

SOUTH AFRICA / JUDGMENT

Andrews v Road Accident Fund (3606/2021) [2025] ZAWCHC 314 (29 July 2025) [2025] ZAWCHC 314

COURT

Western Cape High Court, Cape Town

BEFORE

S C O'Brien

CASE / FILE NUMBER

3606/2021

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable/Not Reportable

CASE NO: 3606/2021

In the matter between:

NEVANA YULEEN ANDREWS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation:

Coram: O'BRIEN AJ

Heard: 10 June 2025, 11 June 2025, 19 June 2025

Delivered: 29 July 2025

Summary:

ORDER

O'Brien AJ:

I make the following order:

- (a) The defendant shall provide to the plaintiff an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the payment of the cost of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying goods to her arising from the injuries sustained by her in the motor vehicle accident on 29 February 2016, after such costs have been incurred and upon proof thereof;
- (b) The defendant shall pay to the plaintiff an amount of R8 761.54 in respect of her claim for past hospital and medical expenses;
- (c) The defendant shall pay an amount of R568 430.00 for loss of earning capacity;
- (d) The defendant shall pay the plaintiff's costs of suit, on a party and party scale, including the fees of counsel on Scale C, and the reasonable and necessary qualifying expenses of the following expert witnesses:

1.d.1. Dr Carl Liebetrau, orthopaedic surgeon;

1.d.2. Dr Movsowitz and Conway, radiologists;

1.d.3. Ms Chantelle Griesel, occupational therapist;

1.d.4. Ms E Erens, physiotherapist;

1.d.5. Dr Chris George, psychiatrist;

1.d.6. Ms Mia Boon, counselling psychologist;

1.d.7. Mr Lani Martiny, industrial psychologist; and

1.d.8. Ms Michelle Barnard, actuary.

Introduction

[2] In her amended particulars of claim, the plaintiff a 51 year old female, claims from the Road Accident Fund ("RAF") the following:

- (a) General damages: R 600 000.00
- (b) Past medical expenses: R 100 000.00
- (c) Past loss of income: R 800 000.00
- (d) Future loss of income: R2 400 000.00

Total amount of damages: R3 900 000.00

[3] The merits were settled in favour of the plaintiff's claim.

- [4] Regarding future medical expenses, the RAF provided an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.
- [5] The only issues that require adjudication are the plaintiff's damages for future medical expenses and past and future loss of income. The plaintiff testified that she is 51 years old, a mother of two boys and resides in Kraaifontein. At the time of the accident, she lived in Highbury Park, Kuils River. When the accident occurred, she was the driver of her vehicle when a minibus taxi collided with the side of her car. She immediately felt pain in her hip and back.
- [6] She was taken to the emergency section of the Netcare Hospital, Kuils River. At the hospital, she was given pain medication for a whiplash injury she suffered.
- [7] After the accident, she could not move due to spasms in her right leg.
- [8] She was always a safe and confident driver, but after the accident, developed a fear of driving. She travels by bus from Kraaifontein to the City Centre.
- [9] When the accident occurred, she was working for Nedbank Home Loans. Her job description was to call on clients, developers and attorneys. To this extent, she had to do approximately 16 visits per week. Due to her inability to continue in her job function, she requested that her manager allow her to work remotely from home. Consequently, her work became more administrative as she was not able to work effectively from home. She was later retrenched.
- [10] In October 2022, she went back to Nedbank.
- [11] Thereafter, she worked for a company called Capcubed, where she managed support staff, a role that was not her preferred one. She travelled to KZN to visit clients. She was eventually retrenched.

Out of desperation, she joined SA Home Loans, where she earned a basic salary plus commission. Again, her functionality was more administrative.

