

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

CASE NO: 52172/18

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 11 September 2023

E van der Schyff

In the matter between:

ADV A.J. DU TOIT obo JOYNT SHANE MABIJA

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Van der Schyff J

[1] In this matter, a previous order was granted wherein the plaintiff was, amongst others, awarded general damages in the amount of R1 900 000.00 and an interim payment regarding loss of earning capacity in the amount of R3 000 000.00.

[2] The loss of earning capacity remains to be finally adjudicated. It is common cause that the plaintiff suffered serious bodily injuries and that he has no residual earning capacity. It is also common cause that the plaintiff was 22 years old when he was injured. He admitted to using alcohol, methamphetamine, and cannabis for years. The plaintiff, however, stated that he rarely used drugs by the time of the accident because he was focusing on music. He was a bricklayer before the accident and was on his way to a construction site when the accident happened. There is no certainty about his highest level of education, but the plaintiff reported it as Grade 11. In the heads of argument, it is stated, however, that it is uncertain whether he

completed and passed Grade 11. I pause to note that the various experts' information was inconsistent in this regard.

- [3] Despite the factual position of the plaintiff being 22 years old at the time of the accident and, according to the educational psychologist, had reportedly obtained Grade 10, she opines that before the accident, the plaintiff had the intellectual ability to complete his Grade 12 and at least would have been able to complete a certificate on NQF level 5.
- [4] A person's earning capacity is determined by several factors, of which a person's general level of intelligence is but one, albeit an important one. Although the plaintiff possibly had a general level of intelligence well within the average range before the accident, his educational history indicates that he would probably not have completed his secondary education and not obtained any tertiary qualification. I am aware of the widely accepted fact that young people have more opportunities to further their education. Still, a factual basis must substantiate the assumption that a young individual would have used such opportunities. The IP correctly states that cognizance should be taken of the socio-economic realities of South Africa in general and the particular circumstances of the individual involved. The current matter is not a matter where the facts sustain a finding that the plaintiff would have likely been able to benefit from, amongst others, the NSFAS bursary scheme.
- [5] The industrial psychologist [IP] and the actuary based their calculations on the educational psychologists' opinion that the plaintiff would have been able to enter the labour market as a semi-skilled labourer. I also consider that the IP reports that the plaintiff held up three part-time jobs while attending school, indicating his eagerness to become financially more self-sufficient.
- [6] The actuary calculated the capital value of the plaintiff's loss in an updated report, after having applied contingencies, at R7 198 980. The actuary provided for a 20% contingency deduction.

[7] It is trite that when earning capacity is quantified, a court has a wide discretion. I am of the view that the actuarial calculation can still guide me but that a higher contingency deduction will allow for the award to be more in line with what I regard to be proven facts. I accept that the past loss amounts to R 451 060.

Future:

Uninjured income:	R8 434 900.00
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Less 40% contingencies:	<u>R3 373 960.00</u>
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R5 060 940.00

Less interim award:	<u>R3 000 000.00</u>
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R2 060 940.00

Add	<u>R 451 060.00</u>
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R2 512 000.00

ORDER

In the result, the following order is granted:

- 1. The 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. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiff:

Instructed by:

For the defendant:

Instructed by:

Date of the hearing:

Date of judgment:

A. Loubscher

SAVAGE JOOSTE & ADAMS INC.

F. Mostert

State Attorney

18 August 2023

11 September 2023