

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



Case number: 40408/2016

Date of hearing: 27 July 2023

Date delivered: 2 August 2023

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

2/8/23
.....
DATE

.....
SIGNATURE

In the matter between:

VAN NIEKERK, JANDRE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

SWANEPOEL J:

[1] This matter concerns a claim by plaintiff in terms of the Road Accident Fund Act, 1996, for damages arising from an accident that occurred on 21 August 2014. The merits of the claim have been settled, and it is agreed that defendant is liable for 90% of plaintiff's proven damages.

[2] Defendant has conceded the seriousness of plaintiff's injuries, and that plaintiff is entitled to general damages. The parties agree that an award for general damages in the sum of R 900 000.00 is appropriate, less 10% apportionment of damages, amounting to R 810 000.00.

[3] The sole issue for consideration is then the plaintiff's loss of earnings. Plaintiff was an apprentice motor cycle mechanic at the time of the collision. He was employed by family members at the Suzuki, Richardsbay dealership, and he had been working for the dealership since 2010.

[4] Plaintiff suffered a moderate traumatic brain injury in the collision, and he fractured his frontal nasal bones. The result is that he now suffers from attention and concentration deficits, slowed psychomotor speed abilities, rote and verbal memory deficits, and executive functioning vulnerabilities.

[5] At the time of the accident plaintiff was still working towards his formal qualification as a motor cycle mechanic. His employer, Mr Viviers, testified that he had not been satisfied that plaintiff was ready for the trade test, and he had decided to hold plaintiff back for a year. Nonetheless. Mr

Viviers was confident that had the accident not occurred, plaintiff would have attained his qualification.

[6] Mr Viviers also testified that the sequelae of the accident had left plaintiff unable to fulfil a number of functions. He was unable to perform mechanical work on engines, and the dealership had received complaints about his work. Plaintiff's short-term memory was affected, he was quieter struggling to sleep, and sometimes he arrived late at work because of the insomnia. It was clear that plaintiff was in sympathetic employment. Mrs Belinda Viviers testified that she had tried to accommodate plaintiff in the motor cycle sales side of the business, and also in the spare parts department, without success. He simply could not cope.

[7] To add insult to injury, the Viviers intend to sell the dealership in order to relocate to the Western Cape, at which time plaintiff would be unemployed, and most likely, unemployable.

[8] Plaintiff's actuary premised his calculation of plaintiff's loss of earnings on the plaintiff becoming a qualified mechanic in 2018, had the accident not occurred. Although plaintiff had not actually suffered a loss in income up to 2018, the sole reason was that he was fortunate that he was employed by family members who were sympathetic towards his plight. However, he has suffered a past loss of income considering that his salary has not increased since 2018, when he would likely have qualified.

[9] Defendant did not file expert reports, and it did not file heads of argument. Defendant argued that, given the length of plaintiff's apprenticeship by the time the accident occurred (four years), it is likely that plaintiff would never have qualified, and that his pre-morbid earning capacity would have been much less than that postulated by the actuary.

[10] The difficulty that defendant has, is that it has presented no evidence to support that contention. Defendant's belief is also gainsaid by the evidence of the Viviers. Mr Viviers was of the view that, although plaintiff had some work to do to qualify, he would nonetheless have succeeded. There is nothing to support defendant's contention.

[11] I therefore accept the evidence of plaintiff's witnesses, and I am also satisfied that the contingencies proposed by plaintiff's counsel are appropriate.

[12] In the circumstances, I make the following order:

[12.1] The Defendant is ordered to pay to the Plaintiff the amount of R 5 598 404.37 (five million, five hundred and ninety eight thousand, four hundred and four rand, thirty seven cents) in delictual damages, (the "capital amount"). The amount is compiled as follows:

Past & future loss of earnings & earning capacity:

R 4 788 404.37

General damages: R 810 000.00

Total after apportionment: R 5 598 404.37

[12.2] Should payment not be effected timeously the Plaintiff will be entitled to recover interest on the unpaid capital amount at the prescribed rate *per annum* published from time to time in the national gazette, and calculated from the 15TH day after date of this Court order.

[12.3] The Defendant will provide the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 and in terms of all the expert reports filed, wherein the Defendant undertakes to pay 90% of the Plaintiff's costs in respect of future accommodation of the Plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or supplying of goods to the arising out of the injuries sustained in the motor vehicle collision that occurred on 21 August 2014 after such costs have been incurred and upon proof thereof.

[12.4] The Defendant is ordered to pay the Plaintiff's taxed, *alternatively* agreed costs of the suit on High Court party-and-party scale within the discretion of the taxing master to date, which costs may include, but not be limited, to the costs of the following experts:

DR TJ ENSLIN
DR HB ENSLIN
MISS C STEENKAMP
MR L ROPER
DR D DE KLERK
DR JH KRUGER
DR L VAN DER MERWE
PROF M VORSTER
DR CALLAGHAN
MISS E JACOBS / MISS C PREISS
MISS M PRETORIUS
GRS ACTUARY

[12.5] The costs shall include the reasonable traveling and accommodation expenses of the Plaintiff and Mr.J Viviers and Mrs B Viviers who are declared necessary witnesses.

[12.6] In the event that the Plaintiff's party-and-party costs are not agreed:

[12.6.1] The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

[12.6.2] The Plaintiff shall allow the Defendant 14 **(FOURTEEN)** days from date of allocatur to make payment of any taxed costs; and

[12.7] Should payment of the taxed costs not be effected timeously, the Plaintiff shall be entitled to recover interest on the taxed *alternatively* agreed costs at the prescribed interest rate *per annum* from the date of allocatur to date of final payment.

[12.8] The amounts referred to herein will be paid to the Plaintiff's attorneys, Gert Nel Incorporated, by direct transfer into their trust account, details of which are the following:

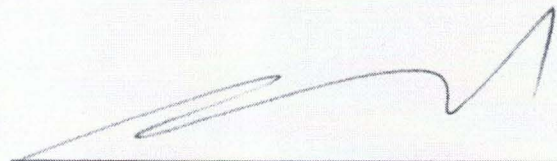
ABSA Bank

Account number: 405 329 6997

Branch code: 335545

REF.: DH OELOFSE/GN9849

[12.9] It is recorded that there is a valid contingency fee agreement entered into.



**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

COUNSEL FOR PLAINTIFF: Adv. C Dredge

ATTORNEY FOR PLAINTIFF: Gert Nel Inc.

COUNSEL FOR DEFENDANT: Adv. TK Gaokgwathe

ATTORNEYS FOR DEFENDANT: The State Attorney

DATE HEARD: 27 July 2023

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