

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



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

CASE NUMBER: 10078/2019

[1] REPORTABLE: YES/NO

[2] OF INTERENST TO OTHER JUDGES: YES/NO

[3] REVISED: NO

10 November 2023

DATE

SIGNATURE

In the matter between:

GONTSE SEGOLE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

NTULI AJ

MR. Gontse Segole (The Plaintiff) was a passenger in a car with registration number [...], driven by Tokelo Mloi when the car collided head on with another car travelling in the opposite direction. The plaintiff sustained injuries and was taken to Bopelong Provincial Hospital, then transferred to Helen Joseph Hospital and finally ended up at

Charlotte Maxeke Academic Hospital. He was diagnosed with the following injuries, namely.

1. A moderate traumatic brain injury,
 - 1.1 with subdural haemorrhage,
 - 1.2 An occipital skull fracture,
2. Fractures and injuries to the face,
 - 2.1 Fracture of the right nasal bone,
 - 2.2 Orbital ridge fracture,
 - 2.3 Fracture of the left ramus of the mandible,
 - 2.4 Dislocation of the temporomandibular joint,
3. Chest injuries,
 - 3.1 Fractured ribs,
4. Neck injury,
 - 4.1 Fracture of the C2 vertebrae with disc narrowing at C3/C4,
5. Fracture of the right tibia and fibula,
6. Fractures of the pelvis,
 - 6.1 Fracture of the left pubic ramus,

He is now suing the Road Accident Fund (RAF) the defendant, for general damages and loss of future earning capacity. The defendant has conceded 100% merits in favour of the plaintiff and the future medical costs are provided for by the section 7(4) certificate, the defendant has made available to the plaintiff.

By agreement the matter proceeded by way of Rule 38(2) of the High Court rules. Only the plaintiff's expert's opinions were admitted in into the record and the defendant did not challenge them. The parties then submitted abridged Heads of Arguments focusing only on the issues to be adjudicated upon, namely the loss of future earning capacity and the general damages.

The plaintiff motivates his claim by relying on the undermentioned expert's opinions.

1. **Dr Schnaid**, an orthopaedic surgeon, in a report he compiled on 13 July 2023, notes that: ***“Mr Segole sustained multiple injuries in the motor vehicle accident***

and now has pain in the cervical spine, lumbar spine, pelvis, right tibia/fibula and chest with neuropsychological sequelae". He goes on to list the injuries thus:

2.

1.1 Head injury:

This aspect should be deferred to a Neurologist and Neuropsychologist. The patient manifest with headaches, memory lapses and seizures.

1.2 Mandible:

X-rays demonstrates non-union of the left mandibular fracture. There is poor mastication of solid foods. This should be deferred to a Maxillo Facial Surgeon.

1.3 Chest:

This aspect should be assessed by a Thoracic Surgeon. X-rays are normal.

1.4 Cervical spine:

X-rays demonstrates a C2 fracture with disc narrowing at C3-4. The patient will benefit from physiotherapy and anti-inflammatory agents. Symptoms and dysfunction will probably be ongoing. Provision should be made for a cervical fusion, when indicated in future.

1.5 Lumbar spine and pelvis:

The patient sustained a fracture of the left pubic ramus. X-rays of the lumbar spine and pelvis are normal. The patient will benefit from the lumbar back rehabilitation programme by a physiotherapist. Symptoms and dysfunction will probably be ongoing. Provision should be made for a lumbar fusion when indicated in future.

1.6 Right tibia and fibula:

The right tibia and fibula have united with fixatives in situ. The fixatives should now be removed, and the lower limb rehabilitated. The presence of the fixative weakens the bone, putting it at risk of refracturing. The loss of ankle movement is irreversible.

1.7 Pain, suffering, amenities, and permanent damage:

The pain the patient endured was severe. He still experiences pain in the cervical spine, lumbar spine, pelvis, right tibia/fibula, and chest with neuropsychological sequelae.

Amenities: These have been negatively affected. He can manage daily household chores but with difficulty and all manual and ambulatory function at home and in the community at large will remain restricted.

1.8 Ability to work:

In my opinion, he will not be able to do physical demanding work in future.

