



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

Case No: 49021/19

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

..... 18 June 2021 .....

**SIGNATURE** **DATE**

In the matter between:

**BONGANI ALBERT NKOSI**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT**

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**TSATSI AJ**

**INTRODUCTION**

[1] This application has been heard in a virtual hearing via Microsoft Teams.

[2] The Plaintiff a 41 year old male, who was employed as a General Worker at a Construction Company, instituted a claim against the Defendant as a result of a motor vehicle accident which occurred on 13 July 2018 wherein the Plaintiff was a passenger. The Plaintiff was 38 years when he got involved in the motor vehicle accident.

[3] Merits have been settled 100% in favour of the Plaintiff on 10 October 2019.

**ISSUES**

[4] The issue in dispute are past and future loss of earnings, future medical expenses and general damages.

**BACKGROUND**

[5] With regard to past and future loss of earnings the Plaintiff appointed various experts, viz.; the orthopedic surgeon, neurosurgeon, maxilla- facial and oral surgeon, occupational therapist, industrial psychologist and an actuary.

[6] According to the orthopedic surgeon Dr P T Kumbarai at the time of the accident the Plaintiff lost consciousness and only regained it in hospital. The Plaintiff was taken to Charlotte Maxenge Hospital and he sustained the following injuries: rib fractures, loss of teeth, fracture of the mandible, laceration chin, undisplaced fracture of the right distal radius, head injury and poor hearing left ear.

[7] The neurosurgeon Dr Mazwai, noted the findings of the orthopedic surgeon as stated above. In summary Dr Mazwai stated that the Plaintiff has significant mental

disturbances and should be compensated for general damages and future medical treatment.

[8]According to the maxilla facial and oral surgeon, Dr Lebaka the Plaintiff needs dental care to maintain good oral hygiene. The occupational therapist Dr Masango noted that the Plaintiff will benefit from occupational therapy intervention for pain management and principles vocational rehabilitation for reskilling, work hardening and conditioning.

[9]The opinion of the Industrial Psychologist is that the Plaintiff can be deemed an unequal competitor in the open market due to the injury sustained in the accident and that it is unlikely that he will attain his pre- morbid level of success.

[10] The actuary, JC Sauer considered the report of the Industrial Psychologist, quantified the claim for loss of earnings and earning capacity to the amount of R 2678 720.00 (Two million Six Hundred and Seventy Eight Thousand Seven Hundred and Twenty Rand ) only.

## **THE LAW**

### **General Damages**

[11] **Kaduku vs RAF** (83408/2014) [2017] ZAGPPHC 432 (22 March 2017) (2017 - R 650 000. 2020 value R734 000). Kubushi J, in determining the claim for general damages, referred to the injuries suffered by the plaintiff, which included: a left tibia and fibula fracture and head injury with a laceration of the scalp. He was treated with an open reduction and internal fixation with tibial nails was done for the left tibia fracture. He was treated medically for the head injury and the scalp laceration was sutured. The evidence indicated that he sustained a moderately severe diffuse brain Injury.

[12] In ***Abrahams v RAF*** 2014 (J2-1) QOD 7 (ECP) Eksteen, J awarded R500 000.00 to a 41 year-old spray painter. The present day value of the award dated 29 May 2012 is R727 000.00. Although the judgment is found in segment J, it is apparent that the plaintiff did not really suffer multiple injuries. The court found

that the head injury complained of was really minimal and no cognisance was taken thereof in considering the amount to be awarded for general damages.

[13]In **Ndaba v RAF** 2011 (6E3) QOD 14 (ECB) R300 000.00 was awarded to a female informal hawker who was 42 years old at the time of the injury. This is equal to a value of R456 900.00 in 2019. This plaintiff sustained multiple orthopaedic injuries including a pelvic fracture, and fractures to the right femur and tibia as well as a left knee injury. Open reductions and fixation were performed on the hip joint, femur and tibia. Injuries to her shoulder and hip might require hip and shoulder replacement over time.

[14]In the matter of **Road Accident Fund v Faria** 2014 (6) SA 19 (SCA) the Supreme Court of Appeal, restated the principle from the Duma matter *supra* and held that under the new legislative regime the assessment of whether a claimant's injury was serious was an administrative and not judicial, decision. Unless the Fund was satisfied that the injuries were serious, the claimant has no claim for general damages.

[15] In **Msiza v Road Accident Fund**<sup>1</sup>, a 62 year old woman was awarded R700 000.00 in 2014 after sustaining the following injuries in a motor vehicle accident: left femur fracture, later on her leg had to be amputated above the knee; fracture of the right humerus and laceration of the scalp.

[16]In casu the Plaintiff did not sustain injuries leading to the amputation of his leg.

[17] The Road Accident Fund offered an amount of R500 000.00 (five hundred thousand Rand) for general damages, I am of the view that an amount of R600 000.00 (six hundred thousand) for general damages will be reasonable.

#### Loss of earning capacity

[18] The issue of diminished earning capacity is trite. The mere fact of physical disability does not necessarily reduce the estate or patrimony of the person injured.

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Put differently, it does not follow from proof of a physical injury which impaired the ability to earn an income that there was in fact a diminution in earning capacity<sup>2</sup>.

[19] The principles for an assessment of loss of earnings or earning capacity were set forth by the then Appellate Division in ***Southern Insurance Association Ltd v Bailey*** 1984 (1) SA 98 (A)<sup>3</sup>: "*Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss....*"

[20] In 2019 a 28 year old woman who suffered blunt abdominal trauma; forehead lacerations; and pelvic fracture was awarded an amount of R486 948.00 for past loss of earnings and R6667 532.00 for future loss of earnings<sup>4</sup>. In this case the Plaintiff was a passenger and lost a 28 week foetus as a result of the collision. At the time of the accident the Plaintiff was 23 years old.

[21] If one compares the preceding case with the case in *casu*, in the preceding case the Plaintiff was much younger and even lost a 28 week foetus.

[22] I have considered all the experts reports submitted on behalf of the Plaintiff and his pre and post- morbid situation as detailed in the experts reports.

[23] The Road Accident Fund offered an amount of R714. 677.65 (seven hundred thousand fourteen and six hundred seventy seven Rand and sixty five cents) for loss of earning. I am of the considered view that an amount of R400 000.00 (four Hundred thousand Rand) for past loss of earnings and R600 000.00 (six hundred thousand Rand) for future loss of earnings is reasonable in the circumstances.

[24] I accordingly mark the draft order "X" and it is made an order of Court.

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**E.K TSATSI**

**ACTING JUDGE OF THE HIGH COURT**

For the Plaintiff: Adv. N. Sobekwa

Instructed by: Marlin Marimuthu Attorneys

For the Defendant: No appearance

Date of Hearing: 9 June 2021

Date of Judgment: 18 June 2021

This judgment was handed down electronically by circulation to the parties' representatives via email and by uploading on case lines.

- 1) 30118/2011) [2014] ZAGPPHC 27 (19 February 2014).
- 2) Union & National Insurance Co Ltd v Coetzee 1970(1) SA 295 (A) at 300A
- 3) At 113F to 114E
- 4) M v Road Accident Fund (14250/2016) [2020] ZAGPPHC 96 (17 April 2020).