



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case Number: **5512/2022**

In the matter between: -

CHRISTOFFEL JACOBUS VILJOEN

PLAINTIFF

(Identity Number: [REDACTED])

and

ROAD ACCIDENT FUND

DEFENDANT

CORAM: GROENEWALD, AJ

HEARD ON: 16 APRIL 2024

DELIVERED ON: 25 APRIL 2024

[1] This is a claim for damages arising from a motor vehicle accident that occurred on 28 October 2020 between Harrismith and Warden along the N3 Highway.

[2] The matter was set down for trial on 16 and 17 April 2024 for the determination of the plaintiff's claim on both merits and quantum. On the first day of the trial the legal representatives of both the plaintiff and the defendant indicated to me that the defendant had conceded the merits on the basis that the defendant is liable for 100% of the plaintiff's proved or agreed damages. They further

requested that the matter stand down until the next day to afford the parties an opportunity to endeavour to settle the issue of damages.

[3] Before the commencement of the trial on 17 April 2024 the legal representative of the defendant indicated to me that she was unable to obtain the necessary instructions from the defendant and would therefore not be able to appear on behalf of the defendant at the trial. The trial therefore commenced on 17 April 2024 in the absence of the defendant.

[4] At the commencement of the trial plaintiff's counsel indicated that the defendant has not yet made a formal decision to either accept or reject the plaintiff's serious injury assessment report and consequently the plaintiff was not entitled to pursue the adjudication of his general damages at that juncture. The plaintiff subsequently applied for the separation of the issues of general damages and past medical and hospital expenses in terms of rule 33(4) of the Uniform Rules of Court.

[5] The only issue left for determination is the defendant's loss of earnings and future medical expenses.

[6] At the commencement of the trial the plaintiff also brought a substantive application in terms of which he sought leave to present the evidence of certain of the plaintiff's experts by way of affidavit in terms of rule 38(2) of the Uniform Rules of Court and that the Court admits into evidence the plaintiff's hospital records and the collateral evidence provided to the plaintiff's expert witnesses, in terms of section 3(1)(c) of Act 45 of 1988. I granted the aforesaid application and made the following order:

[6.1] The applicant is granted leave to present evidence by way of affidavit, in terms of rule 38(2) of the Uniform Rules of Court, in respect of the issue of quantum of the following expert witnesses:

[6.1.1] Dr NP Metuse (Plastic & Reconstructive Surgeon);

- [6.1.2] Drs LF Oelofse and MB Deacon (Orthopaedic Surgeons);
- [6.1.3] Dr RS Leshilo (Psychiatrist);
- [6.1.4] Dr DK Mutyaba (Neurosurgeon);
- [6.1.5] Me Nalinee Rughoo (Clinical Psychologist);
- [6.1.6] Me Narishca Doorasamy (Occupational Therapist);
- [6.1.7] Mr Kevin Jooste (Industrial Psychologist);
- [6.1.8] Mr GA Whittaker (Actuary).

[6.2] The Court admits into evidence in terms of section 3(1)(c) of Act 45 of 1988 the following:

- [6.2.1] The plaintiff's hospital records;
- [6.2.2] The collateral evidence provided to plaintiff's expert witnesses;

[6.3] No order as to costs.

[7] During the trial plaintiff's counsel handed up a bundle of documents consisting of the affidavits of the plaintiff's experts. I accepted the bundle of affidavits into evidence as exhibit "A". Exhibit "A" did not contain an affidavit of Mr Kevin Jooste, the Industrial Psychologist.

[8] During the trial the oral evidence of the following witnesses were also presented by the plaintiff:

- [8.1] Mr Christoffel Jacobus Viljoen, the plaintiff;
- [8.2] Dr LF Oelofse, the orthopaedic surgeon;
- [8.3] Me Narishca Doorasamy, the occupational therapist;
- [8.4] Mr Kevin Jooste, the industrial psychologist.

[9] The plaintiff is an adult male born on [REDACTED] 1985. He is currently 39 years of age. He resides on the farm Valckenberg, Eeram, Harrismith, Free State Province.

[10] According to the plaintiff he sustained various injuries as a result of the accident, including injuries to his upper right arm.

[11] After the accident the plaintiff was immediately transported by ambulance to the Harrismith Private Hospital. The plaintiff was assessed and stabilised in the emergency room. His Glasgow Coma Scale (GCS) score on arrival at the hospital was reported at 15/15. According to the plaintiff he was unconscious and only gained consciousness at the hospital.

[12] On his arrival at the hospital the plaintiff presented with the following:

[12.1] Multiple lacerations and abrasions to his chest;

[12.2] A severe degloving injury to his right upper arm which actively bled;

[12.3] A contaminated visible dislocated humerus fracture with multiple bone fragments.