3. **Dr D M Manyane** (neurologist) in the report of 20 July 2023 records the following regarding the plaintiff's injuries.

3.1 Pain and suffering

The claimant sustained a moderate traumatic brain injury with GCS of 11/15. The CT scan of the brain was requested and showed subarachnoid haemorrhage, occipital fractures, and facial fractures. The head injury was managed conservatively. As an outcome of the head injury, he presents with neurocognitive impairment and post-traumatic headache. He also sustained blunt chest trauma with rib fractures and small pneumothoraxes. He also sustained mandible fracture with dislocation. The right tibia fracture was managed surgically with open reduction internal fixation. Deference is made to orthopaedic surgeon, general surgeon, clinical psychologist, occupational therapist, and industrial psychologist.

3.2 Future medical treatment

3.2.1 Neurocognitive impairment

3.2.1.1 Deferred to clinical psychologist.

3.2.2 Moderate traumatic brain injury

3.2.2.1 The claimant sustained moderate traumatic brain injury.

3.2.3 Post-traumatic headaches

3.2.3.1 The claimant presents with post traumatic headache.

3.2.3.2 He will need follow up with neurologist.

3.3 conclusion

The claimant sustained a moderate traumatic brain injury with GCS of 11/15. He was sent for CT scan of the brain which showed subarachnoid haemorrhage, facial fracture, occipital skull fracture and mandible fracture. The head injury was managed conservatively. He also sustained blunt

chest trauma with multiple rib fractures. He sustained by(sic) right tibia fracture which was managed surgically. He presents with neurocognitive impairment and post-traumatic headaches impairment as outcome of the head injury. Deference is made to the relevant experts as set out in the report. He qualifies for serious impairment and should be compensated accordingly.

4. Dr Mthobeli Vundla (Orthodontist) after examining the plaintiff, concluded that:

- 4.1 He presented with CI III malocclusion,
- 4.2 Facial asymmetry and mandibular deviation on opening to the lefthand side,
- 4.3 There is limited mouth opening about 27mm due to fractured left condyle,
- 4.4 The patient needs restoration of aesthetics and improving of function,
- 4.5 There is a significant association between severity of malocclusion and the Emotional and Socia Well-Being of adolescents, corroborating previous studies found in literature (Matloba et al).
- 4.6 Concern for dental aesthetics is very common in today society, as it has a direct effect on quality of life, principally in relation to social acceptance. Several studies including those done in SA have suggested that the new unsatisfactory dental aesthetics may have a negative impact on the Social and Emotional Well-being of individuals. The presence of aligned teeth exerts strong influence on the perception of beauty and is identified with professional success and intelligence, and associated with individuals who are socially more successful. Physical appearance is of great importance for the construction of personal identity and, therefore, it is mandatory for the above-named patient to restore his physical appearance and function as he has, his whole life ahead of him. We live in a competitive society and world; therefore, one needs self-esteem, confidence in order to thrive in life. Mr Segole also needs to restore his aesthetics and function which is directly related to his confidence, thus giving him the ability to approach his future with confidence and smile.

5. **Ms MD NGCUKA** (Counselling psychologist) points out in her conclusion that: On this assessment, Mr Segole presents with a group of neuropsychological deficits.

His Glasgow Coma Scale score is indicated as having been 13/15 on the second day of his initial admission to the hospital. Post-traumatic amnesia seems to have lasted between 1hr to 24hrs and it is associated with more severe injury. The neurologist indicated retrograde amnesia on the hospital records. Visual defects are strong indicators of the severity of traumatic brain injury. Anosmia (loss of smell) can also be a marker of not only damage to olfactory regions of the brain but also orbitofrontal damage which can be objectively, documented with MRI neuroimaging. Head movement in the anterior-posterior plane is most likely to produce a subdural hematoma. These are all injuries that have been mentioned as part of his profile and so, it would not be far-fetched to say he presents with a moderate traumatic head injury.

