

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO:78388/2017**

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

.....  
DATE

.....  
SIGNATURE

In the matter between:

**KALIS GERALD OSCAR**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

## JUDGMENT

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**FLATELA A.J**

### **Introduction**

[1] The issue served before me on 29 October 2021 for determination of liability, past medical expenses and future medical expenses only. The plaintiff is not claiming General damages. His injuries were not serious injuries. I determined this matter on pleadings.

[2] On the 13 October Matshitse AJ granted an order for the defendant to attend a pre-trial conference failing which the plaintiff was referred to trial Court to proceed by default. The defendant failed to attend the pre-trial.

[3] On 28 January 2017, Plaintiff whilst a passenger in a white Toyota Hilux bearing registration number [....] was involved in a car accident. The car was driven by J Kalis.

[4] The Plaintiff alleges that the said collision was caused solely from the negligence of the said driver, him being negligent in one or more of the following aspects:

[4.1] He travelled at an excessive high speed

[4.2] He failed to reduce speed when he ought to have and could have done so

[4.3] He failed to keep a proper lookout

[4.4] He failed to have due consideration to other users of the road

[4.5] He failed to take any or adequate steps to avoid the said collision when, when by the exercise of reasonable care and diligence, he could have and should have done so;

[4.6] He failed to keep his said vehicle under proper or any control and the motor vehicle rolled.

[5] The Plaintiff was transported by ambulance to Faerie Glen Hospital whereafter he was transported to Wilgers Hospital then transferred to Eugen Marais Hospital.

[6] The Plaintiff suffered the following injuries:

[6.1] A Fractured cervical spine

[6.2] Lacerations on the head

[6.3] Lacerations on the left elbow

[6.4] Injuries to his 5<sup>th</sup> and 6<sup>th</sup> vertebrae

[7] As a result of the injuries suffered and the sequelae thereto, the Plaintiff, received the following medical treatment:

[7.1] Complete examination at Life Wilgers Hospital;

[7.2] Hospitalized at Eugene Marais Hospital;

[7.3] X- rays Bezuidenhout and Partners

[8] The plaintiff alleges that as a direct result of the car accident and injuries caused by the car accident , the plaintiff will in further undergo hospital and medical treatment.

## **Plaintiff's claim**

[9] The Plaintiff claims the following heads of damage

9.1 Past medical expenses R 16 827.14

9.2 Future medical expenses Undertaking in terms of Section 17(4)(a)

## **Expert Reports**

[10] The Plaintiff filed the medical report by Dr Westhuizen – an Orthopaedic Surgeon who examined the plaintiff. In his report, he states the following:

10.1 the CT scan report of cervical spine dated 28 January 2017 mentions a possible un-displaced fracture of C2. The plaintiff was treated consecutively in a neck collar for 8 weeks.

10.2. On x-ray there are no previous fractures.

103. Most of the plaintiffs' current symptoms is situated over his lower cervical spine and there are degenerative changes over C5/C6 present which may be the cause of his current stiffness and pain. In short term provision should be made for the occasional conservative treatment programme, which should include a good physiotherapist program

10.4 The plaintiff main future requires a spine discectomy and fusion

### ***Future medical treatment***

[11] The plaintiff alleges that he will require future medical treatment in the form of conservative and surgical treatment:

11.1 Visits to doctors and medication:	R15 000.00
11.2 Physiotherapy	R20 000.00
11.3 Cervical spine fusion	R150 000.00

### **Discussion**

[12] Section 17 (1) of the Act provides as follows:

'The Fund or agent shall –

Be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the motor vehicle or of his or her employee in the performance of the employees duties as an employee.'

[13] The test for negligence was stated in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430 E-G as follows:

" For the purpose of liability *culpa* arises if-

*A diligens paterfamilias* in the position of the defendant-

- (i) Would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
- (ii) Would take reasonable steps to guard against such occurrence; and

The defendant failed to take such steps,

..... Whether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstance of each case. No hard and fast basis can be laid down."

Tlhapi J in *Fox v RAF* <sup>1</sup> held that

"It is trite that the onus then rests on the plaintiff to prove the defendant's negligence which caused the damages suffered on a balance of probabilities. In order to avoid liability, the defendant must produce evidence to disprove the inference of negligence on his part, failing which he/she risks the possibility of being found to be liable for damages suffered by the plaintiff"

[14] I am satisfied that the insured driver was the sole cause of the accident.

[15] The plaintiff has filled the receipts in support of the amount claimed for the past hospital expenses. The value of the future medical expenses is R185 000.00. Together with the past hospital expenses is R201 827 .14.

[16] In the result, the following order is made

2. The Defendant is held 100% liable for any proven damages resulting from the injuries sustained by the Plaintiff.
3. The Defendant shall pay the plaintiff an amount of R 16,827.14 (Sixteen Thousand Eight Hundred and Twenty-Seven Rand and Fourteen Cents) in respect of past medical and Hospital Expenses.

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<sup>1</sup> (A548/16) [2018] ZAGPPHC (26 April 2016)

4. Together with interest a tempore mora calculated in accordance with the prescribed rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996 which interest shall start to run 14 days from date of delivery of judgment.
5. Payment will be made directly to the trust account of the Plaintiff's attorneys within a hundred and eighty (180) days from the granting of this order: Provided that interest shall start running on the capital amount within 14 days of granting this order.
6. The defendant shall pay the qualifying fees of Dr van Der Westhuizen
7. The Defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse **100%** of the Plaintiff costs of any future accommodation of the Plaintiff in a hospital or nursing home, or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by Plaintiff in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.
8. Defendant pays Plaintiff's taxed or agreed party-and-party Magistrate Court scale costs of party and party scale at the discretion of the Taxing Master.
9. Should the Defendant fail to timeously pay the taxed costs as provided for in the preceding sub-paragraph, those taxed costs shall carry interest at the rate of 7% per annum from date of taxation to date of final payment (both days inclusive).
10. All amounts payable in terms of this order shall be deposited into the following trust account of the applicant's attorney

**Riette Oosthuizen Attorneys Trust**

**Standard Bank : Brooklyn Branch**

**Branch Code 011 827 998**

**Reference: D4264**

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**FLATELA L**

**ACTING JUDGE OF THE HIGH COURT**

*This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 25 February 2022*

Date of Hearing: 29 October 2021. In Chambers  
Date of Judgment: 25 February 2022  
Plaintiffs' Counsel: JA DU PLESSIS  
Instructed by: Riette Oosthuizen Attorneys Trust  
Respondent's Counsel: NONE  
Instructed by: RAF