

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 32846/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
15/06/2022	

In the matter between:

C S NDLOVU

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

van der Westhuizen, J

- [1] The plaintiff claimed damages suffered as a result of injuries sustained in a motor vehicle accident that occurred on 25 April 2015. At the time the plaintiff was 21 years of age and was a passenger in the vehicle.

- [2] On a previous occasion, the defendant conceded liability for a 100% of the damages that the plaintiff may prove or the amount agreed upon. The defendant's defence was struck out in terms of a court order granted on 1 March 2022.
- [3] The defendant rejected the claim for general damages and that claim was referred to the Health Professions Council for determination. The only rubrics of damages that require consideration is that of loss of earnings and future medical expenses.
- [4] The plaintiff sustained the following injuries:
- (a) Multiple lacerations to the abdomen, the face and back;
 - (b) Fracture of the left clavicle;
 - (c) Compression fracture of L1 vertebra.
- [5] At the time of the collision, the plaintiff was unemployed. She held a grade 12 qualification that she obtained in 2013. The plaintiff commenced work as a waitress during 2018 and continuous to be so employed.
- [6] The only issue that required consideration at hearing of the matter was that of contingency. It is trite law that the determination of contingencies to be applied lies within the discretion of the court taking into consideration a number of facts.
- [7] *In casu* the plaintiff was unemployed at the time of the accident and was not actively seeking employment. At the time of the accident, the plaintiff had no work experience. Whatever the potential earning capacity the plaintiff had prior to the accident, was intentionally not pursued by the

plaintiff. The plaintiff only actively sought and obtained employment during 2018, after the claim was instituted. The reason for that was not explained. One may speculate in that regard.

- [8] The actuary who compiled a report on behalf of the plaintiff considered no past loss of income and only opined in respect of future loss of income. An amount of R589 479.00 was calculated applying a 10% contingency for past loss and a 25% contingency for future loss.
- [9] In my view, in the present matter the appropriate approach would be to grant a lump sum in respect of future loss of earnings. Applying that approach, an adequate compensation would be an amount of R589 479.00.

I grant the following order:

1. The defendant is ordered to pay the plaintiff an amount of R589 479.00 in respect of loss of future earnings;
2. The defendant is to provide the plaintiff with an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act for a 100% of future medical expenses that may be incurred;
3. The defendant is to pay costs of suit on a party and party scale, including the costs of experts appointed on behalf of the plaintiff, as well as the costs to attend medico-legal examinations by all parties. Such costs to further include the costs of counsel.
4. The claim for general damages is postponed *sine die*.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Judgment Reserved: 24 May 2022

On behalf of Plaintiff: T Maphelela
Instructed by: Phukubye Attorneys

On behalf of Defendant: No appearance
Instructed by:

Judgment Delivered: 15 June 2022