

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED 13 FEBRUARY 2024
DATE	SIGNATURE

CASE NO: 34107/2021

IN THE MATTER BETWEEN

MOLLER, ARNO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

CEYLON AJ

A. INTRODUCTION:

[1] This is a claim for delictual damages suffered by the Plaintiff as a result of injuries sustained in a motor vehicle accident which occurred on 07 January 2021, at Denne Avenue and Uys Krige Drive, Panaorama, Cape Town, Western Cape Province.

[2] According to the particulars of claim, the Plaintiff sustained the said injuries as a result of a collision between motorcycle with registration number CY ■■■ 117, driven by the Plaintiff and motor vehicle with registration FCL ■■■ L, driven by the Defendant's insured driver Mr Ricardo Farmer. The Plaintiff pleaded that the sole cause of the injuries was the negligent and/or wrongful act of the driver and/or owner of the insured driver. As a result of the negligence of the said driver, the Plaintiff sustained several injuries, including fractures of the right ankle and foot, right knee, scarring and multiple soft tissue injuries and abrasions, and for which the Plaintiff had to receive medical treatment.

[3] The Plaintiff claims a total amount of R3 959 000-00 as a result of the bodily injuries sustained, it being the damages suffered by the Plaintiff as follows:

3.1 past hospital, medical and other goods and services	
and services necessitated by (estimated)	R200 000-00
3.2 future medical, hospital and other goods and services	
necessitate (estimated)	R250 000-00
3.3 past loss of earnings	R45 000-00
3.4 future loss of earning capacity	R2 664 000-00
3.5 general damages	R800 000-00

[4] In his second amended particulars of claim the amounts were amended and estimated as follows:

4.1 past medical/hospital expenses	R650 000-00
4.2 future medical/hospital expenses	R250 000-00
4.3 past-loss of earnings	R58 666-00

4.4 future loss of earnings	R1 917 779-00
4.5 general damages	R1 000 000-00
TOTAL	R3 876 445-00

[5] In terms of the Practice Note, only signed by the Plaintiff's attorneys, the merits and quantum is in dispute, which is confirmed in the Heads of Argument ("HOA") of the Plaintiff.

[6] At the date of the trial, the Defendant was absent from Court and the Plaintiff proceeded on a default basis in terms of the Uniform Rules of Court. After the Plaintiff's Rule 38(2) application was granted, evidence was led by way of expert witness reports and case authority. No witnesses were called to testify at the hearing.

[B] THE PLAINTIFF:

[7] The Plaintiff is an adult male technician and foreman, born 23 December 1992 and resident at [REDACTED], Portofino Complex, Panoarama, Cape Western Province. He was 28 years old at the time of the accident. He is married and has one minor child.

[8] The Plaintiff matriculated in 2011, did not pursue further studies and has undergone various on-the-job training. He worked as workshop assistant, senior supervisor, storeman and technician between the periods 2009 to present.

[9] At the time of the accident, the Plaintiff was employed as a service technician at CTS Trailers where he started working in February 2016.

[10] According to the industrial psychologist's reports, the Plaintiff was in a fairly good health condition prior to the accident. He had previously been involved in a minor motor vehicle accident in 2010 but did not sustain any serious injuries, and he had been injured at work when hit by a pipe to his head and for which he received stitches. He did not make mention of any pre-existing physical conditions, learning problems and psychological impairments or traumatic experiences.

[11] The Plaintiff earned a gross remuneration of R189 059-00 per annum at the time of the accident.

[12] The Plaintiff suffered right hand and hip, lower back, right foot and ankle injuries, sleeping difficulties, memory impairment, aggression and irritability, social withdrawal, depression and anxiety, as a result of the accident.

[13] The experts consulted are of the view that the injuries are serious and resulted in a loss of income, amenities, quality of life and employment.

C. THE INJURIES AND ITS SEQUELAE:

[14] The Plaintiff suffered various injuries as a result of the accident. Said injuries and its sequelae will be discussed by way of the reports provided by the Plaintiff's medical experts. The Defendant provided no medical expert reports in this matter.

