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

**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

 CASE NO: 8475/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

 **6 October 2023 …**MPIENAAR**……..**

 DATE SIGNATURE

In the matter between:

**MAMADEPA MODJADJI ELISA OBO Plaintiff**

**RATHOBELA MOTSAMAI MARTIN**

and

**THE ROAD ACCIDENT FUND Defendant**

**Coram :** M PIENAAR (AJ)

**JUDGEMENT**

**INTRODUCTION**

1. The Plaintiff instituted action against the Defendant in terms of **section 17** of the **Road Accident Fund Act 56 of 1996,** as amended (“the Act”),

 pursuant to injuries suffered by the Plaintiff in a motor vehicle accident which

 occurred on the 29th July 2021.

2. The matter came before me on 18 September 2023. Mr Nkabinde appeared

 for the Plaintiff. The Defendant did not defend the action and the matter was

 enrolled on the default roll. It is on that basis that the Plaintiff proceed with

 an application for default judgment.

3. The Defendant has conceded liability in favour of the Plaintiff. **[1]**

4. The Plaintiff applied that the issue of General Damages be postponed sine

 die. The Court ordered that the issue be separated and that the matter

 should proceed on the quantum of the loss of earnings. The only issue for

 this court to adjudicate was the past and future loss of earnings.

5. The Plaintiff amended the Particulars of Claim for past and future loss of

 earnings and/or earning capacity as follows: **[2]**

Past and future Loss of Earnings R3 000 000,00

 It is also noted that the Plaintiff intends amending the Particulars of claim by

 deleting paragraph 7 and paragraph 10 and replaces with the “attached

 amended particulars”, but there was no document attached to the notice of

 amendment. **[3]**

**EVIDENCE**

6. The Plaintiff, at the commencement of the hearing, relied on the evidence on

 affidavits. **[4]** The Plaintiff has served and filed the medico legal reports of

 the following experts:

 6.1 Dr Khetani S Bila, Orthopaedic Surgeon (Exhibit A)

 6.2 Gillian Sibiya, Clinical Psychologist (Exhibit B)

 6.3 Yvonne Segabutle, Educational Psychologist (Exhibit C)

 6.4 Koketso Rakgokong, Industrial Psychologist (Exhibit D)

 6.5 Peggy Mabasa, Occupational Therapy (Exhibit E)

 6.6 Tsebo Actuaries (Exhibit F)

7. Dr Khetani Bila assessed the Plaintiff on 03 August 2022. He was availed of the

 medical records. He came to the conclusion that the Plaintiff sustained a left

 leg injury and a head injury. The symptoms he presented with could be

 attributed to the accident injury. The issue of headache to be deferred to the

 Neurologist.

8. Gillian Sibiya assessed the Plaintiff on 03 August 2022. It is reported that

 Martin has no loss of consciousness and that he was transported to hospital

 where he was observed, stabilised, and later discharged home to recover the

 following day. He reported sustained injuries to his left hand and left leg.

 Based on background information it appears that Martin enjoyed a good

 quality of life before the accident and that the accident has disrupted

 his enjoyment and quality of life. Martin’s psychological prognosis seems fair

 at this point.

9. Ms Yvonne Segabutle evaluated the Plaintiff on 03 August 2022 it transpired

 that the Plaintiff was repeating Grade 7 at Westview Christian Academy,

 when the accident occurred. He explained that he failed due to playfulness.

 It is likely that Martin had the potential to complete and pass his Grade 12

 with a Diploma level, allowing him to proceed with tertiary studies, where he

 would obtain at least a Diploma qualification of choice (NQF6).

10. As far as the post accident is concerned, Ms Segabutle noted that his

 scholastic performance declined. He struggles to concentrate in class and his

 memory is a challenge in class. At the time of report finalization, school

 reports were not submitted. Ms Segabutle has contacted Ms Rathobela’

 telephonically but her phone was on voicemail. The Clinical Psychologist,

 Gillian Sibiya concurs and noted that Martin’s overall performance on the

 assessment revealed difficulty in cognitive functioning. Considering his

 cognitive functioning he is likely to benefit from placement in a vocational

 programme found in Mild and Moderately Intellectually disabled special

 schools to allow him to follow skills related stream allowing him to obtain a

 level 1 qualification, equivalent to Grade 9. He is likely to proceed and reach

 fail at least once in the current Senior Phase and proceed to Grade 10 where

 he would struggle to proceed as the departmental rule of repeating once in a

 phase falls off. As such he could be expected to fail Grade 10 numerous

 times until he decides to drop out with Grade 9 as highest academic

 attainment at NQF 1.

