

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: 2019/18810

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

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SIGNATURE
NOVEMBER 2022

DATE: 16

In matter between:

P J VAN DEN HEEVER

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MOOKI AJ

- 1 The plaintiff seeks relief for injuries that he suffered following a motor vehicle accident. The plaintiff's car collided with a trailer to a truck. A third party was the driver of the truck. The plaintiff seeks relief against the Road Accident Fund ("the Fund"), a statutory body established in terms of section 2(1) of the Road Accident Fund Act, 56 of 1996.
- 2 The plaintiff pleaded the usual allegations; including that the third-party driver was negligent and that such negligence led to the collision, resulting in the plaintiff suffering injuries. The Fund is the "statutory defendant."
- 3 The court on 5 October 2021, per Windell J, struck the defences pleaded by the Fund. The matter thus came before court on an unopposed basis. The plaintiff filed various report by experts in support of his claim. The experts also gave updated reports. The experts deposed to affidavits, confirming their respective reports.
- 4 The plaintiff did not pursue all the bases to the relief that he seeks. He only pursued a case for loss of earnings. The claim based on other headings was postponed. The plaintiff gave evidence as detailed below.
- 5 He worked at Samancor Eastern Chrome Mines, where he was the human resources practitioner at the Tweefontein shaft of that mine. He was employed on a fixed term contract that was renewed repeatedly. He was responsible for safety meetings. He was also responsible for the mine, plant and engineering department.
- 6 The mine operations were located at different sites. For example, the mine was on the one side of the mountain with a smelter and engineering

department on the other side of the mountain. Part of his duties required him to go underground. He was generally not office bound.

- 7 He was injured in the following circumstances. He was driving to work using the Sekhukhune Road, between Lydenburg and Steelpoort, Mpumalanga, at approximately 05:15 in the morning on 19 July 2018. It was a tarred, single carriage road in both directions. He was driving at a speed of approximately 80 km an hour. The speed limit was 100 or 120 km an hour. It was still dark at the time.
- 8 He came around a bend, driving at the speed as indicated above. The road turned to the left as he got onto the straight from the bend. He saw four truck lights approaching towards him, at a distance of approximately 150 to 200 metres from him. He thought the four lights were a truck overtaking another. He slowed down when he saw the four lights.
- 9 He was just driving past the four lights when he suddenly saw a trailer before him. A truck had two trailers and one of the trailers was still on the road, straddling his lane. He slammed onto the brakes but struck the trailer. It was still dark at the time.
- 10 He was rendered unconscious for a period. A motorist helped him out of his car. An ambulance later took him to a medical station. He subsequently received various specialist medical attention.
- 11 His right knee was broken in the accident. He had a prior injury, five years ago, to his left knee. The ligaments to his left knee broke during this accident. He struck the car window with his head and the safety belt affected his shoulders as a result of the impact.

- 12 The neurosurgeon reported that the plaintiff sustained the following injuries: head injury, with loss of consciousness; soft tissue neck injury; blunt chest trauma; blunt abdominal trauma; blunt pelvic trauma; tibial plateau fracture of the right knee; and ligamentous injuries of the left knee. The plaintiff had an open reduction and internal fixation of the tibial plateau fracture of the right knee following the accident. The plaintiff used crutches for several months, and continued to use crutches from time to time.
- 13 The neurosurgeon further reports that the plaintiff complained of pain in the right knee and was in constant pain which is aggravated by standing and walking. The pain rendered the plaintiff less productive than before the accident. The plaintiff had undergone procedures on his left knee in 2014 and had a complete reconstruction of ligaments of that knee. The accident rendered the plaintiff's left knee unstable, necessitating the use of a brace.
- 14 The plaintiff was also found to present with psychological and psychiatric complaints. He presented with cognitive mental problems, which were found to be probably related to the psychological/psychiatric complaints.
- 15 The neurologist concluded that the plaintiff sustained a mild traumatic brain injury, but that he had no affective mental problems or change of personality following the accident. He was found to be "normal" in various categories during the neurological examination; those categories being short, medium, and long term memory; concentration, language ability, mathematical ability, general knowledge, and abstract thought.

- 16 The neurologist further reports that the plaintiff had signs of a mild traumatic brain injury, evidenced by losing consciousness after the accident and a dense phase of post-traumatic amnesia of five minutes. The neurologist did not give an opinion regarding the clinical extent of the brain injury.
- 17 The occupational therapist reported that the plaintiff experienced pain on his knees. He could not drive long distances and would request his wife to assist with the driving. She recorded that his duties before the accident required him to go underground on occasion. He could not continue with his duties at the mine and he resigned his employment. He worked in different jobs following his resignation. That included working as a delivery manager at a Spar in Port Alfred. The occupational therapist opined that work to be done by the plaintiff required sedentary, light to medium exertion. The plaintiff continued to experience pain for which he took medication.
- 18 The occupational therapist continued that the plaintiff also worked as a general manager at a garage. He was mostly responsible for administrative tasks and for assisting in the front-shop. His job required him to be in the forecourt including assisting with pouring petrol.
- 19 The occupational therapist noted that the plaintiff resigned from Caltex and rejoined Samancor in April 2022. He had applied for the position and went through the interview process. His duties are 100% sedentary and the plaintiff had the use of an ergonomic chair. The plaintiff continued to experience pain especially on the right knee when remaining in a seated

position. He also experienced swelling and had some difficulties in concentration.