While some of his symptoms, namely: problems with memory, impaired concentration, headaches, intellectual and physical fatigue, dizziness and increased sensitivity to noise and irritability, point to general impairment resulting from minute lesions and lacerations scattered throughout the brain, there are also indications of specific areas of hurt. His whole tests result point to these neuropsychological sequelae:

Frontal lobes injury involving:

- The orbito-frontal region where there are structures involved in the primary processing of olfactory stimuli, Odor discrimination is frequently affected by lesion here.
- The prefrontal cortex which participates decisively in the higher forms of attention, for example, in raising the level of vigilance.
- Prefrontal cortex where sustained attentions activated until the task no longer requires attention but has become automatic.
- Prefrontal cortex being involved in attention- mediates the capacity to make and control shifts in attention.
- Working memory tasks that call for temporary storage and manipulation of information, involved the frontal lobes.

- Frontal lobes lesion affecting divided attention. Difficulties on part B of the Trail Making Test occur when this capacity is impaired.

Additionally, other frontal lobe difficulties, have to do with Executive functions.

-planning, initiation, judgement, perseveration and so forth.

Occipital lobe injury

Among the injuries sustained by Mr Segole, was the impact on the occipital bone resulting in the bleeding on the inner plate. The problem with his visual scanning may originate from hurt in the primary cortex of the occipital lobe. An MRI would be highly useful here.

SEIZURES

It seems to me that he might be experiencing some partial seizures that he may not be aware of.

6. **Mr SEKAO KABELO**, an Occupational therapist, after conducting some tests on the plaintiff, he concluded that:

“Mr Segole suffered a loss of productivity during this period of his hospitalization after the accident. He managed to return to his job, however he is experiencing challenges at work and afraid to report to his supervisor as he is concern that he might be retrenched. The kind of occupation he does required good cognitive function and physical endurance to compete fairly in a workplace with other colleagues. The injuries sustained from the accident left him with both cognitive and physical limitations that make difficult to cope with functional activities of daily living as he used to before the accident. He then remains vulnerable and disadvantaged employee in a competitive workplace regarding longevity, efficiency, effectiveness, and productivity compared to a normal healthy individual”.

7. **MS THLORISO AUDREY SEPENYANE**, an Educational Psychologist deferring to **Dr Schanaid**, the Orthopaedic surgeon when addressing the sequelae of the tibia/fibula fracture and the other injuries, opines that:

“Mr Segole will clearly not be able to function optimally. The neurologist affirms that Mr Segole presents with a history of impaired memory since the head injury which was further confirmed by his performance on the perceptual reasoning and working memory subtest from the intellectual test. Moderate head injury can lead to a lifetime of physical, cognitive, emotional, and behavioural changes. These changes may affect a

person's ability to function in their everyday life. The above was confirmed by the RAF 4 narrative test, that Mr Segole has suffered severe long-term mental or severe long-term behavioural disturbance or disorder. And although he does not present with epilepsy, his risk of developing seizures is 5-7%. Should the above prevail, he is likely to suffer and might possibly end up as a candidate of chronic attention medically. The accident has clearly rendered him as a vulnerable candidate in his social life as well as working abilities".

Deferring to the Occupational therapist's report she observed that:

"Mr Segole's limitations and pain would compromise his ability to function at the same level as his uninjured co-workers, even in a situation with the physical demand category matching his physical abilities, he is thus considered a vulnerable job seeker in the open labour market when compared to his non injured counterparts. Considering that Mr Segole was an active person (loved playing soccer) and also a hard worker, the injuries sustained in the accident and sequelae has caused some disruption in Mr Segole's enjoyment of life amenities".

8. After quoting from the findings of other experts **Mr Ben Moodie**, an Industrial psychologist concludes that:

"When note is taken of the opinions expressed by the Occupational Therapist as well as the Psychologist, it would seem as if the claimant would now, post-accident, not be able to complete his studies. Even though the claimant is motivated to enrol for these studies, the fact of the matter is that he presents with memory and concentration problems which will obviously have a negative impact on his ability to study further. Moreover, the claimant also suffers with headaches which will in turn also affect his ability to concentrate and this might lead to irritability which he confirmed to the experts.

