

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 3878/2021

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

A handwritten signature in black ink, appearing to read "E van der Schyff".

Date: 26 August 2022 E van der Schyff

In the matter between:

S M MNIKINA

PLAINTIFF / APPLICANT

and

ROAD ACCIDENT FUND

DEFENDANT / RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] The plaintiff (Mr. Mnikina) approached the court for default judgment regarding the plaintiff's claim for loss of earnings. The issues of liability and general damages were previously settled. The defendant is liable for 75% of the plaintiff's proven damages.

- [2] Mr. Mnikina was 27 years old when the accident occurred. His highest qualification is a Diploma in Journalism and Media Studies (NQF Level 06). When the accident occurred, he was employed as a driver at Masase Transfers and Tours. He was earning a gross salary of R 16 200.11 per month, which amounted to an annual gross income of R194 401.31. Mr. Mnikina never returned to his pre-accident employment since his vehicle was written off and he was recovering from the accident injuries. His contract was terminated in May 2020.

- [3] Before the accident, Mr. Mnikina's duties entailed driving passengers around. The occupational therapist (OT) explained that 'his work required light physical strength demands with rare, medium physical strength demands.'

- [4] Since the accident occurred, he has been unemployed and unable to secure alternative employment. It must be highlighted that this information was conveyed to the court through the industrial psychologist's report, and no evidence was placed before the court as to what lengths Mr. Mnikina went to secure alternative employment. Mr. Mnikina reported to the industrial psychologist (IP) that he aspires to become a Travelling Tourist Reporter and wants to complete a Doctorate in Child Psychology and Development to open a nursery.

- [5] It must be stated at the onset that it is not necessary to hold a Doctorate in Child Psychology and Development to manage or run a nursery. In addition, no evidence was presented that indicates that the plaintiff would have been able, over time, to obtain a Doctorate in the preferred field, irrespective of whether the accident occurred or not. I accept counsel's submission that the calculation presented was done on a conservative basis and that the plaintiff would have proceeded with some studies, not a doctorate. However, the mere fact that the plaintiff's siblings are school teachers does not indicate that the plaintiff would have followed in their footsteps. There is no indication on the papers before me that the plaintiff actively pursued to

further his tertiary qualifications prior to the accident occurring, or that he was intent to do it at a later stage, save for his remark that he wanted to obtain a Doctorate.

- [6] Mr. Mnikina sustained a head injury with facial lacerations and fractures of the right humerus and ulna, the left tibia and fibula, and the right ankle. The OT opined that Mr. Mnikina met 'most' of the inherent demands of his pre-accident employment as a driver. However, he might experience limitations to his ability to drive due to the range of motion limitations in the right elbow. His pre-accident level of functioning has been reduced. The neurosurgeon held that Mr. Mnikina's life expectancy remained unchanged, that he sustained a concussion and that no future neurosurgical operation is anticipated. The neuropsychologist opined that Mr. Mnikina's present profile suggests that he may present as a hazard to the safety of himself and others on the road and that he is to be regarded as a vulnerable member of society and is at a disadvantage to compete with his peers.

- [7] The IP accepts that Mr. Mnikina would have remained on his present employment level, comparable to a Paterson B2/B3(MED Level), until he finished his studies. As stated, the evidence does not support a finding that he was in the process of studying.

- [8] As stated above, there is no indication on the papers filed that Mr. Mnikina was enrolled for further studies, or actively pursuing the opportunity to study further prior to the accident. Without providing the basis for such a postulation the IP stated that '[c]onservatively it is postulated that the plaintiff could have furthered his studies beyond his pre-morbid level of education, resulting in him attaining an NQF level 7 qualification.' Although Mr. Mnikina could theoretically have been able to further his studies before the accident occurred, a claim for loss of future income needs to be quantified on the realities and the facts of the specific case. In the absence of any evidence that Mr. Mnikina was indeed planning to further his qualifications before the accident occurred, the court cannot assume that he would have done so, if the necessary factual basis for such an assumption is not presented. The court also has to consider the neurosurgeon's opinion that 'it is reasonable to state that intellectually, Mr. Mnikina was probably of 'low average' to 'average' pre-morbid functioning relative to his peers.' The neuropsychologist also indicated that Mr.

- Mnikina reported a pre-morbid medical history of significance as well as 'multiple interpersonal difficulties'. Based on this information, it cannot be assumed that Mr. Mnikina would have been successful in an endeavour to engage in further studies
- [9] After considering the expert reports filed, I am of the view that although Mr. Mnikina's earning capacity was limited as a result of the accident, he is not rendered unemployable.
- [10] In my view, the claim for loss of earning capacity is best quantified by using the same scenario having regard to the accident and had the accident not occurred and applying a higher contingency deduction in the former scenario.
- [11] The actuary indicated that the present value of Mr. Mnikina's future income having regard to the accident is R7 871 029.00. It is in my view, justified to apply a 5% contingency deduction to determine the present value of his income had the accident not occurred, and a 20% contingency deduction having regard to the accident. As for Mr. Mnikina's past loss, I will afford the plaintiff the benefit of the actuarial calculations provided by him and allocate the maximum amount calculated by the actuary in this regard.

Present value	Contingency deduction	Past loss	
Uninjured: R7 871 029	(5%) R393 551.45	R262 219	R 7 739 696.55
Injured: R7 871 029	(20%) R1 574 205.80	R262 219	R 6 559 042.20
DIFFERENCE:			R 1 180 654.35

- [12] If it is considered that the defendant's liability is limited to 75%, the plaintiff's claim for loss of earnings or earning capacity amounts to R 885 490.76.

ORDER

In the result, the following order is granted:

1. The Draft Order marked 'X' dated and signed by me, is made an order of court.



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. H Groenewald
Instructed by:	Campbell Attorneys
For the respondent:	No appearance
Instructed by:	
Date of the hearing:	20 July 2022
Date of judgment:	26 August 2022