[15] The Plaintiff consulted several medical experts, including the following specialists:

- (a) Dr Colin Barlin (Orthopaedic Surgeon)
- (b) Dr Vengal Medapati (Plastic Surgeon)
- (c) Karen Niewoudt (Occupational Therapist)
- (d) Elna Rossouw (Industrial Psychologist)
- (e) Ivan Kramer (Actuary)

[16] From an examination of the reports of these experts, the following injuries sustained by the Plaintiff as a result of the accident were revealed: posterior fracture dislocation of the right hip; a lisan fracture dislocation of the bases of the right 1st and 2nd metatarsals and the adjoining metatarsophalangeal joints; fractures of the right index ring and fifth metacarpals; a haematoma over the lateral aspect of the right proximal shin with a possible neuropraxia of the common peroneal nerve.

[17] The Plaintiff received the following treatment for the aforesaid injuries: he was taken by ambulance to the Mediclinic Panorama Casualty; his right hip dislocation was reduced under sedation and the X-rays confirmed the injuries; skin traction was applied to the right leg, a front slab was applied to the right hand and a back slab was applied to the right lower leg and the metacarpal fractures of the hand were internally fixed with plates and screws; underwent CT scans of the right hip and foot and the right foot was internally fixed with rectangular plate and screws; the acetabular fracture was internally fixed with plates and screws and the hip was reduced; the acetabular fracture was then internally fixed with plates and screws and the hip reduced; remained in intensive care units for 2 days after the third surgical procedure; he was discharged in wheelchair 12 days after admission to hospital and was confined to bed at home for a period of 2 months; the right leg back slab was replaced with a moon boot 6 weeks after discharge from hospital; at 2 months, he was mobilised on crutches he discarded the gutter crutch after approximately 4 ½ months after discharge and used a single crutch for 6 weeks thereafter; he received approximately 12 sessions of physiotherapy over a period of 4 months.

[18] The experts further recorded the following regarding the Plaintiff:

- (a) Pre-accident status: he is married and had no children at the time of accident, but now has a 4-month-old son; he is employed as a truck trailer technician and his duties

includes spray painting, electrical work, wheel alignment and welding and required to lift heavy axles. He enjoyed hiking, climbing and long-distance motorcycling on weekends. He had no history of previous musculoskeletal injuries or pathology.

(b) Post-accident: his social activities were severely curtailed during his convalescence; he was off work for a period of 3 months with significant loss of income; has difficulty climbing on and off trailers and continue to lose overtime pay and he struggles with hiking currently.

(c) Current symptoms: he has a severe deformity of the right foot with constant, severe pain and swelling as well as deformity of the ankle aggravated by standing and walking for long periods, particularly on uneven surfaces; pain keeps him awake at night despite the use of pain medication; he experiences intermittent severe pain and sensitivity over the right hand aggravated by his work activities and in particular, the use of heavy tools; there is decreased sensitivity in the affected fingertips affecting his ability to use screwdrivers; he also suffers severe, constant pain in his right hip aggravated by sitting for long periods, especially in a car.

[19] He further suffered unrightly scaring; severe right antalgic gait and a pes planus deformity of the right foot affecting his walking.

[20] The expert recommended surgery in future to the right foot (for fusions, estimated costs to be R85 000-00), right hand (removal of internal fixation, costs approximately R30 000-00) and right hip (hip replacement, approximately R200 000-00); adjuvant treatment at a cost of R3000-00 per annum for the period until surgery is done. Life expectancy has not been affected.

[21] The Plaintiff will after the treatment be employable only in a supervisory or sedentary capacity and retire at least 5 years earlier than normal.

[22] According to the industrial psychologist, the Plaintiff has become forgetful after the accident and forget work instructions on a regular basis. He is also frustrated, short-tempered and irritable, socially withdrawn and prefers to keep to himself. He feels moderately depressed daily and anxious when travelling. His experts are of the view that the Plaintiff's amenities of life, quality of life and life enjoyment have been negatively affected by the accident and its sequelae.

[23] The experts opined that due to the severity of injuries the Plaintiff will probably retire at age 60 instead of the normal age 65 and will lose the income for the five-year period as a result thereof.

[24] The actuary report dealt with the calculation of the Plaintiff's loss of earnings/earning capacity and the basis thereof in his report.

D. MERITS:

[25] According to the Particulars of claim, the Plaintiff sustained injuries arising from a motor vehicle accident that occurred on 07 January 2021 at the corner of Denne Avenue and Uys Krige Drive, when a collision between motor vehicle with registration numbers FCL [REDACTED] L driven by one Mr Ricardo Farmer ("insured vehicle") and a motorcycle bearing registration numbers CY [REDACTED] 117, driven by the Plaintiff, took place.

