

SOUTH AFRICA / JUDGMENT

Brits v Road Accident Fund (54415/2018) [2025] ZAGPPHC 417 (11 April 2025)

[2025] ZAGPPHC 417**COURT**

North Gauteng High Court, Pretoria

BEFORE

Strijdom

CASE / FILE NUMBER

54415/2018

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(Gauteng****Division, Pretoria)****Case no:**

54415/2018

Heard

on: 10 February 2025

Judgment handed down:

11 April 2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER

JUDGES: YES/NO

(3) REVISED: NO

Date: 11 April 2025

Signature

In

the matter between

IZAK

JAN PETRUS BRITS

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

STRIJDOM, J

1. This is a claim for compensation due to a motor vehicle accident that occurred on 24 June 2017 between a motor vehicle bearing registration letters and numbers O[...] there and then driven by the insured driver and a motorcycle with registration numbers and letters D[...], driven by the Plaintiff.

MERITS

2. In this matter which was unopposed I gave an ex-tempore judgment on 10 February 2025 in respect of merits and found that the respondent must be held 100% liable for any proven damages by the plaintiff. The finding on liability was based on the following facts presented by the Plaintiff.

2.1 On 24 June 2017 at 20:20 the plaintiff was travelling from work to his primary residence, driving a motorcycle;

2.2 As the plaintiff was travelling straight, a Toyota Hilux with registration D[...] made a u-turn in front of the plaintiff without any indication and collided with the motorcycle on its right hand side;

2.3 The plaintiff attempted to avoid the accident but was unable to do so. The plaintiff sustained injuries as a result of the accident.

QUANTUM

3. The Plaintiff appointed the following experts:

3.1 Dr JP Marin (RAF4);

3.2 Dr JP Marin (Orthopaedic surgeon);

3.3 Dr S Van Heerden (Plastic and reconstructive surgeon);

3.4 V Samouri (Clinical Psychologist);

3.5 F Steyn (Occupational therapist);

3.6 Baige & Burger (Industrial psychologist);

3.7 J Sauer (Actuary);

4. The plaintiff sustained the following injuries:

4.1 Fractured base of the right first carpometacarpal.

4.2 Right tibia and fibula fracture.

5. The following documents were discovered in respect of quantum by the plaintiff:

5.1 Proof of income[1];

5.2 Proof in income - 2024[2];

5.3 Hospital records[3];

5.4 Past medical expenses-vouchers[4].

PAST MEDICAL EXPENSES

6. With reference to the report of Dr PJ Viviers (specialist physician) dated 17 January 2025 the following was noted:[5]

6.1 The Plaintiff received on-scene treatment and was transported by private ambulance service to Mediclinic Nelspruit Hospital where he was assessed, treated and admitted.

6.2 According to clinical records submitted, there were no medical co-morbidities or surgical history of relevance reported.[6]

6.3 The vouchers to the total amount of R218 315,39 were provided to Dr PJ Viviers.

6.4 Based on the clinical and hospital notes, the plaintiff received optimal emergency evaluation and care from the period of presentation to the Mediclinic Nelspruit, and through his subsequent surgical intervention and post-operative care.

6.5 His injuries necessitated emergency evaluation and treatment, followed by admission to a standard general ward and ensuing surgical intervention. Surgery was performed timeously and adequately, with due regard to the prevention of complications as well as appropriate post-operative care. He received early and sufficient physical rehabilitation, to expedite return to mobility and reduced length of hospital stay, further reducing complication risk.

6.6 There is a nexus between the accident, injuries sustained, and the management received.

7. Dr PJ Viviers concluded that “after viewing the vouchers and statement of account provided for perusal, I have no doubt that the costs of his treatment were indicated, valid, and in accordance with a reasonable standard of care”.[7]

8. It was submitted by the plaintiff that an amount of R168 673,16 should be awarded and paid to the Momentum Medical Aid and an amount of R49 642-23 should be paid to the plaintiff.

FUTURE MEDICAL EXPENSES

9. The respective experts made recommendations in respect of future medical expenses. In my view, the future medical expenses should be dealt with by way of an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act.

