

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:

77094/17

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

1/12/2023
DATE

MPIENAAR
SIGNATURE

SIKHONDE NKOSINATHI VINCENT

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR (AJ)

INTRODUCTION

1. The Plaintiff is a 42 year old male who sues the defendant for damages suffered as a result of personal injuries sustained on the 28th June 2016 wherein the insured vehicle collided with the Plaintiff who was a passenger at the time of the accident.

2. Summons issues at the instance of the Plaintiff was served on the RAF and

thereafter RAF appointed attorneys to represent it in the matter.

From the

papers it is apparent that the Plaintiff served documents, including the notice

of set down of the matter for trial which was served on the RAF on 14 June 2023. [1]

3. On or about 28 June 2016 at or along Old Ekangela Road, Bronkhorstspuit an

accident occurred involving a motor vehicle with registration numbers and

letters XGN 931 GP who lost control of the insured motor vehicle and

crashed. At the time of the accident the Plaintiff was a passenger in the

insured motor vehicle. Merits was granted on the basis that the Defendant is

100% liable to pay the Plaintiff's proven or agreed upon damages.

4. The general damages claimed, in this case, will not be entertained because

the court has no jurisdiction to entertain such before the Road Accident fund

could be satisfied. The general damages claim will be postponed sine die.

5. The heads of damages I proceeded with on default judgment was the loss of

earnings and earning capacity. The court must ensure that a just and fair

award is guided by the expert doctor's opinions and the factual evidence

presented concerning the future loss of earnings and earning capacity. The

plaintiff has to prove the case on a balance of probabilities that the Plaintiff

capacity to earn has been affected by looking at the Plaintiff's position before

and now concerning his injuries. It is trite that courts can only rely on the

facts that have been verified. In the case of Road Accident Fund v S M [2] in

paragraph 2: the SCA held that:

“[T]he Court must first consider whether the underlying facts relied on by the

witness have been established on a prima facie basis. If not, then the expert's opinion is worthless because it is purely hypothetical, based on facts that cannot demonstrated even on a prima facie basis. It can be disregarded. If the facts are established on a prima facie basis, then the Court must consider whether the expert's view is one that can reasonably be held on the basis of those facts. In other words, it examines the expert's reasoning and determines whether it is logical in the light of those facts and any others that are undisputed or cannot be disputed. If it concludes that the opinion can reasonably be held on the basis of the facts and the chain of reasoning of the expert, the threshold will be satisfied." See also Maumela J decision in Van Tonder NO v Road Accident Fund (4032/2013) [2021] ZAGPPHC 382 (30 May 2021) at para 7".

6. In this action the Plaintiff amended the Particulars of Claim in terms of Rule 28 compensation form the Defendant as a result of injuries sustained during the incident in the following amounts:

Past loss of income	R100 000,00
Future loss of income	R700 000,00
General Damages	R900 000,00

EVIDENCE

7. In terms of Rule 38(2) the expert reports were ordered to constitute evidence adduced at the trial.
7. Dr Mukansi (Orthopaedic Surgeon) assessed the Plaintiff on 26 April 2018 and reported that the Claimant sustained a left clavicle fracture and left ribs fractures as well as right first MC fracture. He was a Sasol Dino Operator and now a Sasol Service Operator. He can work till retirement age. The 2018 medico legal report is outdated and to assist the Court to quantify their claim.
8. Prof Chauke (Cardiothoracic) assessed the Plaintiff on 20 May 2021 confirmed that Mr Sikhone has a work capacity loss up to a minimum of three months

following the accident and chest injuries sustained. He shall occasionally lose work capacity as a result of chronic chest pains.

