

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: **NO**

Date: **27 June 2024** Signature: _____

CASE NO: 8347/21

In the matter between:

NDLOVU VIRGINIA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Coram: Dlamini J

Heard: 16 October 2023

Delivered: 27 June 2024 – This judgment was handed down electronically by circulation to the parties' representatives via email, uploaded to *CaseLines*, and released to SAFLII.

7.3	Dr. SS. Selahle	Plastic & Reconstructive Surgeon
7.4	Dr. HM. Laauwen	Educational Psychologist
7.5	Mark Day	Industrial Psychologist
7.6	Munro Forensic Actuaries	
7.7	Dr. JJ. Schutte	General Practitioner

[8] It is recorded that no oral evidence was led at the trial, the matter proceeded by way of default. The various experts' evidence in the form of their medico-legal reports was admitted as real evidence and no further evidence was led in this regard.

[9] At the trial, the only issue that remained outstanding was the determination of the plaintiff's past and future loss of earnings.

[10] Two scenarios were postulated in so far as the plaintiff's past and future loss of earnings are concerned.

10.1. Pre-accident income;-

10.1.1 Future loss of earnings is 25%.

10.2 Post-accident income;-

10.2.3 Future loss of earnings at 40%. Applying the contingencies the plaintiff's loss of earnings amounts to R5 716 710.

[11] The principles regarding the compensation for loss earnings are trite and have been well pounced upon by our courts. In *Southern Insurance Association v Bailey NO*,² the court observed that “*where the method actuarial calculation is adopted, it does not mean that the trial Judge is tied down by inexorable calculations. He has a large discretion to award what he considers right*”. This decision was followed in *Road Accident Fund v*

² 1984 (1) SA 98 (A)

Guedes,³ the SCA advised, citing with approval of Southern Insurance that “the calculation of the quantum of future the amount, such as loss of earning capacity, is not as I have already indicated, a matter of exact mathematical calculation. By its nature, such an inquiry is very speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance **Association Ltd V Bailey NO**) courts have adopted the approach that, in order to assist in such calculations, amounts to be awarded as compensation and the figure arrived at depends on the Judges view of what is fair.

[12] For the court to be able to apply proper calculation of the quantum of the past and future amounts, such as the loss of earning capacity all the facts about his earnings capacity must be put before the court.

[13] It was submitted that although the plaintiff is still employable post-accident however it was highlighted that for him to be able to attain his post-accident educational potential, it was required that he be provided with the necessary therapeutic intervention as recommended by his experts.

[14] Submissions were made that in determining the child's future loss, this court must take into account the plaintiff's physical injuries and how these will impact on his working capacity. The future treatment required by the plaintiff and whether the plaintiff will fully recover. That the possibility exists that the plaintiff could be fired or retrenched. Finally, all these factors must be weighed against the injuries sustained by the plaintiff the causal link between these injuries, and the impact that it had on the plaintiff's earning capacity.

[15] This court has taken into account that the plaintiff's pre-accident IQ measure placed him at a superior range of intellectual function. That with

³ (611/04) [2006] SCA 18 RSA

adequate learning and therapeutic support he will be able to reach his potential.

[16] The plaintiff is not permanently disabled. His experts note that the child will be able to complete his Grade 12 and entering the TVET College will be able to complete an N6 Certificate. His experts have opined that the plaintiff is still capable of progressing further occupationally and thus increasing his earnings as he continues to gain further experience as well as develop his skill set.

[17] In light of all the circumstances mentioned above and taking into account the plaintiff's injuries, educational background, and real prospects of achieving post-Grade 12 qualifications. The fact that he will be able to secure permanent employment. I am of the view that the sum of R2 000. 000.00 (two million rands) is a just and fair award for the plaintiff's past and future loss of earnings.

ORDER

1. The order that I signed on 16 October 2023 marked X is made an order of this Court.

J DLAMINI
Judge of the High Court
Gauteng Division, Pretoria

REQUEST FOR REASONS: 22 April 2024

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