- [12] In November 2022, she was appointed as the sales manager for Africa Dried. She acted as a manager at a call centre until March 2022.
- [13] On 3 April 2023, she began her role as a sales executive at the CTICC.
- [14] She further testified that after she took medication for pain, she developed an anal fissure.
- [15] Before the accident, it had always been her intention to move into a management position, and she aspired to become a sales manager. After the accident, her career underwent a change.
- [16] Under cross-examination, she confirmed that in 2021, she had been retrenched. Her first husband passed away in

2023. Her youngest son was expelled from school. It was put to her that, according to one of the experts, she was ambivalent and in an unstable relationship with her second husband. She denied this contention. It was also pointed out to her that Dr Carl Liebertrau, an orthopaedic surgeon, found that physically she would be able to continue working until retirement. She could not really comment on this statement.
- [17] Questioned by the court, she confirmed that she had attended evening classes while obtaining her diploma in management from the University of the Western Cape. Since October 2023, she and her second husband have been separated but not divorced.
- [18] Chantel Griesel, an occupational therapist, assessed the plaintiff on 8 December 2022. On 20 February 2023, she concluded her report. At the time of her assessment, the plaintiff complained of pain in her lower back, her right hip and cervical pain around the base of her neck. The plaintiff also complained of muscle spasms in her right-lower leg.
- [19] During the plaintiff's physical assessment, the range of motion in her neck, hips, knees and back movements appeared normal with no visible restrictions. The plaintiff was able to climb stairs independently without visible discomfort. However, she moves slowly and carefully through the range of motion noted during active range of motion testing. Her gait and posture remain unaffected whether she is sitting or standing.
- [20] According to a psychological assessment, the plaintiff was able to comprehend and follow instructions but struggled to maintain attention and concentration during certain functional tasks. She experiences difficulty performing motor tasks and communicating simultaneously even though the activity demands were repetitive and low in cognitive demand.
- [21] She performed functional capacity testing, namely the Valpar 8 and 11. These tests assess the plaintiff's ability to follow instructions, standing endurance, mental stamina and eye-hand-foot coordination. During this testing, the plaintiff was constantly showing signs of anxiety and frustration. There was stiffness in her neck, shoulders and her right leg. She experiences pain and numbness in her right leg while sitting and standing and appears to be highly frustrated, wanting to complete the task.
- [22] According to this witness, the plaintiff endures pain, which directly influences her ability to maintain productivity, efficiency and efficacy in her work-related tasks. However, this witness did not assess the plaintiff in her current position at CTICC. The witness recommends assessment by a clinical psychologist. Furthermore, the plaintiff requires seating and standing assistive devices to relieve her pain experience during sitting and standing.
- [23] Mia Boon, a counselling psychologist, assessed the plaintiff on 5 September 2023. She conducted various assessments on the plaintiff. The plaintiff experiences anxious arousal, which suggests persistent feelings of tension and hypervigilance, often associated with the aftermath of traumatic experiences. Her elevated scores on the anger/irritability scale

suggest unresolved anger and emotional dysregulation, possibly related to her traumatic experience. The plaintiff experiences a disconnection from her thoughts, feelings or identity, which can be a coping mechanism for dealing with trauma. Her emotional tests highlighted symptoms of anxiety and depression. In her opinion, the plaintiff suffers from posttraumatic stress disorder; additionally, she manifests symptoms of depression and anxiety, which could be exacerbated by the physical pain resulting from her sustained injuries.

- [24] The witness recommends that the plaintiff receive psychotherapy; see a psychiatrist for pharmacological management of her depression and anxiety to manage her pain.
- [25] Lani Martiny, an industrial psychologist, assessed the plaintiff on 1 November 2022. In compiling his report, he had access to the various medico-legal reports presented in this matter. The plaintiff told him that if the accident had not happened, she would have continued working for Nedbank and intended to progress into management where she would have retired at the age of 65 years.

Given the injury, she will likely retire at the age of 60.