EXPERT FINDINGS

10. Dr Martin's clinical findings indicate that the plaintiff sustained the following injuries:

10.1 Right hand fracture;

10.2 Right tibia and fibula fracture.

11. It is the expert's view that the right-hand injury had a profound impact on the plaintiff's productivity and working ability and will continue to do so in future. The accident and the accompanying right hand injury have resulted in the plaintiff suffering some deficits. Even with successful treatment, the plaintiff will always have a deficit. The plaintiff's working abilities have been negatively affected by the accident. The plaintiff should not do physical labour after the plaintiff's trapezium is excised; it will be difficult for him to perform the duties expected of a diesel mechanic.

12. The expert concluded that if accommodated in a sedentary work environment, the plaintiff will be able to work to the normal retirement age of 65. If not accommodated, the plaintiff will be able to work to the retirement age of 55 years. Provision should therefore be made for 10 years of early retirement.[8]

13. With reference to the report by F Steyn (Occupational therapist) dated 25 March 2021, the following extracts are referred to:

RESIDUAL WORK CAPACITY:

13.1 The claimant presented with challenges mainly relating to his right ankle, right hand and right wrist. He presented with muscle

wasting in his right thigh, confirming altered functional usage in his right leg. Muscle strength was slightly decreased in the muscle surrounding his right knee and ankle and wrist. He reported pain in his right ankle with dorsiflexion and pain in his right wrist with extension and radial and ulna deviation. His right-hand grip strength was 51,32% below the acceptable range of his age and gender, whilst his left uninjured hand was 17,72% above the norm.[9]

13.2 When considering his overall functioning residual capacity, the claimant is ideally suited for sedentary, light and medium work. His ability to engage in dynamic strength equates to heavy physical work, while positional tolerance and mobility equated to medium work.

13.3 His ability to engage in sitting, standing, stooping, kneeling, stair climbing, walking and repetitive trunk rotation was limited to frequently, thus not more than 2/3 of his working day. This was however, since he maximally extended himself.

13.4 His pre-accident and current work as a diesel mechanic is classified as very heavy work considering the pathology in his right CMC joint, it can be concluded that he remains permanently unsuited for his pre-accident work.

13.5 It should be noted that the fact that he requires an assistant will place him in a vulnerable position as he is unable to compete with the pain-free individuals of the same age and educational level. As the pathology progresses and especially when he requires an excision

arthroplasty of his right trapezium, he will struggle increasingly more with fine motor coordination as well as working in confined spaces, which are often required form a mechanic. He will also struggle to engage in tasks requiring grip strength and dexterity or tasks requiring abnormal hand movements with working in small spaces.

13.6 Furthermore – in order to preserve his right wrist and thumb after an excision of the trapezium, handling even light loads remain contraindicated. In order to preserve the adjacent joints he should refrain from placing undue strain on his right wrist and hand which would include limiting frequent lifting.

13.7 Thus, early retirement is foreseen, as he will not be able to cope with the job requirements of being a diesel mechanic.

13.8 Note is taken that the claimant has mostly worked as a mechanic as he is no longer suited for medium and heavy work his career options have been narrowed considerably. If for any reason he loses his job, he will struggle to re-enter the open labour market, doing sedentary and occasional light work due to his work history as well as his level of education.

13.9 Thus it can be concluded that the accident has had a detrimental effect on his vocational potential.

13.10 Thus, in conclusion, the claimant will only be able to cope with his current work with an assistant to do heavy work for a couple of years.[10]

14. According to the second addendum report by Baige & Burger (industrial psychologists) dated 12 November 2024 workplace collateral information was obtained. The comments can be summarised as follows:

14.1 The claimant is employed as a permanent diesel mechanic;

14.2 His job performance is rated above average, since his is a very good mechanic;

14.3 He definitely has promotional prospects, there is a strong possibility that he could be promoted to senior mechanic manager. This could transpire within the two years.

