

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

CASE NO: 50250/2019

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO

DATE: 10 JANUARY 2022

In the matter between:

PETRUS HENDRIK BERNARDUS BREET

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10 January 2022.

MOTHA AJ

INTRODUCTION

1. This is an application for default judgment brought by the Plaintiff, Petrus Henrik Barnardus Breet, who is an adult male born on 02 April 1963. On or about 30 November 2016 at or about 13h30 near the R510 Ben Alberts he was a passenger in a motor vehicle which was involved in an accident.

2. He was taken to Thabazimbi Medi-Clinic and transferred to Die Wilgers Hospital where an intramedullary nail was inserted into his right femur. He developed a pulmonary embolus and was admitted to ICU for 10 to 12 days.

3. As a result of the aforesaid motor vehicle collision, the Plaintiff sustained the following injuries:

- 3.1 Soft tissue injury to Back.
- 3.2 Soft tissue injury to Chest.
- 3.3 Soft tissue injury to Elbow.
- 3.4 Open reduction and fixation of Right Femur.

MERITS

4. Merits have been conceded. The Defendant's defence was struck out on 24 November 2021. Accordingly, this matter is proceeding as unopposed.

GENERAL DAMAGES

5. The issue of general damages has been referred to the HPCSA.

FUTURE MEDICAL EXPENSES

6. The Defendant has offered Section 17(4)(a) undertaking for future medical

expenses.

THE ISSUES

7. I am therefore, called upon to adjudicate the loss of income and past medical and hospital expenses.

8. The Plaintiff claims the following amounts:

8.1 Past medical and hospital expenses: R36 191.98

8.2 Past loss of earnings: R142 547.50

8.3 Future loss of earnings: R2 340 562.20

PAST MEDICAL EXPENSES

9. The Plaintiff has provided vouchers for the past medical and hospital expenses which amount to R36 191.98. Therefore, the Plaintiff is entitled to the said amount.

FUTURE LOSS OF INCOME

10. It is trite that the Plaintiff must prove his case on a preponderance of probabilities. He must prove the extent of his loss as well as the amount of damages that should be awarded. In assessing the compensation the Court has a large discretion.

11. Having regard to all the evidence in the case, one must enquire if the Plaintiff has discharged the onus of proving the negligence averred against the Defendant.¹

12. At the hearing it was submitted that the Plaintiff was a farmer. The entire basis

¹ Goliath v Member of the Executive Council for Health, Eastern Cape (085/2014) [2014] ZASCA 182; 2015 (2) SA 97 (SCA) (25 November 2014)

for mounting a claim for loss of earnings pivoted on the need to hire an experienced farm manager to assist the Plaintiff on his farm.

13. Upon the perusal of the medico-legal report, dated 18 September 2019, from the Defendant's Orthopaedic Surgeon, Dr. S.S. Mukansi, at paragraph 14 the following is stated:

"He sold his farm and started some business."

14. When this was brought to the Plaintiff's attention and a response thereto elicited, Counsel submitted that since the Plaintiff is in Australia the issue of loss of earnings should be postponed *sine die*. *A fortiori* this put paid to this matter.

15. In the result I make the following Order.

ORDER

1. The defendant is ordered to pay R36 191.98 for the past medical and hospital expenses, which amount shall be paid into the Trust Account of HAGERMAN & ASSOCIATES, Pretoria, whose trust account details are as follows:

ACCOUNT HOLDER	: HAGEMAN & ASSOCIATES
BANK	: STANDARD BANK
BRANCH CODE	: 012445
ACCOUNT NUMBER	: [....]
BRANCH NAME	: LYNNWOOD RIDGE
REFERENCE NUMBER	: C S Hagerman/BvanSittert/B014

2. General Damages are postponed *sine die*.

3. The above-mentioned sum shall be paid by the Defendant to the Plaintiff on/or

before 180 days from date of this order, by depositing same into the Plaintiff's Attorneys of Record Trust Account, the details of which are as follows:

4. The aforementioned amount referred to in paragraph 3 above will not bear interest unless the Defendant fails to effect payment thereof within 14 (FOURTEEN) calendar days of the date of this Order, in which event the capital amount will bear interest at the prescribed rate of 7.25% per annum calculated from the date of this Order up to the date of payment.

UNDERTAKING

5. The Defendant shall provide the Plaintiff, within reasonable time, with an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act, 56 of 1996, wherein the Defendant undertakes to pay 100% of the costs relating to the future accommodation of the plaintiff in a hospital, or nursing home, or treatment of, or the rendering service, or supplying of goods to the Plaintiff that arises from the injuries sustained by the plaintiff in the motor vehicle accident of **30 November 2016** as and when such costs have been incurred and upon proof thereof (the "undertaking").

COSTS:

6. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on Magistrate Court Scale, which costs will include, but will not be limited to the following, subject to the discretion of the taxing master:

7.1 The costs of all expert reports, medico-legal reports, addendum medico-legal reports and combined joint reports, RAF4 Serious Injury Assessment Report(s) and radiology reports of all experts of whom notice had been given and/or whose reports have been furnished to the Defendant and/or its Attorneys and/or whose reports have come to the knowledge of the Defendant and/or its Attorneys as well as all reports in

their possession and/or in the Plaintiff's bundle of documents. This shall include, but not limited to, the following experts of whom notice has been given, namely:

7. The Defendant is ordered to pay the Plaintiff's taxed and/or agreed party and party costs within 180 (One hundred and eighty) days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties.

8. Should the Defendant fail to make the payment of the party and party costs within 14 days after service of the taxed accounts on the Defendant, the Defendant will be liable for interest on the amount due to the Plaintiff at the applicable rate of interest per annum as from the date of taxation to the date of final payment.

9. It is recorded that the Plaintiff and the Plaintiff's Attorney of Record have entered into a contingency fee agreement.

MOTHA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Date of hearing: 29 November 2021

Date of judgment: 10 January 2022

Appearances:

For the Plaintiff: Adv. P.J. Vermeulen SC

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For the Defendant: No appearance

(Instructed by: No appearance)