[26] The Plaintiff alleged that the sole cause of the said collision and injuries sustained was the negligence and/or wrongful act of the driver and/or owner of the insured vehicle.

[27] The Plaintiff further alleged that, as a result of the said negligence, he sustained several injuries and their sequelae (mentioned above) and suffered damages in the amount of R3 876 445-00 (as amended).

[28] In its Plea, the Defendant denied the negligence as alleged in the Particulars of claim and pleaded contributory negligence and apportionment of damages. Accordingly, the Defendant pleaded that the Plaintiff's claim be dismissed, alternatively, that the Plaintiff's claim be reduced in terms of the provisions of the Apportionment of Damages Act 34 of 1956 as amended, interest on the judgment amount and costs as deemed just and equitable by the Court.

[29] The Plaintiff, in his Heads of Argument ("HOA") contended that the onus to establish contributory negligence is on the Defendant and cited Solomon and Another v Musset and Bright Ltd 1926 AD 427 at 435 to substantiate the legal principle.

[30] As indicated previously, the Defendant did not appear at the hearing and the Plaintiff proceeded with default judgment.

[31] In my view, the Defendant did not discharge the onus as envisaged in the Solomon decision *supra*. No evidence was led to this effect at the hearing, nor could contributory negligence be established from the papers filed by the Defendant. The Plaintiff's version remains, to my mind, uncontested in the circumstances.

[32] Accordingly, this Court finds that the Defendant is fully (100%) liable for the Plaintiff's agreed or proven damages.

E. QUANTUM:

(i) past medical and hospital expenses:

[33] The Plaintiff, in his HOA, indicated that he has a claim for past medical and hospital expenses, which was submitted to be in the amount of R577 751-99 and set out in detail on pg 2A-2, Caselines.

[34] The past hospital expenses are in favour of Mediclinic Panorama for R480-76, which was paid by the Plaintiff. The past medical expenses total was R7 913-89, also paid by the Plaintiff. The total was therefore R8 394-65.

[35] The schedule of expenses in relation to past hospital/medical expenses and the vouchers with the details thereof is set out in section 2A pg 2A-1 to 2A-84 of Caselines. The total is R577 751-99. None of the expenses in the schedule was contested by the Defendant and it appears to be fair and reasonable. Accordingly, an award to this extent will be made.

(ii) general damages:

[36] According to the Plaintiff, in his HOA, the Defendant has not yet informed the Plaintiff if his claim for general damages is accepted or not.

[37] In its Plea, the Defendant, by way of its special plea, pleaded that the issue of the seriousness of the Plaintiff's injuries has not been dealt with in terms of Regulation 3(3) and 3(4) to (14) of the regulations to the RAF Act. The decision to determine if an injury is serious or not for purposes of the RAF Act is that of the Defendant and the Court can only enter the fray after a party exhausted the procedure under PAJA [Mabasa v RAF (86350/2018) [2021] ZAGPPHC778 (29 October 2021) and Mphaha v RAF (698/2016) [2017] ZASCA 76 at para 14].

[38] In view of the above, this Court is of the view that it is unable to adjudicate the issue of general damages and it must therefore be postponed *sine die* in the circumstances.

(iii) future medical/hospital expenses:

[39] From the expert reports and evidence of the Plaintiff before Court, it is clear that the injuries sustained by the Plaintiff is serious and will attract future medical, hospital and related costs and expenses. The details of the injuries and its sequelae has been discussed above. Accordingly, this head of damages will be dealt with in terms of section 17 (4)(a) of the RAF Act 56 of 1996 and this Court intend to grant an appropriate order to this effect.

(iv) past and future loss of earnings/loss of income:

[40] The past and future loss of earnings have been calculated and provided by the actuary in his report provided to this Court. The report deals with the projected future and past loss of earnings/earning capacity and takes into account the input of the industrial psychologist, Mrs E Rossouw.

[41] According to the actuarial calculations, the past loss of earnings is R58 666-00. The Plaintiff proposed a 5% contingency deduction (R2 933-30) to be applied. This is in line

with the generally accepted deductions in respect of past loss of income. The total past loss of earnings is therefore an amount R55 732-70 (that is, R58 666-00 minus R2 933-30).