- [26] Collateral information obtained from Nedbank revealed that the plaintiff frequently complained at work and her regional manager had to take her to the hospital on at least one occasion. Due to her anxiety when driving in her car, she was allowed to work from home for a period due to the pain she experienced.
- [27] In her pre-morbid career scenario, the witness believed that the plaintiff would probably have remained employed by Nedbank. By the time she reached the age of 45 years, she would have at least moved up one level. A level movement in the skilled band leads to an approximate 14% increase. She would have continued with average annual increments of approximately 7% until 50-55 years, when she would have been promoted, resulting in an estimated 14% increase. Thereafter, she would receive average annual increments until her retirement at age 65.
- [28] Regarding her post-morbid career scenario, the witness took into account that she experienced difficulties in doing her work at Nedbank. She had a sympathetic employer who allowed her to work from home for a period. After receiving optimal medical treatment, she will probably retire at 60. Her productivity may be affected by the combined sequelae of her injuries, her emotional state, and her advancing age; she will probably retire at age 60.
- [29] He opines that there may be changes in the plaintiff's employment leading to gaps in employment and changes in her income, which would be best addressed through contingencies.

- [30] The reports of Anita Erens and Dr Chris George were admitted into evidence without objection. Erens, a physiotherapist, concludes that the plaintiff presents with symptoms of chronic pain disorder. This pain has impacted her ability to function fully in her domestic tasks, leisure activities and employment. She recommends that the plaintiff follow a rehabilitation program consisting of physiotherapy and counselling.
- [31] Dr George, a psychiatrist, diagnosed the plaintiff as suffering from a chronic adjustment disorder with anxious and depressed mood, and chronic pain syndrome. He prescribed anti-depressants and will follow up and monitor her progress to adjust her medication according to her therapeutic responses.
- [32] The defendant elected not to call any witnesses and closed its case. There is a duty on a plaintiff to adduce sufficient evidence to enable a court to award an amount that seems fair and reasonable. *Griffiths v Mutual & Federal Ins Co Ltd* [1993] ZASCA 121; 1994 (1) SA 535 (A) at 546.
- [33] In *Southern Ins Association Ltd v Bailey* NO 1984 (1) SA 98 (A) at 113:
- ‘Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future,
- without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.’
- [34] In *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at 586:
- ‘The calculation of the quantum of a future 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 enquiry is 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 Ins Association Ltd v Bailey* NO). The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right.’
- [35] Mr Corbett, acting for the plaintiff, argued that it was always the plaintiff’s intention to remain in the banking industry. He further contended that Griesel administered a test to determine the plaintiff’s functionality in completing physical tasks in which the latter was compromised. The evidence of Erens and Dr George was admitted as evidence without objection from the defendant. Both opined that the plaintiff suffered from chronic pain syndrome, which had become entrenched over a long period. Boon and Dr George diagnose posttraumatic stress syndrome.
- [36] Mr Corbett further submitted that the Court should accept the evidence of the industrial psychologist, Martiny, that the plaintiff would have remained at Nedbank. At age 45, she would have been promoted with a 14% salary increase. Post-morbidly, the plaintiff has difficulties in performing at her pre-level functioning.

[37] Ms Thomas, acting for the defendant, submitted that the orthopaedic evidence indicates that the plaintiff will be able to continue with her employment. The plaintiff worked for nine and a half years after the accident and continues to work. There is no indication that she is not coping with her current level of functionality. There is no evidence to show that the plaintiff would have been promoted at age 45. Furthermore, given the plaintiff's psychological functioning after the accident, which according to Ms Thomas, is not related to the accident, it should not be taken into consideration. Stated differently, the defendant argued that the two factors – her son's expulsion from school, the separation from her current husband – are two independent

factors that impact her psychological functioning which is unrelated to the accident. Also, no assessment was done in her current job to determine her productivity.

[38] Mr Corbett noted that there is no evidence to suggest that the plaintiff suffered any psychological harm prior to the accident. She is an ambitious woman, who was well remunerated which is testament to her drive and ambition. Although she struggles with pain, she has mitigated her loss by continuing to work. This shows her determination and motivation. The evidence shows that she is a career orientated woman. He concludes that the accident was the primary cause that contributed to her psychological fallout.

