**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

**30/11/2023** MPIENAAR

DATE SIGNATURE

CASE NO: 56845/2019

In the matter between:

**KIRSTI NIGRINI PLAINTIFF**

and

**ROAD ACCIDENT FUND DEFENDANT**

**JUDGMENT**

**PIENAAR AJ**

**INTRODUCTION**

1. The Plaintiff is a 34 year old female who sues the defendant for damages

suffered as a result of personal injuries sustained on the 6th of March 2017

wherein the insured vehicle collided with the Plaintiff who was a driver at the

time.

2. The summons was issued on 2 August 2019 served on the RAF on

12 September 2019 and thereafter, RAF appointed attorneys to represent it in

the matter. [1] from the papers, it is apparent that the Plaintiff served

documents, including the notice of set down of the matter for trial

electronically on the RAF [2]. On 11th October 2022, the Plaintiff obtained

an order from this Court *per* Justice Khumalo to the effect that RAF’s defence

as pleaded is struck out with costs [3]. Therefore, the matter thenceforth

proceed towards default judgment.

3. On 20 November 2020 an order was made in favor of the Plaintiff in respect

of 100% liability for merits, and R500 000,00 in respect of General Damages

and future medical expenses with an unlimited undertaking inters of the

provisions of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996.

This means the only issue which remains unresolved which I am required to

adjudicate are that of the quantum of the Plaintiff’s future loss of

earnings/loss of income earning capacity/loss of employability [4]

4. In this action the Plaintiff amended the Particulars of Claim in terms of

Rule 28 compensation from the Defendant as a result of injuries sustained

during the incident in the following amounts:[5]

4.1 Loss of income R10 000 000,00

5. I gave the Plaintiff an opportunity to file the amended Heads of Argument,

which I am grateful for. [6]

**EVIDENCE**

6. For sake of completeness the following documents is uploaded onto

Caselines as exhibits for the trial, namely:

6.1 Plaintiff’s experts bundle as Exhibit A

6.2 Plaintiff’s trial bundles as Exhibit B

6.3 Plaintiff’s experts’ Affidavits as Exhibit C

6.4 Plaintiff’s amended actuary report (calculations) as Exhibit D

7. Dr Williams assessed the Plaintiff on 16 October 2018 [7]. He came to the

conclusion that the Plaintiff sustained neck strain, impact injury of the chest,

strain or impact of the right shoulder and straining injury of the right knee.

The injury of the patient’s chest appears to have healed well, with no residual

symptoms. She should not have future problems from the effects of this

injury. She may have neck pain in the future, in keeping with the symptoms

of age-related degenerative spondylosis. The pain and discomfort affecting the

right upper limb may still improve, but the patient may retain symptoms in the

long term. The condition of the left knee should be assessed further, perhaps

by MRI scan. At the time of the accident, she was on long leave and she has

not resumed working. She should be able to work in a position where she will

be doing sedentary and perhaps some light physical work. Her ability to

perform tasks that would require sustained or strenuous standing and walking

or climbing of stairs, ladders and other structures or lifting, handling and

carrying of heavier objects or rising her right hand above shoulder level, will

be limited to some extent. The 2018 medico legal report is outdated and to

assist the Court to quantify their claim.

8. Grethe Jordaan (Occupational Therapist) assessed the Plaintiff on 9 June

2020 [8] The Plaintiff was diagnosed with Post Partum Depression Disorder

following the birth of her daughter in February 2019. She is currently taking

a mood stabiliser(venlor). She experiences memory difficulties post accident.

She experiencing word-finding difficulties post accident. She feels depressed

in general. She experiences anxiety whilst traveling in a vehicle. The Client

does however experience significant psychological difficulties, and it is a

known fact that psychological difficulties could cause cognitive fallout, usually

presenting as memory and attention difficulties. Reference is given to a

Clinical Psychologist to comment on her psychological profile, treatment

indicated and prognosis in this regard. Reference is also given to a

Neuropsychologist for further comment with regards to the cause of her

cognitive limitations. Her prognosis of her cognitive difficulties will be directly

related to the causality and prognosis of the causing factor.

9. Mr C T Viljoen (Physiotherapist report) dated 29 June 2020. Since the MVA in

2017 she started experiencing intermittent left shoulder subluxations and

pain. Her right knee sustained a patellofemoral joint injury and she

experiences intermittent locking and patellar subluxations.

10. Mr Barend PG Maritz (Industrial Psychologist) assessed the Plaintiff on

9 June 2020 [9]. Plaintiff’s highest level of qualification is that of a Bachelor

of Laws Degree, which is equivalent to an NQF Level 07. She was an IR/HR

Manager at HR City. The Plaintiff noted that she returned to her pre-morbid

position in April 2017 for approximately three weeks, before she resigned due

to her physical limitations.

11. Mr van Deventer (employer) noted that she was a phenomenal employee,

and he remembers her fondly. He explained that she was very good at what

she did and she made his workload a lot lighter. He further mentioned that

he wanted her to come work for him again and made her an offer, however

she did not accept.

12. Since the accident occurred, she has become unemployed, and has not

managed to secure alternative employment to date. This postulation is

incorrect on the basis of the job offers she received post accident. The

accident has evidently had a severe impact on her physical, cognitive and

psychological functioning, and will continue to do so in future.

13. Mr Wim Loots prepared calculations based on pre and post accident earnings

the same.

**ONUS**

14. The Plaintiff bears the onus to prove his or her loss. It is for the court to

determine what should be paid.

15. The onus 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. 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**

17. The issue of loss of earnings is postponed sine die.

17.1 The Plaintiff is 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/

earning capacity.

17.2 The costs incurred for the hearing on 28 September 2023 are reserved

save that if such costs are ordered in favour of the Plaintiff in due course.

MPIENAAR

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**PIENAAR (AJ)**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG LOCAL DIVISION, PRETORIA**

Date of hearing : 28 September 2023

Date of judgment : 1 December 2023

**APPEARANCES**

For the Plaintiff : Adv Cliff

Instructed by : Campbell Attorneys

For the Defendant : No appearance

Link no: 4673152

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1. Caselines 02 Pleadings

2. Caselines 9 Application for default judgment , bundle 6

3. Caselines 7.3 Issued Court Order

4. Caselines 06 Draft Order/Court Order

5. Caselines 04: Notices

6. Caselines 9.2 Amended Heads of Argument

7. Caselines 05: Experts, bundle 1

8. Caselines 08: Experts, bundle 1

9. Caselines 08: Experts, bundle 2