

REPUBLIC OF SOUTH AFRICA



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

Case No: 2023/092351

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

19 FEBRUARY 2023

DATE

SIGNATURE

In the matter between:

ROODE: FRANCOIS GERHARDUS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 19 February 2024.

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## JUDGMENT

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### WEIDEMAN AJ

1. This matter came before court on the 13<sup>th</sup> of February 2024 as part of the Default Judgment Court Roll.
2. Acting on behalf of the plaintiff was advocate Matsiela.
3. Having heard counsel for the plaintiff, the court indicated that it would grant the plaintiff an order for the following Heads of damages and in the amounts as listed below:

3.1 Past Hospital & medical Expenses	R748 490.81
3.2 Future Medical Expenses	Undertaking
3.3 Past loss of Earnings	R107 645.00
4. The quantification of the plaintiff's general damages would be postponed *sine die*.
5. Based on the documentation filed of record and the discussion with counsel in court the court was willing to allow and provide for as a claim for future loss of income early retirement, as was dealt with in the expert reports filed of record.
6. The court was not persuaded that, in addition to early retirement, provision should be made for a separate claim for loss of earning capacity. Counsel was

invited to prepare supplementary Heads of Argument, addressing specifically this aspect of the Plaintiff's claim.

7. The court is indebted to adv Matsiela for his assistance in this regard. Adv Matsiela's supplementary Heads of Argument may be found on CaseLines at 04-1.
8. The supplementary submissions address the question raised by the court, that is, why an additional 15% contingency deduction should be added to the "having regard to the collision scenario", considering that the actuarial calculation made provision for the plaintiff's early retirement at age 60?
9. Having had opportunity to consider the arguments advanced by counsel, as read with the medico-legal reports filed of record, the court accepts that it is reasonable to apply an additional 15% contingency deduction to the post morbid scenario to cater for the risk faced by the plaintiff (having regard to his reduced earning capacity and hazard of not being able to find comparable employment should he lose his current position) in the next fifteen years of his remaining work life.
10. Reverting to the actuarial calculation and applying a 10% contingency in the "but for the accident" scenario and a 20% contingency in the "having regard to" scenario the nett effect is an amount of R2 224 244.00. This is the amount that the court will incorporate in its order for the claim for future loss of income, including early retirement and impairment of capacity.

**11. In the circumstances the complete order is as follows:**

- 11.1 Payment to the Plaintiff the sum of R3 080 379.81, before the apportionment on negligence. After deducting the 25% agreed

contributory negligence of the Plaintiff, the nett amount due to the Plaintiff is R2 310 284.86.

11.2 The Plaintiff's claim for General Damages is postponed sine die.

11.3 Payment will be made directly into the trust account of the plaintiff's attorneys within 180 (one hundred and eighty) days from date of this order, details of their trust account being the following:

Holder: Joseph's Incorporated Account No: 50450103011

Bank: RMB Private Bank

Branch Code: 261251

Reference: J Calitz, R0004073

11.4 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Act for 75% of the costs of the plaintiff's future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff arising out of the injuries sustained by plaintiff in the motor vehicle collision which occurred on the 3rd November 2021.

11.5 The defendant is to pay the plaintiff's agreed or taxed High Court costs, such costs to include, but not limited to the preparation and of the plaintiff's experts report and confirmatory affidavits.

The defendant shall pay interest on the aforesaid capital amount calculated at the mora rate of interest as from 14 days from date of settlement until date of payment.

**COURT,**

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**D. WEIDEMAN  
ACTING JUDGE OF THE HIGH**

**JOHANNESBURG**

**APPEARANCES:**

Plaintiff 's Counsel:           Lebogang Matsiela

For the defendant:           Riyasha David

DATE OF HEARING:           13 FEBRUARY 2024

DATE OF JUDGMENT:        19 FEBRUARY 2024