9. Mrs Matsape (Occupational Therapist) assessed the Plaintiff on 7 November 2019 and revealed that test results reveal that he can cope with a light type of occupation. Based on Mr Sikhonde's evaluation it is noted that his physical capacity could not meet the open labour market requirements from medium to heavy type of work category. This is the reason why he could not cope with his premorbid position. Though he has continued working he is reportedly unable to discharge his full range of duties. Therefore, it may be unrealistic to expect the claimant to secure a promotion while employed at Sasol. He may continue working within his current position for as long as his employer is willing and/able to accommodate his shortfalls.

10. Mr Sechudi (Industrial Psychologist) testified that Mr Sihonde's career started June 2006 and he has spent his entire career as an employee

at Sasol. He was initially employed as an Operator before he was promoted in June 2009. As such he went on to work as a Process Controller.

At the time of the accident he was still employed in the same capacity

and he was earning R14 000,00 per month. His job entailed that he operates process equipment, system and processed for a specific plant/

unit within the Sasol environment to achieve production requirements

in a safe manner.

11. Considering Mr Sikhonde's age and work experience it is likely that he may have continued working at Sasol while developing his skills set through work experience. Mr Sikhonde's career would have been characterised by significant progression through work experience. Thus his earnings would have increased to Paterson C1 at least lower quartile [R218 000] per year basic salary. From the age of 46 years any increases in his earnings may have been attributed to additional inflationary increases until normal retirement age.

12. Post accident potential, Mr Sikhonde was involved in a motor vehicle accident and attained medical intervention at Muelmed Hospital. He experiences chest pain as well as pain on his left shoulder and right wrist. Ms Matsape reported that the motor vehicle accident has negatively affected his work ability. Should he lose his current job he will struggle to engage in any similar job of process operator.
13. His education background and restricted work experience remain a limiting factor when considering re-aligning his career. Accordingly, Mr Sikhone may remain vulnerable in the open labour market for the rest of his career. At present, Mr Sikonde has no guarantee that he will be retained at Sasol until he reaches the retirement age of 65 years.
14. Mr Robert Koch actuary based his calculations on the Industrial Psychologist report. Plaintiff Counsel made submissions that an amount of R1 074 347,00 is fair and reasonable for loss of earnings/earning capacity.
15. This was submitted notwithstanding that the particulars of claim refer to an

amount of R700 000,00 and no further amendments has been delivered or applied for the amend the amount to an amount being proposed by Plaintiff's Counsel.

ORDER

In the result I make the following order:

- 15.1 The Defendant is liable to pay 100% (Hundred percent) of Plaintiff's proven or agreed damages.
- 15.2 The Defendant will also furnished the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the Plaintiff arising out of the injuries sustained in the collision.
- 15.3 The plaintiff's claim in respect of general damages is postponed sine die.

15.4 The Plaintiff's claim in respect of loss of income/earning capacity is postponed sine die.

15.5 The Respondent shall pay the Applicant's party and party costs on the High Court scale either as taxed or agreed for the 21st September 2023 which costs will include:

15.5.1 The reasonable taxable preparation, qualifying and reservation fees, if any of the Applicant's experts for trial of whom notice was given to the Respondent;

15.5.2 The reasonable taxable costs of necessary consultants with the said experts and the reasonable taxable traveling costs of the Applicant for attending the medico legal examinations subject to the discretion of the taxing master.

15.5.3 The costs of senior junior counsel which costs include full day fee, preparation fees, Heads of Argument for trial and perusal fees.

15.5.4 The Applicant shall in the event that costs are not agreed serve the

notice of taxation on the Respondent and

15.5.5 The Applicant shall allow the Respondent 180 days to make payment of

the taxed costs.

MPIENAAR

PIENAAR (AJ)

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION PRETORIA

Date of hearing : 21 September 2023

Date of judgment : 1 December 2023

APPEARANCES

For the Plaintiff : Adv Thabede

Instructed by : RS Tau Attorneys
ndweleni@rstauattorneys.co.za

For the Defendant : No appearance

Link no: 4162362

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1. Caselines 016 Application for default, bundle 8
 2. (1270/2018) [2019] ZASCA 103 (22 August 2019),