

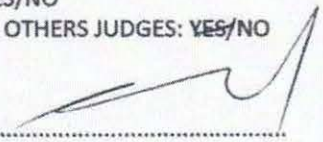
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**



Case number: 67669/2017

Date of hearing: 11 August 2023

Date delivered: 22 September 2023

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
22/9/23	
DATE	SIGNATURE

In the matter between:

THABISO GEORGE MATLALA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

SWANEPOEL J:

[1] Plaintiff sues the defendant ("the RAF") for damages sustained as a result of an accident that happened on 10 March 2017. The merits were previously settled 100% in plaintiff's favour, as were general damages. The sole issue for determination is the quantum of plaintiff's loss of past and future income.

[2] Plaintiff is a 33 year-old male who worked as a machine operator before the accident. He has a Grade 12 qualification, a certificate in Health and Safety, and a Higher Certificate in Occupational Health and Safety. Plaintiff suffered injuries to his right femur, leg and foot. He suffers from ongoing pain, which is worsened by prolonged sitting, walking, standing or cold weather. He has a right distal leg angulation. Plaintiff also suffers from depression and post-traumatic stress disorder.

[3] Plaintiff returned to work 5 months after the accident. Plaintiff's pre-accident employment can be classified as light work. However, after his return-to-work plaintiff was unable to conduct his pre-accident duties as normal, and he was reassigned as a general worker. For a period of time, until end May 2019, plaintiff was employed as a SHE Officer. It was reported to plaintiff's industrial psychologist that plaintiff's incapacity made it difficult to find a position that suited him. Plaintiff's orthopaedic surgeon was of the view that plaintiff's competitiveness in the labour market had been compromised, and he estimated his loss of working capacity at 5 to 10%. Plaintiff's psychiatrist believed that plaintiff qualified on the narrative test for general damages, due to severe long-term behavioural disturbances. Plaintiff's occupational therapist was of the

view that plaintiff was employable, although his prospects had been compromised by the injuries sustained. Plaintiff's industrial psychologist (in a report dated 22 May 2019) was of the view that pre-morbid plaintiff would have grown his career to become a Health and Safety Representative. Post-accident, he opined that plaintiff would be reliant on an accommodative employer. He would find it difficult to find employment if he became unemployed, but he nevertheless remained employable.

[4] Respondent was subsequently retrenched for reasons unrelated to his injuries. In a supplementary report dated 18 October 2022, after plaintiff became unemployed, the industrial psychologist concluded that plaintiff would in all likelihood not obtain employment, and would be unemployed for the remainder of his life. It is to be noted that the industrial psychologist did not interview plaintiff again, he did not enquire as to the steps plaintiff had taken to obtain alternative employment, and he had no idea why plaintiff had become retrenched.

[5] Defendant's industrial psychologist testified that plaintiff retained the ability to be employable in the open market, albeit with limitations. He is able to compete with his peers for sedentary work, specifically in his work at the time of the accident.

[6] I find it disturbing that plaintiff's industrial psychologist came to the conclusion that plaintiff would in all likelihood not obtain employment, without even having discussed with plaintiff his circumstances at the time

when the second report was produced. The industrial psychologist literally came to his new findings without having any basis in fact to do so.

[7] I will therefore accept the opinion of the defendant's industrial psychologist. I accept that plaintiff is compromised, that he will be reliant on a sympathetic employer, and that he will in all likelihood retire before the age of 65. I cannot find that he is unemployable.

[8] As far as contingencies are concerned, I am of the view that a 15% deduction pre-morbidly is appropriate. As in the case of *Krone v Road Accident Fund [2015] ZAGPPHC 697*, I am also of the view that a 50% post-morbid contingency deduction must be applied. I shall apply that deduction to the actuarial report of the plaintiff dated 30 May 2019 (which was premised on the plaintiff remaining employed):

Past loss of earnings:	R 93 335.00
Future earnings (uninjured):	R 11 389 200.00
After 50% deduction:	R 5 694 600.00
Future Injured earnings:	R 2 750 600
After 25% deduction:	R 2 062 950.00
Total future loss:	R 3 631 650.00
Total future and past loss:	R 3 724 985.00.

[9] Plaintiff has not addressed me on a contingency fee agreement, nor is one uploaded to CaseLines, and I therefore accept that there is no such agreement.

[10] Consequently, I make the following order:

[10.1] Defendant shall make payment to plaintiff in the sum of R 3 724 985.00 for loss of earning capacity.

[10.2] Defendant shall provide plaintiff with an undertaking in terms of section 17 (4) of the Road Accident Fund Act, 56 of 1996 for payment of all future hospital medical and related expenses resulting from plaintiff's injuries.

[10.3] Defendant shall pay plaintiff's taxed or agreed party/party costs, including the qualifying and reservation costs of the following experts:

[10.3.1] Neil Barnard;

[10.3.2] Munro Actuaries;

[10.3.3] Dr. Sibanyoni

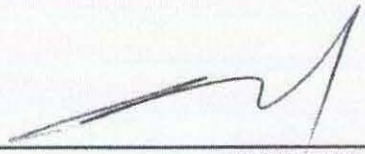
[10.3.4] B Molwana

[10.3.5] Dr. Texeira

[10.3.6] Dr. Matjane

[10.4] Defendant shall pay the costs within 14 (fourteen) days of taxation or agreement.

[10.5] There is no valid contingency fee agreement.



**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

COUNSEL FOR PLAINTIFF:	Adv. Makhubo
ATTORNEY FOR PLAINTIFF:	Leballo Attorneys
COUNSEL FOR DEFENDANT:	Adv. Shivambo
ATTORNEYS FOR DEFENDANT:	The State Attorney
DATE HEARD:	11 August 2023
DATE OF JUDGMENT:	22 September 2023