Discussion

[39] The plaintiff impressed as an independent-minded individual intent on furthering her career. However, I cannot ignore the fact that from a physical perspective, Dr Liebetrau, the orthopaedic surgeon, found the plaintiff to be able to cope with her employment, notwithstanding the pain she experiences. Thus, from a physical point of view there are no deficits.

[40] The impression I gained of the plaintiff, apart from some difficulties immediately after the accident, was that as time passed, she coped. The plaintiff managed to obtain a tertiary education; her current employment requires her to liaise with customers, including walking long distances as part of her job description. Not complaining about current occupational hazards shows her ability to continue in her current position. The plaintiff's salary has consistently increased over the years. There is no evidence to suggest that the plaintiff in her current role is unable to cope with the demands of her job. After the accident, she received an award from her then employer.

[41] Concerning her psychological condition, her PTSD did not impact her ability to perform her work. I cannot ignore the fact that the plaintiff's current situation – her son expelled from school, separated from her second husband, contributed to her psychological fallout.

[42] What I stated in the previous paragraph, however, does not mean that the plaintiff did not suffer damages as a result of the accident. The chronic pain syndrome, the emotional and physical injury she endured resulted in a loss of earning capacity. Given the plaintiff's past working history, the absence of any physical impairment caused by the accident, and her current working ability it is difficult to quantify the plaintiff's loss.

[43] The best way to address the likelihood of a probable loss of earning capacity is to do so through a contingency differential. See: *Prinsloo v Road Accident Fund* 2019 JDR 2335 (GP). Applying this approach, it allows for the possibility of certain forms of loss. This approach is not foreign to a court's

investigation to determine the amount of damages. See *Quantum of Damages*, Volume 1, 4th Edition page 8:

'Allowance for a prospective loss necessarily introduces a speculative element into the assessment of damages: while the general rule is that loss must be established on a balance of probabilities, it has been held that justice may require that a contingency allowance be made for a mere possibility of certain forms of loss. In this regard the distinction is drawn (in principle, and not without difficulties) between causation and quantification.' See also *Chinappa v Sentrasure* 1996 (4c3) QOD86 (c).

[44] In adopting the above approach, I do not accept Martiny's postulation of the plaintiff's pre- and- post morbid career path. On the contrary, without evidence of the plaintiff's current functioning, he was unable to project a future career path. The objective evidence suggests that the accident did not significantly impact her career progression.

[45] The plaintiff filed an actuarial report dated 1 July 2023. This report estimated the plaintiff's past loss of income at R790 404.00, and future loss of income at R2 398 437.00, resulting in a total loss of income of R3 188 841.00. The figure arrived at is based on 5% and 15% contingency deductions, respectively. Because of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, the loss of income was capped at R2 842 152.00. To this I shall apply a contingency differential of 20% because in my view it would be fair to the plaintiff given her ability not only to cope with her loss but also her ability to obtain employment in terms of which her salary has increased over the years. In the circumstances, I find that the plaintiff has proven a loss of R568 430.00.

[46] The plaintiff has proven a past loss of medical expenses totaling R8 761.54 as supported by vouchers.

[47] I make the following order:

47.d.1. Dr Carl Liebetrau, orthopaedic surgeon;

47.d.2. Dr Movsowitz and Conway, radiologists;

47.d.3. Ms Chantelle Griesel, occupational therapist;

- 47.d.4. Ms E Erens, physiotherapist;
47.d.5. Dr Chris George, psychiatrist;
47.d.6. Ms Mia Boon, counselling psychologist;
47.d.7. Mr Lani Martiny, industrial psychologist; and
47.d.8. Ms Michelle Barnard, actuary.

S C O'Brien

Acting Judge of the High Court

APPEARANCES:

Plaintiff's Counsel: Adv P Corbett SC

Plaintiff's Attorneys: Van Rensburg & Company

Defendant's Attorneys : Ms C Thomas

The State Attorney

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