11. From the evidence of Ms Segabutle, Motsamai would have been depended

 on both his physical and cognitive abilities to secure and maintain

 employment with a Diploma level of education. Motsamai would have entered

 the open labour market with his earnings starting at the median quartile of

 Paterson B4 R282 000 - R332 000 - R383 000 per annum - total package. He

 would have at best reached the upper quartile of C4 (R624 000 - R710 000 -

 R844 000 per annum total package as his earning ceiling through changed of

 employers and positions for better prospects as well as in house training

 courses at the approximate age of 45 years. Motsamai would have worked

 until normal retirement age of 60-65 years, provided his health and personal

 circumstances permitted.

12. Ms Segabutle under medical and para medical report findings, confirms

 that Dr Bila reported that there is evidence of a healed Tib-Fib fracture.

 The issue of headache to be deferred to the Neurologist [pg 04-90]

13. From a Neuropsychological viewpoint, Ms Sibiya stated that he reported

 struggles with increased anxiety, poor school performance, intrusive thoughts

 of the accident and reduced attention and concentration due to constant

 headaches. He also reported to have limited function of the left hand.Martin’s

 psychological prognosis seems fait at this point.

14. The Industrial Psychologist postulates that post accident he would sustained

 employment not able the probationary period with prolong periods of

 unemployment in between his jobs anticipated between five to seven years

 and more noting the current high unemployment rate in South Africa open

 labour market. His earnings are not expected to call above the lower

 quartile of the unskilled scale (R24 200 - R43 700 - R97 000) per annum.

 He would like remain his earning ceiling for the reminder of his career noting

 that he would also suffer from period of unemployment between his jobs

 and will hinder career advancement.

15. The Educational Psychologist indicated in her report that at the time of report

 finalisation, school reports were not submitted. I have no evidence before

 me relating to the Plaintiff’s school reports pre and post morbidly. The onus

 rests is on the Plaintiff to ensure that the court has all the necessary and

 relevant evidence to assist the court in arriving at a just and fair decision.

16. Motsamai is complaining about headache pains. Dr Bila reported that the

 issue of headache to be deferred to the Neurologist. The onus rests on the

 Plaintiff to discharge the onus.

17. The Plaintiff bears the onus to prove his or her loss. There is therefore a

 duty upon the Plaintiff in RAF actions to prove the elements of their

 claims on a balance of probabilities.

18. With regards to Loss of earnings/earning capacity there is a shortage

 of information of sufficient evidence. In the event of justice the Plaintiff

 must be granted an opportunity to supplement to there claim and in

 view of the foregoing I grant the order to the issue of loss of earnings.

**ORDER:**

In the result the following order is issued:

19. The Defendant is liable for 100% of Plaintiff’s proven or agreed damages;

19.1 The Defendant is ordered to furnish the Plaintiff with an undertaking in

 terms of the provisions of Section 17(4)(a) of the Road Accident Fund Act

 1996 (Act No 56 of 1996) in respect of future accommodation of the

 Plaintiff in a hospital or nursing home for treatment of a service or

 supplying of goods to him pursuant to the injuries which the Plaintiff

 suffered in the collision on 29 May 2021 and to compensate the Plaintiff in

 respect of the said costs, after the costs have been incurred and proof

 thereof.

19.2 The issue of General Damages is postponed sine die;

19.3 As the claim for Loss of Earnings is postponed sine die, leave is granted

 to supplement the evidence in respect to the Claim for Loss of Earnings/

 earning capacity.

19.4 The Defendant is liable for the Plaintiff’s taxed or agreed party and party

 costs on the High Court scale and the Plaintiff’s lodging and traveling costs

 in attending the Plaintiff’s experts which costs shall inter alia include the

 following:

19.4.1 The costs of counsel

19.4.2 The costs of obtaining Plaintiff’s medico legal reports;

19.4.3 The costs incurred in the preparation of the trial bundles

19.5 The party and party costs are payable within 14 days of date of

 settlement/taxation, where after interest will be charged at 11,25%

 from the aforementioned date to date of payment. The Plaintiff’s

 attorneys of record trust account with the following details:

 **ACCOUNT HOLDER : […]**

 **BANK NAME : […]**

 **ACCOUNT NO : […]**

 **BRANCH NAME : […]**

 **BRANCH CODE : […]**

 **ATTORNEYS REF : […]**

 **MPIENAAR**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **PIENAAR, AJ**

Date of hearing: 18 September 2023

Judgment : 6 October 2023

**APPEARANCES**

On behalf of Plaintiff : Adv Nkabinde

Instructed by : V F Hlungwane Attorneys

On behalf of the Defendant: No appearance

Instructed by : Road Accident Fund

 Link no: 5164560

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[1]** Merits offer from the RAF Caselines 12 Offer from the Fund, item 2

**[2]** Amended Particulars of Claim Caselines 02 Pleadings, item 1 pg 02-6

**[3]** Notice of amendment Caselines 14, item 1

**[4]** Experts Affidavits Caselines 10 Experts Affidavits

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_