

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:82839/18

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 28 November 2023 E van der Schyff

In the matter between:

MATHEBULA ALONE KILLER

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Van der Schyff J

[1] The plaintiff was injured in a motor vehicle accident on 21 November 2015. He was a passenger. The defendant conceded liability for 100% of the plaintiff's proven or agreed-upon damages.

- [2] This court is only requested to deal with the issues of past medical expenses, future medical costs, and the quantum of the claim for loss of income.
- [3] The plaintiff was 32 years old at the time of the accident. He was employed as a store manager at Ackermans before the accident occurred. His employment commenced on 1 April 2008. When he recuperated from his injuries, he returned to his employment as store manager in January 2016. He reported that he struggled to concentrate, was forgetful, and often fought with staff members. He also reported struggling to stand for prolonged periods due to lower limb pains. He was subsequently dismissed due to misconduct. He reported a period of unemployment from 13 April 2018 to December 2019. He is currently employed as an agricultural team leader.
- [4] The plaintiff suffered a mild traumatic brain injury, a degloving scalp wound, and diminished vision of the left eye. He now requires spectacle correction for myopia. The ophthalmologist reports that the plaintiff's functional vision score is 100% and that his whole-person impairment is 0%
- [5] From the Plastic and Reconstructive Surgeon's report, the court is informed that the plaintiff sustained blunt trauma to the head with a degloving injury on his forehead involving his left eyebrow, soft tissue left ankle, and soft tissue right knee injuries. Although the doctor noted that his scarring would seriously affect his employability and earning capacity, the doctor noted that the plaintiff would benefit from scar revision surgery.
- [6] The occupational therapist opined that the plaintiff was suited for his pre- and post-accident position as a store manager despite his injuries and their sequelae. The clinical psychologist noted that the plaintiff meets the criteria for a major depressive disorder related to the accident and its aftermath. He indicated that 'it is likely that his involvement in the motor vehicle accident has led to some mild neurocognitive difficulties.

- [7] Having regard to the expert witnesses' opinions regarding the plaintiff's accident-related cognitive, psychological, and emotional challenges, I accept that the accident impacted his earning capacity. Sight can, however, not be lost on the fact that the plaintiff's decrease in income is solely attributed to his being dismissed for misconduct. The experts did not link the misconduct to any accident-related *sequelae*.
- [8] I am thus of the view that the appropriate manner of calculating the plaintiff's capacity loss is to use the postulated uninjured income of R4 150 203 as the basis for the calculation. Contingency deductions of 15% for the pre-accident scenario and 30% for the post-accident scenario (disregarding fractions) will sufficiently compensate the plaintiff for his loss of future income. The qualified capacity loss amounts to R 622 530.00
- [9] Having regard to the fact that the plaintiff was dismissed for misconduct, the accident cannot be considered the sole or primary reason for him not being able to obtain work sooner after being dismissed. I have to have regard, however, to the opinion that the scarring would render him a vulnerable employee. For the past loss, I am of the view that the defendant should only be held liable for the loss of 50% of the postulated accident-related loss.¹
- [10] The issues of past medical expenses and general damages are separated and stand to be postponed *sine die*.

ORDER

In the result, the following order is granted:

The Order marked 'X' dated and signed by me is made an order of Court.

¹ In calculating the past loss I used the figures provided by the actuary as captured in the heads of argument. 50% of the postulated past income had the accident not occurred is R607 433. The income received amounted to R481 823. The difference is R125 610.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiff:	Adv. E. Muller
Instructed by:	Mphela & Associates
Date of the hearing:	30 October 2023
Date of judgment:	28 November 2023