

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
VISED.

3 October 2023

Case No:83344/19

In the matter between:

SINDISWA GLADYS XIMBI-MZIM

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

SK HASSIM AJ

1. The plaintiff was involved in a motor vehicle collision on 6 August 2016. She was thirty-three years and six months at the time.
2. The defendant has conceded that it is liable to compensate the plaintiff. The quantum of general damages payable to the plaintiff has been settled. The defendant has undertaken to furnish to the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, Act No 56 of 1996.
3. Neither party led viva voce evidence at the hearing. The parties' counsel agreed that the dispute should be decided on the basis of the expert reports filed by the

parties and the joint minutes filed by the experts. The plaintiff therefore suffered no past loss of earnings.

4. The outstanding dispute is the defendant's liability for future loss of earnings. The plaintiff was fully remunerated for the three weeks she was not at work after the accident.
5. The following experts, amongst others, filed reports:
 - 5.1. For the plaintiff:
 - 5.1.1. Educational Psychologist, Mr MS Mthimkhulu
 - 5.1.2. Industrial Psychologist, Ms Nqapela;
 - 5.1.3. Clinical Psychologist, Dr Mashaba;
 - 5.1.4. Actuary.
 - 5.2. For the defendant:
 - 5.2.1. Educational Psychologist, Ms Mills;
 - 5.2.2. Industrial Psychologist, Mr Brits;
 - 5.2.3. Clinical Psychologist, Mr Sampson¹.
6. Having met to limit the disputes the following experts prepared joint minutes.
 - 6.1. Educational Psychologists;
 - 6.2. Industrial Psychologists; and
 - 6.3. Clinical Psychologists.
7. The plaintiff had accumulated a number of qualifications pre accident. Her vision was to obtain a Masters' degree. This ambition has not been stunted by the accident. The plaintiff intends pursuing this dream.
8. In April 2015 the plaintiff obtained a Bachelor of Accounting Science: Management Accounting from UNISA. On 3 May 2016 she obtained a Postgraduate Diploma: Management Accounting from UNISA.

¹ The report cannot be located on CaseLines. A joint minute by these experts appears at CaseLines 021-6 – 021-8

9. The plaintiff registered with the Chartered Institute of Management Accountants (CIMA) and commenced study in January 2016 for a qualification (hereinafter referred to as the “**CIMA course**” or the “**CIMA qualification**”). The Post Graduate Diploma: Management Accounting constitutes an NFQ level 8 qualification. So too the CIMA qualification. However even though the CIMA qualification is equivalent to that of a Post-Graduate Diploma in Accounting, CIMA qualified and registered professionals enjoy benefits which make them more competitive and much sought out in the open labour market.
10. The CIMA course covers three subjects. Strategic Management (E3), Risk Management (P3) and Financial Strategy (F3).
11. From July 2012 until her resignation in 2019 the plaintiff was employed by the South African Weather Service (SAWS).
12. At the time of the accident, she held the position Manager: Management Accounting and continued in that position until her resignation in March 2019. Whilst at the SAWS she enjoyed a stint as a Deputy Director.
13. In 2016, whilst at the SAWS and before the accident, the plaintiff registered for the CIMA course. In May 2016, she registered for the mock examination in the subjects Risk Management (P3) and Financial Strategy (F3). According to the defendant’s educational psychologist the plaintiff failed the mock examination in 2016. There is however no evidence whether the plaintiff passed or failed the mock examination.
14. The plaintiff continued with the CIMA course in 2017. There is no record of her pursuing the study in 2018 and 2019.
15. Upon her resignation at the SAWS, and since March 2019 the plaintiff has been employed as Deputy Director Management Accounting Services at the Department of Co-Operative Governance and Traditional Affairs at the Local Municipal Infrastructure Support Agent (“MISA”). A deputy director position is a more senior position than the Manager Management Accounting position she had held at the time of the accident, and it comes with higher remuneration.

16. In January 2020 she enrolled for all three courses in the CIMA course. In January 2021 she enrolled for virtual classes in Strategic Management (E3) and Risk Management (P3). The plaintiff has not passed any of the three subjects she has enrolled for.
17. The educational psychologists agree that pre accident the plaintiff probably had the potential to obtain a Master's degree, which constitutes an NFQ level 9 qualification, in the field in management accounting. However, whereas the plaintiff's educational psychologist was of the view the plaintiff would have completed her CIMA course and registered as a Chartered Management Accountant, the defendant's educational psychologist is of the view that the plaintiff could have attained the CIMA qualification, but her progress would have been slower than in her previous studies because of the demands of three pre-school children and a full time managerial position. Both experts deferred to the information contained in their respective reports.
18. Ms Mills opined in her report that the plaintiff would eventually have obtained a Masters' degree, an NFQ level 9 qualification. But again, she would have progressed slower than previously and not as she had aspired because she would have had to work harder and would probably have needed to make allowance for leave or time off work from her full-time job to properly prepare for the examinations.
19. In the final analysis, the educational psychologists agree that pre-accident the plaintiff would have obtained a Masters' degree which is an NFQ level 9 qualification. They differ on how long it would have taken her to do so. How long it would have taken her to achieve these qualifications can be catered by an appropriate deduction for contingencies.
20. The plaintiff pursued her academic studies until the accident intervened. On the probabilities she would have pursued the CIMA qualification pre accident and would also have realised her dream of obtaining a Master's degree.
21. The plaintiff's educational psychologist does not propound that the plaintiff's cognitive capabilities have been impacted upon by the accident, but that the