[42] The actuary calculated the future loss of income at R1 902 858-00. The Plaintiff applied a 15% contingency deduction to the pre-morbid scenarios, being a reasonable approach having regard to the age of the Plaintiff (thus an amount of R285 428-70), and a 35% contingency deduction to post-morbid scenario, the Plaintiff contending that this deduction was appropriate having regard to the bleak prognosis regarding the Plaintiff's future employability. Accordingly, the Plaintiff submitted that an amount of R1 958 590-70 be made as a reasonable and fair in respect of the total future loss of income of the Plaintiff.

[43] This Court is inclined to agree with the submissions of the Plaintiff in respect of this head of damages as it seems to be in line with the calculations of the actuary and does not appear to be contentious, unreasonable and unfair in the prevailing circumstances. The amounts seem to accord with the gravity of the injuries, the loss of amenities, and the past loss of earnings the Plaintiff lost and stand to lose in future. Accordingly, this Court intends to make an award as per the above-mentioned calculations.

F. CONCLUSION:

[44] If regard is had to the factors and circumstances of the matter cumulatively, the expert reports and case authorities cited in this matter, this Court is of the view that the Plaintiff's injuries sustained is of such a nature that the Plaintiff will derive benefit from the treatment, medication and processes recommended by the experts in their respective reports and will afford some relief and assistance to him. It is clear that the Plaintiff is worse off following the accident and the injuries will have a lasting and serious impact on his health, general well-being and amenities of life.

[45] Taking into account all of the above factors, circumstances and the decrease in the value of money, the awards made in this matter seems to be just, fair and adequate and is as follows:

(a) past medical/hospital expenses	R577 751-99
(b) future hospital/medical expenses	section 17(4)(a) undertaking
(c) past loss of earnings	R55 732-70
(d) future loss of earnings	R1 958 590-70
(e) general damages	postponed <i>sine die</i>

F. COSTS:

[46] The general rule is that costs follow the result and this rule should not be deviated from unless there are good grounds for doing so [Myers v Abramson 1951 (3) SA 438 (C) at 455]. This Court could not find any such good grounds upon which it should deviate from the general rule.

G. ORDER:

[47] In the result, default judgment is granted in favour of the Plaintiff against the Defendant for:

(a) payment in the amount of R2 592 075-19;

(b) the Defendant is ordered to pay the said amount into the trust account of the Plaintiff's attorneys within 180 days of date of this order; The bank account details are as follows:

- | | |
|------------------------|----------------------------|
| (i) Accountholder: | De Broglio Attorneys Inc |
| (ii) Account number: | 1096 451 867 |
| (iii) Bank and branch: | Nedbank – Northern Gauteng |
| (iv) Branch code: | 198 765 |
| (v) Reference: | M4152 |

(c) In the event of default of payment of the above amount, interest shall accrue on the outstanding amount of the prescribed rate per annum, calculated from due date until date of payment.

(d) That the Defendant shall provide the Plaintiff with an undertaking in terms of section 17 (4)(a) of the Road Accident Fund Act 56 of 1996, for the payment of the costs of the future accommodation of the Plaintiff in a hospital or nursing home for treatment of or rendering of a service or supplying of goods to Plaintiff arising from the injuries sustained in the motor vehicle accident on 07 January 2021 after such costs have been incurred and upon proof thereof.

(e) The Defendant is ordered to pay the Plaintiff costs of suit on a party and party basis on the High Court scale, including the costs of the Plaintiff's experts, and qualifying costs of the experts whose notices were served on the Defendant and costs of counsel.

(f) In the event that costs are not agreed, the Plaintiff will be entitled to serve a notice of taxation on the Defendant. The taxed costs will be payable within fourteen (14) calendar days of date of taxation and shall likewise be paid into the said trust account of the Plaintiff's attorneys.

(g) The claim for general damages is postponed *sine die*.



B CEYLON

Acting Judge of The High Court
of South Africa
Gauteng Division,
Pretoria

Hearing date:

02 November 2023

Judgment date:

13 February 2024

APPEARANCES

FOR THE APPLICANT:

Adv N Horn

INSTRUCTED BY:

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Pretoria

FOR RESPONDENTS:

Mr J Perumal

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