASE NO: 7411/2017**

In the matter between:

**KHUMALO NOSIPHO**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**DRAFT ORDER**

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After having heard counsel, evidence presented and after reading papers, **IT IS ORDERED THAT:**

1. The Defendant is liable for 100% of the Plaintiffs proven and/or agreed damages as result of "the motor vehicle collision".
2. The Defendant shall pay to the Plaintiff the sum of R 8 108 460-00 (Eight million One hundred and eight thousand four hundred and sixty Rand), which is made up as follows: R 1 400 000-00 (One million four hundred thousand Rand) (four general damages) and R 7 968 460-00 (Seven million Nine hundred and sixty eight thousand four hundred and sixty Rand) (for loss of earnings), which together makes it full and final settlement.

3. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 for payment of 100% of the costs of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her resulting from a motor vehicle accident , to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof limited to 0%.
4. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the prescribed legal rate, calculated from the 15th calendar day after the date of this Order to date of payment.
5. The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale in respect of both the merits and the quantum, from the onset of the matter, up to and including 12th October 2018, 29<sup>th</sup> and 30<sup>th</sup> May 2019 and notwithstanding, and over and above the costs referred to in paragraph 5.2.1 below, subject to the discretion of the Taxing Master thereto that:
  - 5.1 In the event that the costs are not agreed:
    - 5.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
    - 5.1.2 The Plaintiff shall allow the Defendant 14 (FOURTEEN) days from date of allocatur to make payment of the taxed costs;
    - 5.1.3 Should payment not be effected timeously; the Plaintiff will be entitled to recover interest at the prescribed legal rate on the taxed or agreed costs from date of allocatur to date of final payment.
  - 5.2 Such costs shall include:
    - 5.2.1 The costs incurred in obtaining payment of the amounts mentioned in paragraphs 2 and 3 above;
    - 5.2.2 The costs of and consequent to the appointment of the



counsel, on the Junior scale, including, but not limited to counsel's full fee for 12th October 2018, 29th and 30 May 2019 as well as his preparation thereof;

5.2.3 The costs of all medico-legal, as well as such reports and/or forms furnished to the Defendant and/or its attorneys, as well as all reports and/or forms in their possession and all reports and/or forms contained in the Plaintiff's bundles.

5.2.4 The reasonable and taxable preparation, qualifying and reservation fees if any.

5.2.5 The costs of and consequent to the Plaintiff's trial bundles and witness bundles, including the costs of 5 (five) copies thereof;

5.2.6 The costs of and consequent to the holding of all pre-trial conferences; and

5.2.7 The travelling and accommodation costs of the Plaintiff, who is hereby declared a necessary witness.

6. The amounts referred to in paragraphs 2, 4 & 5 will be paid to the Plaintiff's attorneys, Baloyi Attorneys, by direct transfer into their trust account, which banking details are as follows:

**BANK** : **NEDBANK**  
**NAME:** : **BALOYI ATTORNEYS**  
**ACCOUNT NO.** : **[....]**  
**BRANCH CODE** : **160 445**

7. There is a valid contingency fee agreement.

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BY ORDER OF THE COURT

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REGISTRAR OF THE HIGH COURT  
PRETORIA

**Plaintiff's Counsel**

**Adv. R. Maphutha**

**083 360 1025**

**Defendants Counsel**

**Adv. M. Kgwale**

**072 248 7577**