



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

Case no:26899/2021

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

DATE

SIGNATURE

In the matter between:

Zoliswa Lonia Qulu

Plaintiff

And

Road Accident Fund

Defendant

JUDGMENT

MAKHOB A J

1. The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor vehicle accident which occurred on the 14th June 2018.
2. The defendant was absent on the date of trial. Counsel for the plaintiff requested for default judgment. The plaintiff was called to testify and she testified that an unknown motor vehicle collided with her and she sustained injuries.
3. The court is satisfied that the defendant is 100% (one hundred percent) liable for the damages which the plaintiff might have suffered. In regard to the nature of the injuries and the claim against the defendant, the plaintiff handed in expert reports which are uploaded on caselines.
4. The plaintiff is claiming an amount of R 562 519.00 for loss of earnings/earning capacity. The issue before this court is whether having read the papers and heard counsel the court should grant the amount prayed for by the plaintiff.
5. The interest of the community, as a whole, demand that more scrutiny be applied in the disbursements of public funds.
6. The parties routinely seek to assist the court in assessment of the amount payable by resort to the expertise to the expertise of an actuary. This is not an obligatory approach to the qualification of damages and a court should be careful not to treat reports as if they are scientific data.

7. The *locus classicus* as to the value of the actuarial expert opinion in assessing damages is *Southern Insurance Association Ltd v Bailey* NO 1984(1) SA 98 (A) where Nicolas JA said the following:

“Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is ‘tied down by inexorable actuarial calculations. He has ‘a large discretion to award what he considers right.’ One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or differently put the ‘vicissitudes of life’. These includes such matters as the possibility that the plaintiff may in the result have less than a normal expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labor unrest or general economic conditions. The amount of any discount may vary depending upon the circumstances of the case.”

8. Zulman JA, with reference to various authorities including the *Southern Assurance* said as follows in *Road Accident Fund v Guedes* (611/01) [2006] SCA 18 RSA at 586-587B. *“The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO) Courts have adopted the approach that, in order to assist in such calculation, an actuarial computation is a useful basis for establishing the quantum of damages.”*
9. In *De Jongh vs Du Pisane* 2004 (5) QOD J2-103 (SCA) the supreme court of appeal reiterated that contingency factors cannot be determined

with mathematical precision and that contingency deductions are discretionary.

10. The general approach of the actuary is to posit the plaintiff, as he is proven to have been in her uninjured state and then to apply assumptions (generally obtained from the industrial psychologists) as to her state with the proven injuries and their sequelae. The deficits which arise between the scenarios (if any) are then translated with reference to the various baseline means and norms used. These exercises are designated with the aim of suggesting the various types of employment which would hypothetically be available to the plaintiff both pre and post morbidity. The loss is calculated as the difference in earnings derived between the pre-accident or pre morbid state and post –accident or post morbid state.

11. The occupational therapist (caselines 007-18) par 12 says the following
“the time of the accident under review in June 2018, she was employed as a casual cleaner at British American Tobacco.”

12. Dr J.P Marin (Orthopaedic surgeon) opines as follows on par 11.2.9 (caselines 007-77) *“It is my opinion that the patient will be able to work to the retirement age 65 (sixty-five) years”*

13. The plaintiff did not sustain any fractures or dislocations. X-rays were conducted and no abnormalities were found. She only sustained soft tissue injuries. She was discharged the same day.

14. From the evidence put before me I am unable to find that, the applicant is entitled to any amount in respect of loss of earnings/earning capacity for the following reasons.

14.1 At the time she sustained injury she was temporarily employed.

14.2 She will be able to work to the retirement age of 65 years.

14.3 She did not sustain any fracture dislocations.

14.4 There is no medical proof or diagnosis of the plaintiff's complaints about pain in her body.

15. In my view the injury she sustained was not serious hence she was discharged the same day.

16. The plaintiff did not prove her claim on preponderance of probabilities. In the premises I make the following order.

(i) The plaintiff's claim is dismissed.

(ii) No order as to costs.

D MAKHOBA

JUDGE OF THE GAUTENG DIVISION,

PREORIA

APPEARANCES:

For the plaintiff: Advocate J F Grobler SC

Instructed by : Wehmeyers Attorneys

For the defendant: Non-appearance

Instructed by : Road Accident Fund

Date heard : 11 August 2022

Date of Judgment : ___September 2022