



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

Case no: 14092/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

06 July 2021

In the matter between:

MARIA MAPHANGA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

KHWINANA AJ

[1] Introduction

The plaintiff, Ms Maria Maphanga instituted action proceedings against the defendant for damages in terms of the Road Accident Fund Act 56 of 1996, pursuant to a motor vehicle collision. The plaintiff sustained injuries as a result of a motor vehicle collision that occurred on this the 19th day of April 2019 at or near Old Middleburg Road, Witbank and at or about 17:13 hours.

Background

- [2] The plaintiff is Maria Maphanga born on the 08th January 1972 from Leeufontein. The plaintiff was a passenger in a motor vehicle with registration numbers and letters FGR 560 MP (hereinafter referred to as the insured motor vehicle), driven by Thabiso Mashiloane (herein after referred to as the insured driver) who was the sole cause of the accident in that he lost control of the motor vehicle and it crashed. The plaintiff was on her way from KwaNdebele to Nelspruit for a church trip commuting in a taxi. She did not see how the accident happened.

- [3] The plaintiff lodged a claim against the defendant on or about the 16th day of August 2019 with the defendant and subsequently issued summons at this Honourable Court on the 26th day of February 2020 which was served on the defendant on the 06th day of July 2020.

- [4] The *dies* for the defendant to enter an appearance to defend expired on the 31st of July 2020 in terms of the uniform Rules of Court 19(1). The plaintiff approaches the court in terms of Rule 31(2) of the Uniform Rules of Court.

I am seized with a decision on both liability and quantum.

Issues in dispute

Liability

[5] The plaintiff sustained the following injuries as a result of the motor collision being a Fracture of the right wrist and Laceration of the upper lip. The plaintiff was hospitalised at Emalahleni Private Hospital on the same day being the 19th of April 2014 to the 20th of April 2014. The plaintiff lost consciousness for a while, but managed to get herself out of the taxi. She was assisted by paramedics and stitched at Malahleni Private Hospital. She was discharged with medication. She received a 5 weekly treatment at the private hospital.

[6] The plaintiff has filed documents in support of her claim:

RAF 1 form, Clinical records and Accident report. In terms of the accident report it is evident that the plaintiff was not a driver on the day in question but was a passenger. It is trite law that the passenger is required to prove one 1% against the insured driver in order to qualify for damages of personal injuries. I will come back to this principle when dealing with the law.

[7] Personal injuries

The plaintiff has consulted numerous medical experts regarding the personal injuries and the *sequelae* thereof. The Orthopaedic Surgeon consulted the plaintiff and recorded the following findings:-

7.1 Therapist – Dr P.T Kumbirai, recorded that the plaintiff received the following treatment:-

Clinical and radiological examination, Closed reduction and below-elbow Plaster of Paris applied to the left upper limb - which was later on removed, Pain management and Discharged the same Report. She calculated WPI at 2%. The claimant will have problems in engaging normally in activities which require lifting of heavy weights as she used to prior to the accident. He opined that although WPI at 2% it is my

considered opinion considering the factors mentioned above, that the injuries resulted in:

- Serious long-term impairment/loss of body function.

7.2 The plaintiff also consulted an Occupational Therapist, Ms.T. Mahlokweng, who opined that Orthopaedic surgeon is required for the management of pain and orthopaedic problems. Physiotherapist for management of pain and prevent further deformities. She may benefit from Biokinetics as she is unable to clean the yard anymore as was part of physical exercises. Functional Capacity Evaluation is recommended by Occupational Therapist after receiving optimum treatment, rehabilitation and appropriate assistive devices.

Loss of earnings

[8] The plaintiff consulted an Industrial Psychologist, Mr. O.O Sechudi, Report who prepared his medico-legal report and wrote his findings as follows:-

8.1 The plaintiff secured permanent work in 2014 as a domestic worker earning R 800.00 per week. She worked until the date of the accident. She opined that it is reasonable to conclude that the claimant has been rendered a compromised candidate in the labour market and would be vulnerable to facing extended periods of unemployable until normal retirement age of 65 years. She recommends that the calculations which applies a straight-line increase from career entry point until the earnings ceiling is reached be adopted, as this results in a decreasing pattern of real increases in earnings, inflationary increases thereafter.

[9] The Actuary Mr. Wim Loots prepared a medico-legal report having looked at the employer's certificate and the contract of employment. The employer's

certificate says R 4300.00 per month is the salary however there is a contract of employment which has been alluded to and depicts different employment and the salary. I however note that the actuary relied on the information given to the occupational therapist regarding the salary of R 800.00 per week as a salary.

9.1 The industrial psychologist opined that:-

	Past	Future	Total
Earnings had accident not occurred	90 687	564 592	655 279
Less Contingencies 5/10	4 534 564.59		60 993
	86 153	508 133	594 286
Earnings having regard to accident	0	352 036	352 036
Less Contingencies (0/40%)	0	140 814	140 814
	0	296 911	296 911
Loss of Earnings	86 153	296 910	383 064

Application of the law

[10] In terms of Section 17 (1) (a) and (b) of the Road Accident Fund Act, Act 56 of 1996 as amended has an obligation to compensate a plaintiff (third party) for loss or damages as a result of injuries sustained due to a motor vehicle accident regardless of whether the driver or the owner of a motor vehicle was identified or not. In this matter, the plaintiff sustained injuries and loss due to the motor vehicle collision and the driver is identified.