lumbar, and neck and thoracic pain constricts optimal functioning. It is opined that anxiety and post traumatic symptoms impinge upon the plaintiff's ability to function as effortlessly as she did pre-accident.

22. In the post-accident scenario, the educational psychologists agree that the plaintiff will attain the CIMA qualification and obtain a Master's degree. They also agree that she may not be able to do so with the ease she would have pre-accident. According to the plaintiff's educational psychologist if interventions such as extra time to complete an examination are not permitted to the plaintiff it is not likely that she will progress beyond the Post Graduate diploma (NFQ level 8 qualification) she held at the time of the accident because she experiences pain which disrupts her attentional ability.
23. The limitations which the plaintiff's experts argue the plaintiff has suffered due to the accident do not find objective support. The limitations complained of by the plaintiff are pain related and she complains that she is forgetful, angers easily, is unable to lift heavy objects and cannot walk long distances because that brings on a headache. Yet she has not sought treatment for any of these.
24. In my view the accident has not had a significant impact on the plaintiff's functioning. The plaintiff returned to work three weeks after the accident. She remained in the position she held pre-accident until March 2019. This is more than two and a half years after the accident. She left the SAWS to take up a position that offered a considerable increase in remuneration. The plaintiff herself believes that notwithstanding the limitations she complains of she can still obtain the CIMA qualification and a Master's degree.
25. I cannot accept that the plaintiff's career progression has been impeded by the accident. In this regard (i) I consider it significant that notwithstanding the accident the plaintiff came to be employed as Deputy Director Management Accounting Services earning R920 000.00 per annum which position is more senior than the pre-accident Manager Management Accounting position where she earned R457 187.76 per annum. The accident did therefore not limit her career progression; and (ii) it is striking that notwithstanding the plaintiff

complaining that the accident brings on limitations such as pain and emotional difficulties there is no evidence that the plaintiff has sought and/or received treatment for these.

26. The defendant's educational psychologist holds the view that the plaintiff will be able to progress academically and achieve both a Masters' degree as well as the CIMA qualification however the effects of the accident will delay the former qualification by one (1) year and the latter qualification by two (2) years.
27. I am not able to find that the accident has affected the plaintiff's ability to obtain the CIMA qualification or the Master's degree. Nor am I able to find that the reason for the plaintiff not having completed the CIMA course is due to any limitations flowing from the accident. The reasons are unrelated to the accident.
28. The study towards the CIMA qualification according to the defendant's educational psychologist is demanding in that the content of the subjects for the CIMA qualification is different from the Post Graduate Diploma which the plaintiff holds and furthermore CIMA students need to study hard and long and may have to repeat examinations.
29. The joint minute of the meeting between the educational psychologists in August 2021 records that the plaintiff had three pre-school going children at home. The older child, a boy, was born in 2015. Twin daughters were born in 2018.
30. The plaintiff registered for the CIMA course the year following the accident, but did not write the exam. I cannot find on what is before me that the failure to write the examinations was due to the accident.
31. There is no evidence that the plaintiff registered for the CIMA course in 2018 and 2019.
32. Considering that the plaintiff is an individual who is determined to study and the fact that she registered for the CIMA course in 2017 it is unlikely that the reason for not registering for the CIMA course in 2018 and 2019 was the

limitations brought on by the accident. The responsibilities which come with young children and the demands of a senior position at work are likely to have discouraged the plaintiff from pursuing her studies in 2018 and 2019.