[13] The plaintiff was taken to the operating room (OR) on 29 October 2020 and the operative notes reported the following:

[13.1] Extensive degloving/crushing injury from right shoulder to elbow with a comminuted humerus fracture;

[13.2] Gross and extensive contamination with tarmac/soil.

[14] The plaintiff was taken to the OR on numerous further occasions for surgery to his right arm noted as follows:

[14.1] 30 October 2020 – debridement, relook and insertion of humeral nail;

[14.2] 2 November 2020 – debridement, relook, distal locking and placement of vacuum dressing;

- [14.3] 5 November 2020 – debridement and washout;
- [14.4] 7 November 2020 – debridement, poor muscle reaction to diathermy;
- [14.5] 11 November 2020 – debridement and placement of vacuum dressing;
- [14.6] 14 November 2020 – debridement and placing vacuum dressing;
- [14.7] 17 November 2020 – debridement and vacuum dressing.
- [15] From the joint report of Drs LF Oelofse and MB Deacon it is evident that the plaintiff currently complains of constant pain in his right shoulder, upper arm and elbow. He rates his pain as 9/10 on his shoulder and upper arm when performing physical activities and 6/10 when he is not doing anything. The plaintiff cannot extend or abduct his shoulder actively. The plaintiff also experiences a pins and needles sensation and cramps on his hand. The plaintiff currently has decreased sensation in his right upper arm, more on the dorsal aspect of the hand. The pain in his upper right arm is exacerbated by performing physical activities, especially at work. The plaintiff struggles to dress his body, bath or perform other self-care activities. He cannot reach behind his back when he is bathing and he is also struggling to wipe himself after being to the bathroom. It is difficult and painful for the plaintiff to drive for long distances especially over gravel roads. He now uses his left arm when he is writing and eating and is unable to cut his food. Movement of his right arm is difficult, painful and restricted. He struggles to make a fist with his right hand. It is difficult to sleep on his right side due to the pain in his shoulder. He is unable to participate in leisure activities such as fishing and hunting as he did prior to the accident. He gets frustrated at home and work and he is always dependent on someone for most of his daily activities. This has a negative impact on him and how he feels about himself.
- [16] A clinical evaluation of the plaintiff's right shoulder revealed scarring, severe atrophy, bicep tenderness, rotator cuff tenderness and spasms.

- [17] A clinical evaluation of the plaintiff's right hand revealed wrist joint tenderness, distal radio-ulnar joint tenderness, scaphoid tubercle tenderness and reduced movement of the wrist.
- [18] According to the clinical psychologist, Me Rughoo, the plaintiff also suffered from mild brain trauma. The plaintiff's performance on the neurocognitive assessments indicated moderate deficits in cognitive functioning. The plaintiff presents with severe symptoms of post-traumatic stress, anxiety and moderate symptoms of depression.
- [19] The plaintiff is employed as a diesel mechanic on the farm since 2007. His duties as a diesel mechanic entail the lifting of heavy objects and use of heavy equipment. Since the accident the plaintiff is unable to carry loads and use tools with his right arm. According to the plaintiff he can no longer fulfil his duties as a diesel mechanic.
- [20] To date the plaintiff has retained his position as diesel mechanic on the farm. However, a helper was previously appointed by his employer to perform all the handiwork of the plaintiff. The services of the helper were recently terminated and another qualified diesel mechanic was appointed in order to perform all the duties and functions of the plaintiff.
- [21] Dr Oelofse testified that the plaintiff's job as a diesel mechanic is hard and medically he should not be allowed to perform such work.
- [22] According to Me Doorasamy, the occupation therapist, the plaintiff is no longer suited for his position as a diesel mechanic and is currently only sympathetically accommodated by his employer. Should the sympathy of the plaintiff's employer disappear his position as diesel mechanic will also vanish. Even if the plaintiff should be appointed in a supervisory position, he will still have to drive, mobilise in the field and will have to assume various positions. The plaintiff is not only physically compromised but also cognitively and psychologically. Even if he does not utilise his shoulder the plaintiff is still compromised as a supervisor.