In writer's opinion, from a cognitive perspective, the claimant will therefore not be able to complete his studies, meaning he will only be able to function on par with his current level, earning on par with his current income.

From a physical perspective, the claimant has certain limitation which will also have an effect on his ability to work even in a sedentary type of employment. This means that if the claimant loses his current employment, he will struggle to obtain new employment especially if he discloses to a new perspective (sic) employer about his impairments.

It cannot be concluded that the claimant is unemployable in the open labour market, but it can be concluded that the claimant will have longer periods of unemployment in-between and job-hob in order to obtain the ideal type of employment, should he lose his current employment. This aspect should be dealt with by means of a higher post-accident contingency deduction.

9. It appears from all the experts the plaintiff consulted with, that, had it not been for the accident caused by the insured driver of the defendant, the plaintiff's future career would have been on a progressive trajectory. This reasoning is inferred from these set of facts, namely:
 - 9.1 The plaintiff started to work the moment he left school (2009), as a parker at Pick & Pay – this indicates focus and discipline.
 - 9.2 The plaintiff did a learnership with RIMS in 2009 – this shows his willingness to improve his skills.
 - 9.3 The plaintiff obtained a certificate in Business Administration 2012/2013 at Damelin – this indicates his eagerness to improve his education.
 - 9.4 The plaintiff registered in 2014 for a certificate in human resources at the University of Johannesburg (UJ) but due to financial reasons did not proceed. Again, this indicates his enthusiasm to study.
 - 9.5 The plaintiff enrolled at Boston College in the year of the accident (2017) for a higher certificate in human resource. But for the accident, he could not proceed with the studies. Again, this indicates the plaintiff would have pursued for higher education but for the accident.
 - 9.6 Mr Ben Moodie, the industrial psychologist, says in his report that the plaintiff had a plan to do a B. Tech degree before the accident which would have increased his chances of being promoted to a higher position. Mr Moodie makes this conclusion base on the information he obtained from Mr Maabane, the plaintiff's immediate supervisor, that the plaintiff would require a degree for upward mobility in his career, otherwise there would no prospects of being promoted at all, meaning that he would remain on the same position for the rest of his life.
10. The experts are at ad idem that, owing to the accident, the plaintiff suffered severe injuries with permanent sequalee, namely, permanent cognitive

impairment, memory and concentration problems, he is easily irritable, will not be able to participate in sports, in his instance soccer, he will have great difficulty engaging in manual chores.

- 11.** The obvious corollary to the above is that; 1) he is disadvantaged as he has to compete with healthy individuals in the job market, he has already been sanctioned at work (verbal warning) for failing to meet deadlines, he will struggle to be employed should he lose his current employment.

The law

- ***On General damages.***

The plaintiff was diagnosed and treated for injuries that are articulated in clause 1 above. The authorities show that the determination of quantum is based on the severity of the injuries sustained and the bodily disfigurement and distortion which will constitute the permanent sequelae. Having regard to the plaintiff's injuries taking into account the indicia of identical cases, I conclude that an amount of R1 500 000.00 for general damages would be appropriate.

On future loss of earnings.

It appears from the case law that determining the future loss is in the main, a speculative exercise. This is so because, some claimants may heal and be rehabilitated back to their pre-accident position while other's positions may degenerate well beyond the actuarial abstractions, postulations and predictions by other experts.

However, the court is enjoined to make a decision regardless. In this instant case and having taken into account the postulations and predictions by the experts who examined the plaintiff, and the actuary's predictions, and the decisions of previous court. I conclude that the amount of R2 500 000.00 would be appropriate.

- ***I therefore hereby order that:***

1. The defendant pays the plaintiff an amount of R1 500 000.00 for general damages.

2. The defendant pays the plaintiff an amount of R2 500 000.00 for future loss of earning capacity.
3. The defendant pays the plaintiff's costs of suit on a party and party scale.

NTULI AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 18 August 2023
DATE OF JUDGMENT: 10 November 2023

APPEARANCES:

On behalf of plaintiff: Adv S Meyer
Instructed by: Oni & Company Inc

On behalf of defendant: Adv TH Ngomana
Instructed by: State Attorney obo, Road Accident Fund