[11] In the matter ***MS v Road Accident Fund***¹ paragraph 8 thereof, Fisher J states as follows:

“The statutory nature of the liability is such that the RAF insures the third party for any loss or damage which the third party has suffered as

¹ (10133) [2019] ZAGPJHC 84, [2019] 3 All SA 626 (GJ)

a result of any bodily injury to himself ... if the injury ... is due to the negligence or other wrongful act of ... the insured driver.”

- [12] *In casu* the plaintiff was a passenger when the accident occurred and it is trite law that any person claiming from the defendant must only prove 1 % to prove the defendant's liability as reiterated previously. Counsel for the plaintiff referred me to the matter of ***Prins v Road Accident Fund***², Mojapelo DJP as he then was stated as follows:

“It is common cause that a passenger needs only to prove the proverbial 1% negligence on the part of an insured driver in order to get 100 % of damages that he is entitled to recover from the Fund.”

The plaintiff was a passenger as at the time of the accident and therefore is entitled to 100 % of liability.

Quantum

- [13] Dr P.T. Kumbirai in his report states that the plaintiff has suffered a fracture of the left distal radius and this is something further corroborated by Mr. Sechudi.
- [14] Counsel for the plaintiff referred me to ***Mkhonta v Road Accident Fund (20703/12) [2018] ZAGPPHC 471*** on this type of injury where the court awarded an amount of R950 000-00 for general damages bearing in mind that the plaintiff is a 48 year old domestic worker with no formal education who has since left her job due to her injuries that were suffered as a result of her injury that prevents her from lifting heavy objects.

² (21261/08) [2013] ZAGPJHC 106

- [15] Lifting heavy objects was part of her duties as a domestic worker, hence she left her job. The plaintiff has 17 years prior to retirement at 65. The plaintiff prays for general damages at an amount of R450 000-00 which has been submitted being a fair compensation. Where loss of earnings and earning capacity is concerned, the plaintiff has filed a report by Mr. Loots who states that the plaintiff should be compensated a total amount of R383 064-00 having applied contingencies at 5 and 10 % on pre-accident and 0 and 40 % post-accident, which has been submitted as fair compensation.

Court referred to ***Makhala v Road Accident Fund (9508/2017) [2019] ZAFSHC 21.***

- [16] In ***AA Mutual Insurance Association Ltd v Maqula***³, the court held:

"It is settled law that a trial Court has a wide discretion to award what it in the particular circumstances considers to be a fair and adequate compensation to the injured party for his bodily injuries and their sequelae. "

- [17] It is difficult to find a matter with similar injuries and *sequelae*. Contingencies have been taken into account. The plaintiff is at the evening of her life and was using her arms to earn a living. It is therefore proper that she is compensated with that which is fair and reasonable. I have considered the actuary's report which takes into account the plaintiff's circumstances. I am satisfied with the proposal by the actuary in the sum of R 383 064.00 for loss of earnings.

General damages

³ **1978 (1) SA 805** (A)

[18] The evidence presented to me I am unable to deal with general damages therefore I order that the general damages be referred to the Health Professional Council of South Africa (HPCSA) adjudication.

In the premises I make the following order:-

[19] Order

1. The Defendant is liable to pay 100 % of the Plaintiff's proven damages;
2. Payment in the sum of R383 064.00;
3. Interest will be calculated on the aforesaid amount, at a rate of 7 % per annum;
4. Claim for General damages referred to HPCSA for further adjudication;
5. The Defendant is ordered to furnish to the Plaintiff with an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.
6. Costs of suit on party and party to be taxed on a Regional Court Scale.

E.N.B. KHWINANA

ACTING JUDGE OF GAUTENG DIVISION, PRETORIA

HIGH COURT, PRETORIA

HEARD ON: 8 June 2021

FOR THE PLAINTIFF: ADV. MUSETHA

INSTRUCTED BY: GWEBU INC ATTORNEYS

FOR THE DEFENDANT: NO APPEARANCE

DATE OF JUDGMENT: 6 July 2021

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

ON THIS THE 06TH DAY OF JULY 2021,
BEFORE THE HONOURABLE JUSTICE KWINANA AJ

Case no: 14092/20

In the matter between:

MARIA MAPHANGA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

Having heard Counsel for the Plaintiff and having considered the Pleadings and Documentation filed on record, the following is made an order of Court by default:

1. The Defendant is ordered to pay the Plaintiff 100 % of her proven or agreed damages.
2. The Defendant shall pay to the Plaintiff's attorney the sum of R383 064.00 (Three hundred eighty-three thousand and sixty-four rand) in respect of the Plaintiff's claim with link number 4815778 arising out of a motor vehicle collision on 19 April 2019, in which the Plaintiff was injured.

3. The Plaintiff nominates the following trust account: Gwebu Inc Trust Account Number 62686916366, FNB Bank, Branch code: 250655, as her account into which this amount must be paid, reference MG/RAF/003/19.
4. The Defendant is ordered to furnish to the Plaintiff with an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of the Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the Plaintiff arising out of the injuries sustained by the Plaintiff in a motor vehicle collision that occurred on 19 April 2019, in terms of which undertaking the Defendant will be obliged to compensate the Plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.
5. If the Defendant defaults to pay the amount stipulated in paragraph two within 180 days of this order interest will run on the outstanding amount to be calculated at the rate of 7 % per annum from date of judgement to date of final payment.
6. The Defendant shall pay the Plaintiff's party and party costs of this suit on the Regional Court Scale either as taxed or agreed.
7. Claim for general damages is referred to HPCSA for further adjudication.
8. There is a Contingency fee agreement.

BY THE COURT

REGISTRAR

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