

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

Case number: 52295/2017

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES/NO

DATE: 2022-05-10

In the matter between:

MOSHIDI, MAISELA EPHRAM

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

LINK NUMBER: 4078624

JUDGEMENT

PHAHLAMOHLAKA AJ

INTRODUCTION

[1] The Plaintiff has instituted action against the Road Accident Fund for damages suffered as a result of motor vehicle accident which occurred on 1 June

2014. The action is not defended as the defendant's defence was struck out on 11 October 2021. Both the aspects of merits and quantum are at issue.

MERITS

[2] The Plaintiff alleges that on 1 June 2014 at approximately 22:30 along the R25 near Groblersdal, Limpopo, a collision occurred involving the following motor vehicles; The first insured vehicle with registration number [...], driven at the time by the first insured driver, one S.A. Moshakga; The second insured vehicle with registration number [...], driven at the time by the second insured driver, one M.M. Makgoba; and A motor vehicle with registration number [...], driven at the time by the Plaintiff. The plaintiff avers that the first insured driver was overtaking the second insured driver and as a result encroached into the lane of the plaintiffs travel.

[3] The Defendant has not provided a version obtained from either the insured driver. The essence of lack of a version by the plaintiff is that the uncontested version of the plaintiff will stand as there is no other version to gainsay it. It cannot be contested that the first insured driver overtook when it was dangerous to do so thereby negligently causing the accident. In the result and in view of the fact that the defendant's defence was struck out I am satisfied that the plaintiff has discharged the onus of proving negligence against the defendant.

QUANTUM

[4] Following the collision, the Plaintiff, who was 43 years of age at the time, was transported by ambulance to Groblersdal Provincial Hospital. He was stabilized in the casualty unit and referred for X-rays, which revealed no fractures. He was treated conservatively and was discharged with pain medication and crutches on 6 June 2014. His pain did not subside, subsequently he returned to the hospital on 13 June 2014 but was again treated conservatively and discharged the same day.

[5] From the accident the plaintiff sustained the following injuries:

5.1 A strain to his right ankle.

5.2 soft tissue injuries of his right hip, right knee, and right shoulder.

5.3 Symptoms of post-traumatic stress disorder and major depressive disorder.

[6] The Plaintiff currently complains of the following:

6.1 PHYSICAL/FUNCTIONAL:

6.1.1 Chronic pain in her right ankle, especially in the morning.

6.1.2 Occasionally his right ankle is swollen.

6.1.3 Inclement weather worsens his pain symptoms.

6.1.4 His sleep is disturbed, although he is uncertain whether related to the collision, he did however note that he did not struggle to sleep prior to the collision.

6.1.5 He struggles to execute his employment duties effectively.

6.1.6 Activities that aggravate the pain:

6.1.6.1 Sitting for long periods and then standing up;

6.1.6.2 Walking or standing prolong;

6.1.6.3 Handling heavy objects;

6.1.6.4 Climbing stairs and ladders.

6.1.6.5 Walking over uneven terrain.

6.2 PSYCHOLOGICAL/COGNITIVE:

6.2.1 Increased anxiety when travelling.

6.2.2 Occasionally rethink the collision.

6.2.3 He has become forgetful.

LOSS OF EARNINGS AND EARNING CAPACITY

[7] In trying to quantify his claim the plaintiff appointed experts and their reports were filed. The experts' reports may be summarized as follows:

7.1 DR H B ENSLIN-ORTHOPAEDIC SURGEON

According to Dr Enslin the plaintiff was left with a serious long term musculoskeletal impairment. He sustained soft tissue injuries without complications. He can continue working as a rubber line until his normal age of retirement. The expert further says the initial symptoms of the plaintiff experienced immediately after the accident have improved. He is able to perform all the work tasks that are required of him although he experiences discomfort in the right leg while at work. With successful treatment and rehabilitation, his functional abilities should improve.

7.2 MR LOPPER-CLINICAL PSYCHOLOGIST

Mr Lopper opines that the plaintiff's involvement in the accident under discussion has contributed to a deterioration of his psychological functioning due to his psychological response to the trauma and his reported on-going experiences of pain to his right leg. His psychological symptoms indicated that he has been suffering from symptoms post-traumatic stress disorder as well as symptoms of a major

depressive disorder.

7.3 MRS I KLEYNHANS- OCCUPATIONAL THERAPIST

The occupational therapist reports that from a physical perspective, the plaintiff displayed the maximum ability to meet the demands of sedentary to light natured work. This is also as a result of the cardiovascular status on the day of assessment. Based on his good prognosis of his orthopedic injuries, he should be able to continue with his job in future with recommended treatment. From a cognitive point of view, his abilities appear intact and should not influence his work ability.

