



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

CASE NO. 65104/2020

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

DATE

SIGNATURE

ADV C CAWOOD NO obo WALTER CHARLES NELL PLAINTIFF

AND

**THE ROAD ACCIDENT FUND
DEFFENDENT**

JUDGMENT

MAKHOPA J

1. The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor vehicle accident that occurred on the 17 February 2019.
2. The merits were not settled however the plaintiff managed to prove the merits 100% in his favour. The defendant was not represented in court on the 16th January 2023 when the matter was set down for trial. Counsel for the plaintiff asked the court to grant default judgement in favour of the plaintiff. Counsel for the plaintiff addressed the court and referred to his heads of argument.
3. The plaintiff filled the following medical-legal reports of the following experts:
 - 3.1 Dr K Le Ferre – Psychiatrist
 - 3.2 Dr JS Sagor- Orthopedic surgeon
 - 3.3 R De with – Clinical and Neuro Psychologist
 - 3.4 M Le Roux – Occupational therapist
 - 3.5 E Auret- Besselaar-Industrial psychologist
 - 3.6 W Boshoff-Actuary.
4. With regards to the claim for general damages I am of the view that the claim is well supported by medical evidence and the case law.
5. The only issue remaining is whether this court after hearing counsel and reading the papers should grant the amount as requested on behalf of the plaintiff in respect of loss of earnings. During the proceedings I did ask counsel to address me on all issues to the best of his ability because I am going to reserve judgement.

6. The evaluation of the amount to be awarded for loss of income does not involve proof on a balance of probabilities. It is a matter of estimation. The general approach is to posit the plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions to his state with the proven injuries and their sequela.
7. I am called upon to perform a delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability. Furthermore, I must determine the plaintiff's future income, if any, having regard to the disability.
8. The occupational therapist says the following at paragraph 6.3 of 018-71 on case-lines

“6.3 PRE-ACCIDENT EMPLOYMENT

- a) He was self-employed, performing mainly painting, gardening and reparations of appliances such as microwaves, fridges washing machines, DVD players, televisions etc.*
- b) He worked independently and had sufficient work to keep himself busy on a daily basis.*
- c) The reparations of smaller items were done at his own house. Customers delivered these to his door, then he carried it inside. Large appliances were usually repaired at the client's house, smaller appliances were repaired at a table, whilst large ones stood on the floor. He thus worked in sitting, standing forward bending (in sitting and standing), crouching and kneeling. Sound dexterity, strength and*

vision were required. He used pliers, screwdrivers, a soldering iron etc.

- d) The time spend on repairs varied, depending on the appliance and fault. It however typically took him an average of 1½ hours to perform a repair.
- e) He often had to purchase parts. Has either travelled by taxi or walked if the store was nearby and the part small.
- f) Whilst doing gardening, he was on his feet for the entire day and performed occasional to frequent, prolonged low-level work (crouch, kneel, bend). Heavy physical work was also required whilst working with a spade or garden fork, or lifting and carrying heavy loads.
- g) He painted in and outdoor walls of houses, performing constant standing work with occasional to frequent ladder negotiation elevated or low work (crouch, kneel, bend), depending on the task a hand on a given day. He handled paint buckets between 11-201.
- h) Whilst painting or doing gardening, he used the client's tools and equipment.”

9. It is trite that the onus rests on the plaintiff to proof his case on the balance of probabilities see *Pillay v Krishna 1946 SA 946*. Thus therefore the duty is on the plaintiff to produce evidence that because of the injury, he has suffered loss of income.

10. I am of the view that the plaintiff failed to show on preponderance of the probabilities that he was self-employed because he failed to provide the following:

10.1 File any proof if income and loss statement

10.2 bank statement

10.3 No proof of any qualification towards his profession.

10.4 He failed to file any tax documents or IRP5's

10.5 He failed to file any invoice issued to him or by him.

11 In my view the plaintiff failed in his duty to satisfy the court that he has lost any earnings or stands to lose any earnings as a consequence of the motor vehicle accident in question.

12 I therefore make the following order:

12.1 The defendant is liable for 100% of the plaintiff's proven general damages.

12.2 The defendant shall pay to the plaintiff an amount of R1500 000 (one million five hundred thousand rands only) for general damages.

12.3 The plaintiff's claim for loss of earnings is dismissed.

12.4 A trust must be created for the benefit of the patient

12.5 Cost of suit

D. MAKHOPA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiff:

Advocate CPJ Strydom

Instruction:

Adendorff Attorneys

For the Defendant:

NONE

Instructed by:

Date heard:

16/01/2023

Date delivered:
