

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



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

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

DATE

SIGNATURE

Case Number: 24326/2019

In the matter between:

ERICK RUDZANI RAUHENGANI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Delivered. This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 15 February 2024.

JUDGMENT

RANCHOD J

[1] The plaintiff, a 33-year-old male, seeks compensation from the defendant for bodily injuries he sustained in a motor vehicle accident on 20 May 2018. The claim is in terms of the Road Accident Fund Act 1996 (as amended) (the Act). Plaintiff was the driver of a Polo Vivo with registration letters and numbers F[...] GP which collided with motor vehicle with registration D[...] L (the insured vehicle) driven by one Zweni Viwe (the insured driver).

[2] The plaintiff sustained a fracture of the right distal fibula. Immediately after the accident he was treated at the Zoutpansberg Hospital where a below knee 'PoP' (backslab) was applied. There was pain management. He was not given any assistive devices and was discharged from hospital the same day.

[3] It bears mentioning that the defendant did not file any expert reports and there was no appearance on its behalf at the trial. I made a ruling in accordance with Rule 38(2) of the Uniform Rules of Court that plaintiff's expert reports be accepted by way of affidavits.

[4] Plaintiff's counsel informed me that the issue of liability was settled by an apportionment of 75%/25% in favour of the plaintiff. The defendant rejected the claim for general damages and according to plaintiff's counsel's heads of argument, plaintiff does not persist with that claim nor with the claim for past medical expenses. The issues to be determined by this court are the claim for future loss of income and future medical expenses. Future medical and hospital expenses are to be covered by a certificate in terms of section 17(4) of the Act.

[5] I turn then to the claim for past and future loss of income with reference to the expert reports filed by the plaintiff. (The defendant did not file any.) The evidence of the experts was accepted by way of their affidavits filed in terms of Rule 38(2) of the Uniform Rules of Court being that of an orthopedic surgeon, an occupational therapist, an industrial psychologist and an actuary.

[6] Dr Peter Kumbirai, an orthopedic surgeon, assessed the plaintiff's injuries to determine whether they qualified as 'serious' in accordance with regulation 3 of the regulations (as amended) framed under the Act by completion of a Form RAF4. Dr Kumbirai says the soft tissue injury has healed and no future surgery is foreseen. He defers to the opinions of an occupational therapist and industrial psychologist as far as plaintiff's future employment is considered. He states that plaintiff suffered neither Loss of Extremity Impairment (LEI) nor Whole Person Impairment (WPI) and concludes:

'10.4: Seriousness of injury

I have calculated his orthopaedic WPI [Whole Person Impairment] at 0% WPI it is my considered opinion, considering the factors mentioned above, the injuries resulted in:

Non-serious long-term impairment/loss of bodily function.'

[7] **The occupational therapist**

7.1 The occupational therapist notes from the clinical records of the plaintiff at Zoutpansberg Private Hospital that 'X-rays revealed a right distal fibula fracture, and his injuries were managed by way of clinical and radiological examinations, analgesics, and a [below knee] backslab, and it was noted that when he was discharged from hospital, he left walking.'

7.2 The occupational therapist observed that plaintiff did not have any mobility aids, but he walked with a slight right-sided limping gait and reported mild pain in his right ankle.

The occupational therapist opines that:

"Functionally, the claimant is expected to experience no cognitive difficulties with managing his day-to-day challenges in his environment. He is also expected to have no cognitive difficulties succeeding in new situations, i.e., he has intact cognitive abilities. Mentally, he is seen able to take care of all his affairs, including finances."

7.3 The occupational therapist says because plaintiff complains of (intermittent) pain in his right ankle and has headaches this can potentially undermine cognitive functioning, if not adequately

attended, “Therefore, urgent management for the headaches and pain in is highly advised.” In my view, any expenses incurred in this regard will be covered by the s17(4) certificate which will be ordered to be provided by the defendant.