7.4 MRS L VAN GAS- INDUSTRIAL PSYCHOLOGIST

The industrial psychologist opines that following successful treatment and interventions, it is anticipated that the plaintiff's condition would improve and that he would be able to continue working in similar positions for the remainder of his career.

DISCUSSION AND CASE LAW

[8] In order for the plaintiff to succeed in a claim for loss of earnings and loss of earning capacity the plaintiff must prove that the accident in question resulted in the diminution of the plaintiff's estate. The mere fact that the plaintiff sustained injuries in an accident does not automatically qualify him for an award for damages.

[9] This principle was laid down in **Rudman v The Road Accident Fund**¹ where the court dismissed the claim on the ground that although the appellant had proved disabilities, which potentially at any rate could rise to a reduction of his earning capacity he had failed to prove that this has resulted in patrimonial loss.

[10] In **Prinsloo v Road Accident Fund**² a white female inspector in the South African Police Service had suffered soft tissue injury of the lumbar spine. The

¹ 2003(2) SA 234 SCA

² 2009 (5) SA 406 (SE)

accident rendered her unsuitable to continue with her physical demanding situation at SAPS. The sedentary type of work was recommended. The expert opinion was that notwithstanding her placement in a sedentary position, whatever the prospects she might have enjoyed for promotion were substantially reduced, if not entirely negated. The court rejected the supposition. See also **Van Heerden v Road Accident Fund**³.

[11] In this case on the submission by the plaintiff's counsel the plaintiff's injuries are not regarded as serious and therefore the plaintiff does not qualify for general damages. On the loss of earning capacity, according to the plaintiff's experts it is anticipated that his condition would improve and that he would be able to continue working in similar positions for the remainder of his career.

[12] At the time of the accident the plaintiff was 43 years of age. According to the Industrial Psychologist he reportedly completed grade 11 as his highest level of scholastic education, where after he completed a one-year course in English communication (level 3) and vocational certificates in rubber lining, splicing and polyurethane. He has been employed as a Rubber Liner for most of his career but also obtained work experience as a Splicer and Belt Splice Assistant. Mr Moshidi was employed as a Rubber Liner at Rema Tip Top at the time of the accident. The Industrial Psychologist reports that when he was first interviewed on 8 March 2018, more than three years after the accident, the plaintiff was employed as a Rubber Liner at Continental Quantitec. The Industrial Psychologist further reports that Mr Moshidi confirmed on 18 October 2021 that he is currently employed at United Manganese of Kalahari as a Belt Splice Assistant. He has been working in this position since 1 September 2018. The Industrial Psychologist further opines as follows: *"the writer opines that Mr Moshdi's career path in an uninjured state would most probably have been similar to his post career path, to date."*

[13] In the light of the above, I am of the view that the accident has not resulted in the diminution of the plaintiff's patrimony and therefore the plaintiff has not

³ [2014] ZAGPPHC 958

suffered loss of earning capacity. In fact his earnings have increase over the years and he is able to find employment at various companies. I am not satisfied that the plaintiff has proved that he suffered past loss of earnings either.

FUTURE HOSPITAL, MEDICAL AND RELATED EXPENSES

[14] The plaintiff has succeeded in proving that he sustained injuries that need future medical attention. The experts have recommended intervention and I agree that the plaintiff that the plaintiff is entitled to future medical expenses. Section 17(4)(a) of the Act provides that the Road Accident Fund⁴ may furnish an undertaking for future medical, hospital and related expenses that may be incurred by a third party. The defendant decided not to participate in these proceedings and therefor it is incumbent upon this court to protect the rights of the plaintiff. I am therefore inclined to order the defendant to furnish the plaintiff with an undertaking for future medical, hospital and related expenses in respect of the injuries the plaintiff sustained in the accident that occurred on 1 June 2014.

ORDER

[15] In the result I make the following order:

- (a) The defendant is 100% liable for the plaintiffs proven damages.
- (b) The plaintiffs claim for loss of earnings and earning capacity is dismissed.
- (c) The defendant shall furnish the plaintiff with 100% undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, Act 56 of 1996, to pay 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 him, arising out of the injuries he sustained on 1 June 2014, after such costs have been incurred and upon proof thereof.

⁴ 56 of 1996

(d) The defendant is ordered to pay costs.

**KGANKI PHAHLAMOHAKA
ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
PRETORIA**

Delivered: this judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 10 May **2022**.

JUDGMENT RESERVED ON	: 10 FEBRUARY 2022
FOR THE PLAINTIFF	: ADVOCATE L VAN EEDEN
INSTRUCTED BY	: GERT NEL INC.
FOR THE DEFENDANT	: NO APPEARANCE
DATE OF JUDGMENT	: 10 MAY2022