

THE REPUBLIC OF SOUTH AFRICA



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

Case no: 34393/2020

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

30 AUGUST 2023

DATE

SIGNATURE

In the matter between:

JULY BENNETH MTSHWENI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

MAKHOB A, J

- [1] The plaintiff instituted an action against the defendant for loss of earnings suffered as a result of injuries sustained in a motor vehicle collision which took place on 5 January 2017.
- [2] The merits were not settled however counsel for the plaintiff handed in the plaintiff's affidavit and addressed the court on the merits. The court found that the insured driver was liable 100% in favour of the plaintiff.
- [3] The defendant was not represented on the date of trial and the attempt to settle matter did not yield any results, on behalf of the counsel for the plaintiff asked for the matter to proceed on default judgment *via* video link. Counsel addressed the court and referred the court to her heads of argument. I was asked to decide the matter on the basis of the papers, and no oral evidence was led.
- [4] The orthopedic surgeon J.P Marin states that the plaintiff was treated and discharged the same day. X Ray results indicates that the plaintiff did not sustain and fractures or dislocation.
- [5] The diagnosis in paragraph 7.6¹ is described as "soft tissue injury of the cervical spine resulting in residual pain and symptoms.

¹ CaseLines 007-8.

- [6] Finally in paragraph 11.2.7² of his report the orthopedic surgeon says “It is my opinion that the patient will be able to work to the normal retirement age of 65 (sixty-five years)”
- [7] Monique van Wyk the occupational therapist in her report³ says that the plaintiff suffered past loss in his part-time job as a hairdresser. He experienced headaches.
- [8] In paragraph 6.3 she says the plaintiff enjoys his current occupation and would like to continue with such in future.
- [9] H. Kotze the industrial psychologist says in her report⁴ she says the plaintiff did not suffer any loss of earnings regarding his formal employment.
- [10] In paragraph 11.2 (ii)⁵ she says the plaintiff still needs to attend to treatment which would lead to periods of absence from work.
- [11] It is trite that the onus rests on the plaintiff to prove his case on the balance of probabilities⁶
- [12] The duty is on the plaintiff to produce evidence that, because of the injury, he has suffered loss income.

² CaseLines 007-11.

³ CaseLines 007-19 par 6.1.

⁴ CaseLines 007-54 par 11.1

⁵ CaseLines 007-55.

⁶ Pillay v Krishna and another 1946 SA 946.

[13] The issue of loss earnings is intrinsically linked with the merits of the matter. To determine whether there was any loss of earning the court had first to determine whether the plaintiff had sustained any injury and, if so, the extent of such injury. It is not sufficient to place actuarial calculations before the court and ask the court to determine the loss of earnings without any reference to the merits of the matter.

[14] I am unable to find on the documents before me that the plaintiff is entitled to any amount in respect of loss of earnings for the following reasons:

14.1. There is no medical proof that the plaintiff, cannot continue with his hair dressing business. On the contrary the orthopedic surgeon says he will be able to retire at 65 years.

14.2. There is no medical proof of the plaintiff's alleged headaches.

14.3. There is no proof of hair-dressing business for example invoice, receipts of bank statements.

14.4. No proof that plaintiff was paying tax on his business and the name of his business.

[15] In my view, the plaintiff has failed in his duty to satisfy the court that he has lost any earnings or stands to lose any earning as a consequence of the motor vehicle accident in question.

[16] I therefore make the following order:

16.1 The plaintiff's claim for loss of earnings is dismissed.

16.2 I make no order as to costs.

**MAKHOPA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD AND RESERVED JUDGMENT: 18 AUGUST 2023

JUDGMENT HANDED DOWN ON: 30 AUGUST 2023

Appearances:

For the Applicant: Adv R Ferguson (instructed by) Wemeyers Attorneys

For the Respondent: N/A