7.4 The occupational therapist lists the plaintiff’s employment history as follows:-

Employer	Time of service	Occupation	Reason for leaving
Shoprite Warehouse	2010/10 – 2011/9	Inventory Clerk	Resigned
Nedbank	2011/9 – 2014/5	Sales Consultant	Resigned
Outsurance	2014/6 – 2018/4	Sales Advisor	Resigned
S.A. Underwriters	2018/4 – 2018/5/20	Insurance Underwriter	MVA
S.A. Underwriters	2018/6/1 – 2018/7/31	Insurance Underwriter	Resigned
Outsurance	2018/8/1 to date	Sales Advisor	Current

7.5 His current job at Outsurance entails the following duties:

7.5.1 Communicating with clients via a telephone

7.5.2 Operating a computer and other office equipment

7.5.3 Doing administration duties

7.5.4 Prolonged sitting (desk based)

7.5.5 He works 5 days a week from 8h00 to 16h30

7.6 After further discussion, the occupational therapist opines that:

“The writer is therefore of the opinion that in light of Mr. Rauhengani's current physical difficulties (pain, fatigue, and discomfort in the right ankle and in the lower back), he is seen safely and efficiently suited to continue to perform the inherent physical requirements of his current occupation as a Sales Advisor with reasonable accommodations, within his present employer and/or in the open labor market, which appears to make sedentary physical type of demands on him.”

7.7 The occupational therapist says further:

“It is the writer's considered view that without reasonable accommodation, Mr. Rauhengani will continue to struggle when performing his current occupation as a Sales Advisor or any other sedentary type of within his present employer and or in the open labour market.

...

His need for reasonable accommodation even when performing sedentary type of occupation makes him to be a vulnerable employee within his organisation when compared to his uninjured peers. It is the writer's considered opinion that in the view of Mr. Rauhengani's residual physical ability, he is seen able to perform sedentary to occasional light physical type of occupations in open labor market, with reasonable accommodation in order to accommodate and minimize discomfort his right ankle and lower back. Given his limitation in prolonged sitting due to lower back fatigue, pain, and discomfort, he may struggle when employed in occupations where productivity and work targets are the order of the day, if no reasonable accommodation is arranged for him.”

[8] Plaintiff's pre-morbid work history, set out above, shows that each time he changed jobs it was after he resigned from the then current job. Unfortunately, there is no explanation as to why he resigned from each job. Post-morbid, he

returned to work about two weeks after the accident. He then resigned about two and one half months later and commenced work at his current employer. As I said, there is no explanation why he resigned and took a lower- paying job. None of the other experts appear to have canvassed this issue. It therefore cannot be said that he took a lower paying job due to his post-morbid health condition.

[9] In the event, the actuarial calculations based on the difference in income between his job at the time of the accident and the job he took on later (at a previous employer) cannot be said to be due to the injuries sustained in the accident on 20 May 2018.

Onus

[10] The onus is on the plaintiff to prove his damages on a balance of probabilities. He is required to adduce sufficient evidence of any alleged loss of income due to the injuries sustained in the accident to enable the court to assess and quantify the loss.

[11] In the result, the actuarial calculations, based on the difference in income between what plaintiff earned at the time of the accident and post-morbid cannot be said, based on the evidence before me, that it is a loss due to the accident.

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

1. The issue of liability is settled with 75/25% apportionment in plaintiff's favor.
2. The defendant is to furnish the plaintiff with an undertaking in terms of s17(4) of the Road Accident Fund Act 56 of 1996 (as amended) limited to 75% of plaintiff's future medical and hospital expenses for the injuries sustained in the accident.
3. There shall be absolution from the instance in respect of the claim for future loss of income or earning capacity.
4. The defendant is to pay plaintiffs agreed or taxed costs, such costs to include the qualifying fees of the experts:
 - 4.1 Dr P Kumberai;
 - 4.2 Tsebo Disability Consultants;
 - 4.3 JH Buitendach; and
 - 4.4 Quantum Actuary.
5. There is a valid contingency fee agreement.

RANCHOD J
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 20 October 2023

Date of judgment: 15 February 2024

Appearances:

For Plaintiff:

Adv Netshiavha
Instructed by Nefuri Attorneys
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For Defendant:

No appearance