20 The industrial psychologist reported as follows. It was noted that the plaintiff had become re-employed at the mine. His income had improved to about 95% of the median, using the Patterson scale and that the plaintiff's career was back on track, but more in a sedentary post.

21 The occupational therapist reported that the plaintiff's income dropped substantially on his resignation, with reference to the various jobs that the plaintiff assumed. The plaintiff was however back on track on his career path because he found work in April 2022 as an HR practitioner, organizational development. The occupational therapist described the plaintiff as being a vulnerable employee and that the plaintiff would become a vulnerable work seeker should he lose his current post.

22 The industrial psychologist reported that the plaintiff became unable to cope at work following the accident, leading to the plaintiff resigning his post. He considered the plaintiff's work following his resignation. The plaintiff had reduced earning capacity in that he assisted his wife with her business for a period and later worked at a Super Spar. He was then unemployed for three months, before taking up permanent employment with Astron Energy.

23 The industrial psychologist reports that the plaintiff remained symptomatic throughout, whilst being stoic to earn some income. The industrial psychologist concluded that the plaintiff remained a vulnerable work seeker; notwithstanding the plaintiff having found a job as an HR

Practitioner in organizational development with his former employer at the mine.

- 24 The actuary considered the plaintiff's actual income both before resigning from Samancor Eastern Chrome Mines and during the period leading to the plaintiff's re-employment. The basis to the income was well-documented. The actuary computed the plaintiff's loss of income as amounting to R1 344 455.00. The actuary initially computed that loss as amounting to R2 819 590.00. The reduced amount was due to the plaintiff having become re-employed.
- 25 The actuarial computation but for the incident was computed as follows. The net accrued value of income was calculated as R1 015 382; with the net prospective value of income computed as R3 023 828, for a total value of R4 039 210. Contingency was applied at 5% for the accrued value and 12.5% for the prospective value. The total value of income, having regard to the incident, was computed in the amount of R2 617 194, considering a 32.5% contingency. This resulted in a computed loss of earning amounting to R1 344 455.
- 26 There was no challenge to the case advanced by the plaintiff. That includes his account of the accident, the cause of the accident, and how the accident affected him. The various experts engaged by the plaintiff opined as detailed above.
- 27 I am satisfied that the plaintiff established that the truck driver caused the accident. The truck driver was solely responsible. The plaintiff became unable to carry-out his usual duties as described. He became obliged to

resign. This led to him incurring a substantial reduction in income. He employed various measures to earn an income, as described above.

28 The plaintiff eventually found himself in the happy instance of being re-employed, earning slightly more than at the time of his resignation. His circumstances have, however, changed. He is unable to perform duties as in the past. The experts are unanimous that he is unlikely to recover his general health and that he remains a vulnerable employee.

29 The actuarial computation is sound, including the proposed contingencies, which I adopt.

30 I am satisfied that the plaintiff made-out a case for relief. I make the following order:

30.1 The Defendant is liable for 100% of the damages suffered by the Plaintiff.

30.2 The Defendant is ordered to pay the Plaintiff the capital amount of R1 344 455.00 (one million three hundred and forty four thousand and four hundred and fifty five Rand) for loss of earnings (“claim amount”).

30.3 The Defendant is ordered to pay the claim amount with interest *a tempore morae*, calculated in terms of the Prescribed Rate of Interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996.

30.4 Payment of the claim amount, to be made within 180 days of the date of this order, shall be made into the trust account of the Plaintiff's attorneys, with the following details:

30.4.1 Holder: De Broglio Attorneys

30.4.2 Account Number: 109 645 1867

30.4.3 Bank & Branch: Nedbank – Northern Gauteng

30.4.4 Code: 198 765

30.4.5 Reference: V729

30.5 The Defendant is ordered, in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to reimburse 100% of the Plaintiff's costs for any future accommodation of the Plaintiff in a hospital or nursing home, or treatment or rendering of service to the Plaintiff or supplying goods to the Plaintiff arising out of injuries suffered by the plaintiff, after such costs have been incurred and upon proof thereof.

30.6 The Defendant is to pay the Plaintiff's taxed High Court costs as between party and party.

30.7 The Plaintiff shall allow the Defendant 180 days to make payment of the taxed costs.

30.8 The issue of general damages and past hospital and medical expenses is postponed *sine die*.

Omphemetse Mooki

Judge of the High Court (Acting)

Heard on: 18 August 2022

Delivered on: 16 November 2022

For the Plaintiff: J Erasmus

Instructed by: De Broglio Attorneys Inc

For the Respondent: No appearance