- [23] Me Doorasamy testified that should the plaintiff lose his current job, his ability to compete in the labour market and the chances that he will be gainfully employed in the future are slim. The plaintiff only has a Grade 12 qualification with minimal skills.
- [24] According to Dr Oelofse the plaintiff will require future medical treatment for the rest of his life, including conservative rehabilitation and most probably multiple surgeries. The plaintiff's shoulder already has osteoarthritis which will progress indefinitely. The plaintiff will therefore need shoulder replacement and revision surgeries. Revision surgeries need to be performed every 10 to 12 years. Dr Oelofse is also not convinced that the bone in the plaintiff's shoulder has united and according to him the plaintiff will in all probability need follow-up surgery in this regard. The plaintiff also suffered nerve damage which will need multiple high-risk surgeries. On the best scenario the plaintiff will thereafter only have compromised function.
- [25] According to Dr Oelofse the chronic pain that the plaintiff experiences has a considerable influence on his age of retirement and he will probably retire at least 10 to 15 years earlier. However, both Dr Oelofse and Me Doorasamy lean towards 15 years.
- [26] The salary advice of the plaintiff for March 2023 indicate that he received a salary of **R39 900.00**. The plaintiff also has the benefit of accommodation from his employer to the value of **R6 000.00** to **R7 000.00** as well as paid utilities amounting to **R5 500.00** per month. His total package is therefore in the region of **R50 000.00** per month in 2023 terms.
- [27] The plaintiff also performed private mechanical work outside of his working hours and according to him he earned approximately **R20 000.00** to **R30 000.00** per month. As a result of his injuries the plaintiff is also unable to perform such work.
- [28] The actuary used different bases to calculate the plaintiff's past and future loss of income. The capped loss of income in basis 1A was calculated at **R5 243**

893.00 and in basis 1B at **R7 443 958.00**. Counsel for the plaintiff argued that basis 1B was more probable.

[29] However, the actuary of the plaintiff calculated the plaintiff's total capped loss of income on the basis that there is a 50% chance that the plaintiff's loss will amount to what is set out in basis 1A and a further 50% chance that his loss of earnings will amount to what is set out in basis 1B as follows:

[29.1]	50% chance of basis 1A: (50% x R5 243 893.00)	R2 621 947.00
[29.2]	50% chance of basis 1B: (50% x R7 443 958.00)	<u>R3 721 979.00</u>
	Total nett loss	<u>R6 343 926.00</u>

[30] Contingencies of 5% on past loss and 10% on future loss were applied by the actuary in the calculation of the plaintiff's loss in both bases 1A and 1B. Counsel for the plaintiff submitted that the contingency deductions are fair and reasonable. At the time of the accident the plaintiff had approximately 13 years' experience with the same employer, had a stable career and was relatively well-paid. Counsel for the plaintiff further submitted that the plaintiff would probably work until the retirement age of 65 years, calculating a future work lifespan of approximately 26 years. I agree that the applied contingencies are fair and reasonable under the circumstances.

[31] Counsel for the plaintiff submitted that this matter is sufficiently complex to warrant cost of counsel as at scale C. I agree with the plaintiff in this regard.

ORDER:

[32] Accordingly I make the following order:

1. The defendant is liable for payment of 100% of the plaintiff's proven or agreed damages arising from the motor vehicle accident that occurred on 28 October 2020.

2. The defendant is liable for payment to the plaintiff in the amount of **R6 343 926.00** (Six million, three hundred and forty-three thousand, nine hundred and twenty-six rand) in respect of loss of income (Hereinafter referred to as "the capital amount").
3. The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supply of goods to the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate the plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.
4. The defendant shall pay the plaintiff's taxed or agreed party and party costs, including costs of counsel as per scale C, and the reasonable qualifying and reservation fees and expenses (if any) of the following experts:
 - 4.1 Dr NP Metuse (plastic & reconstructive surgeon);
 - 4.2 Drs LF Oelofse & Deacon (orthopaedic surgeons);
 - 4.3 Dr RS Leshilo (psychiatrist);
 - 4.4 Dr DK Mutyaba (neurosurgeon);
 - 4.5 N Rughoo (clinical psychologist);
 - 4.6 N Doorasamy (occupational therapist);
 - 4.7 L Linde and K Jooste (industrial psychologists);
 - 4.8 GA Whittaker (actuary).
5. The defendant will effect payment of the capital amount and costs to the plaintiff as follows:
 - 5.1 Payment of the capital amount shall be made within 180 (one hundred and eighty) days from the date of the granting of this order;
 - 5.2 Payment of the taxed or agreed costs shall be made within 180 (one hundred and eighty) days from the date of taxation or agreement.

6. In the event that the capital amount is not paid on the due date, the defendant will be liable for payment of interest thereon at a rate of 11.75% per annum calculated from 14 (fourteen) days from the date of the granting of this order.
7. In the event that costs are not paid on the due date, the defendant will be liable for payment of interest thereon at the statutory prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975, as amended, calculated from 14 (fourteen) days from the date of taxation or agreement.
8. The plaintiff's claims for past hospital and medical expenses and general damages are separated in terms of the provisions of rule 33(4) of the Uniform Rules of Court and postponed for later adjudication.



W.J. GROENEWALD, AJ

On behalf of the Plaintiff: Adv. CAS Greyling Jordaan
 McIntyre & Van Der Post Attorneys
 Bloemfontein

On behalf of the Defendant: No appearance