33. It is therefore more likely that the demands of motherhood and the demands of her high paying job were the more likely cause for the plaintiff not registering for study in 2018 and 2019. This finds support in the fact that the plaintiff registered for the CIMA course in 2020 and 2021 when her children were much older. I am not satisfied that the plaintiff's failure to complete the CIMA qualification since 2017 is attributable to the accident.
34. I am satisfied that the plaintiff will be able to complete both the CIMA qualification and the Master's degree however the effects of the accident will delay the attainment of these qualifications. The CIMA qualification which is an NFQ level 8 qualification will not advance the plaintiff from the Post Graduate Diploma NFQ level 8. It is also not a prerequisite for the Master's degree, an NFQ level 9 qualification which will advance the plaintiff from the Post Graduate Diploma NFQ level 8 qualification. The accident has delayed the plaintiff's attainment of the Master's degree by one year.
35. The industrial psychologists agreed that at the SAWS² pre-accident the plaintiff's total monthly package was R38 098.98,³ translating into an annual package of R457 187.76. This falls between the median and upper quartile of earnings graded for occupations at Patterson C1.⁴
36. In May 2020 the plaintiff was earning R920 000 per annum. This falls between the median and upper quartile on Patterson C5 which ranges between R696 000 -R781 000 -R926 000 total package per annum.
37. The parties' experts agree that pre-accident the plaintiff had the potential to achieve an NFQ level 9 qualification. The plaintiff would have plateaued at a

² SAWS is a government salary levels (1-12) and notches are used as a basis for remuneration and not Patterson grading. Nothing turns in this case on the difference.

³ This does not include the allowance she received for acting in the Deputy Director position.

⁴ CaseLines 032-3 para 2.1.6 of the joint minute of 31 August 2022.

higher senior managerial level, Paterson E1/E2 total package, median quartile of the scale by age 45.⁵

38. I find that the plaintiff is pre-accident likely to have completed the Master's degree, a NFQ Level 9 qualification, and despite the accident is likely to complete the Master's degree. The plaintiff is likely to have plateaued pre-accident at a higher senior managerial level, Paterson E1/2 total package, median quartile of the scale and is likely post-accident to plateau at the same level and at Paterson E1/2 total package, median quartile of the scale.
39. Turning to contingencies. Whether and how soon the plaintiff would have been able pre-accident to attain the qualifications is subject to the demands on the plaintiff's time by three pre-school going children and a senior position such as a deputy director. This should be catered for. Other eventualities that should be catered for is the cost of pursuing the studies and the need for the plaintiff to work harder and take leave or time off work from her full-time job to properly prepare for the examinations.
40. While the normal contingency applied to a plaintiff's uninjured earnings is in the region of 10% for a person in middle age and steady employment ⁶ in this case a 20% deduction for contingencies in respect of uninjured income is appropriate, fair and reasonable.
41. Insofar as a deduction for contingencies on the plaintiff's injured income is concerned, the possibility that the plaintiff may need special concessions such as additional time to complete her studies because of limitations caused by the accident must be catered for.
42. At the initial hearing the plaintiff's counsel argued for a 60% deduction for contingencies on the plaintiff's future injured income. At the last hearing the plaintiff's counsel accepted that 60% may be too high and argued instead for a 40 % deduction for contingencies. In my view this too is too high.

⁵ CaseLines 032-18 para 2.1.14 of the joint minute of 20 September 2022. Also see: Caselines 032-13, para 3.18 of the of the joint minute of 31 August 2022. This is however inconsistent with para 2.1.10.8 at CaseLines 032-4 to 032-5 of the latter joint min ute.

⁶ Fulton v Road Accident Fund (2007/31280) [2012] ZAGPJHC 3; 2012 (3) SA 255 (GSJ) (1 February 2012) para 95; Goodall v President Insurance 1978 (1) SA 389 (W).

43. The normal 15% deduction for contingencies is not fair in the circumstances of this case. The possibility that the plaintiff will require concessions concerning the time allowed to her for completing an examination and for the possibility that she will not be able to obtain such concessions should be catered for. A contingency deduction of 25% is appropriate, fair and reasonable in the circumstances of this case.
44. The actuary is accordingly directed to compute the quantum of the plaintiff's loss for future loss of earnings taking into account the following:
- 44.1. The plaintiff would have attained a Master's degree (an NFQ Level 9 qualification) in the uninjured scenario and will attain a Master's degree in the injured scenario. Thus plateauing pre-accident at a higher senior managerial level, Paterson E1/2 total package, median quartile of the scale and is likely post-accident to plateau at the same level and at Paterson E1/2 total package, median quartile of the scale.
- 44.2. The attainment of the Master's qualification has been delayed by one year as a result of the accident.
- 44.3. 20% deduction for contingencies on future uninjured income must be applied.
- 44.4. 25% deduction for contingencies on future injured income must be applied.
- 44.5. the Cap contemplated in *RAF v Sweatman*.
45. Once the loss has been computed by the actuary, the parties are directed to prepare a draft order based on the quantum calculated by the actuary. The draft order must provide for the payment of costs and interest by the defendant and the date for payment of these.

S K HASSIM
Acting Judge: Gauteng Division, Pretoria
(electronic signature appended)

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 4 October 2023

Date of Hearing: 6 and 7 September 2022 and 9 June 2023

Applicant's Counsel: Adv PM Leopeng

Respondent's Counsel Mr T Mukasi