14.4 Pre-accident he would most likely have continued earning in accordance with the salary advice dated 31 December 2022, until he opted for a better position at Katanga Contracting Services on 20 January 2023. He would have earned in accordance with the offer of employment letter until he returned to South-Africa in March 2024. Thereafter remuneration would have entailed his actual current documented earnings. By +- 2026 he could be promoted to a senior mechanic/manager and earn +- R110 000 00 per month. He would likely continue earning at this rate with straight line increases up to the age of 45, followed by inflationary adjustments up to retirement age.[11]

14.5 It appears that the claimant's likely pre- and post-morbid earnings level remain comparable for now.

14.6 He is now 30 years of age and has only been employed in positions that were heavy in nature and required bilateral dexterity. His relegation to work of sedentary and light nature, need for workplace assistance and permanent unsuitability to his employment as a mechanic has resulted in a severely compromised work capacity as well as productivity. Due to the accident-related sequelae, he now has a restricted scope of employment in the open labour market. Also, his competitiveness in the open labour market has been drastically reduced.

14.7 Having carefully considered all the relevant circumstances of this matter as noted in the reports, it can be reasonably inferred that the claimant is a unequal competitor in the open labour market. He will be at a huge disadvantage when competing for jobs with his uninjured counterparts should he find himself unemployed. [12]

14.8 It seems prudent to apply a higher post-accident contingency deduction to address these vulnerabilities as discussed

15. It is evident that the plaintiff has sustained a capacity loss instead of a direct loss as determined by the orthopaedic surgeon.
16. The applicable principles in determining whether a plaintiff has suffered patrimonial loss was enunciated in *Rudman v Road Accident Fund* [13] as follows:

“In my opinion, the Learned Judge in the Court a quo has not misdirected himself in his understanding of these authorities or in his application for the law to the facts. His judgment correctly emphasises that where a person’s earning capacity has been compromised, ‘that incapacity constitutes a loss’, if such a loss diminishes their estate and ‘he is entitled to be compensated to the extent that his patrimony has been diminished.’”

17. In determining the percentage contingency deduction, the court will have to look into the future and therefore into the proverbial “crystal ball”. However, it is to a large extent a valued judgment that the court must make in regard to the relevant evidential facts before it as well as the probabilities of the case which play an important role.
18. The percentages of the contingency deduction in the different cases vary to a large extent. It was submitted by the plaintiff that the norm with regard to pre-accident contingency deductions are between 10% and 20%.
19. As far as the contingency deduction in respect of the plaintiff’s post-accident income is concerned, the court will usually make some allowance in the computation of damages for the fact that the plaintiff’s capacity has been affected and his position in the labour market is less secure than it was.
20. The plaintiff’s industrial psychologist is of the opinion that a higher post-morbid contingency than the pre-morbid contingency should be applied.

21. Koch, in The Quantum Yearbook 2022 at 12.1 said: “General Contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce etc. There are no fixed rules as regard general contingencies.”
22. In this matter the plaintiff worked as a diesel mechanic prior to the accident. Post accident he is still employed as a diesel mechanic. The plaintiff works for his cousin who employs two general assistants. The plaintiff depends heavily on his assistant to do all the heavier tasks and lifting. He is not able to perform the normal duties of a diesel mechanic on his own. His employment can be described as sympathetic employment.
23. It is trite that loss of earning capacity can be claimed in instances where a plaintiff is still employed out of sympathy and being paid his former salary although he can no longer perform at his former level.
24. It was submitted by the plaintiff that the court must apply a 30% contingency differential 15/45. I am of the view that in the circumstances of this case a 35% contingency will be fair. Such a contingency takes into account that the plaintiff is still employed and may remain in that position and also allows for the possibility that he may be rendered unemployable if he should lose his job. The result would be a 15% pre-morbid contingency and a 35% post-morbid contingency. A differential of 20% contingency.
25. As per the plaintiff’s actuarial calculation by Johan Sauer (actuary) dated 6 February 2025 (20% contingency differential 15/35):

25.1 Past loss:

- Had the accident not occurred R4 595 422,00
- Less 5% contingency deduction R4 365 651,00
- Now the accident had happened R4 558 388,00
- Less 5% contingency deduction R4 330 469,00

Total past loss:

R35 182,00

25.2 Future loss:

- Had the accident not occurred R22 655 470,00
- Less 15% contingency deduction R19 257 149,00
- Now the accident had happened R18 109 190,00
- Less 35% contingency deduction R7 486 176,00

Total future loss:

R7 521 358,00

Total loss of earnings after RAF cap R6 328 204

26. In the result, the draft order marked X is made an order of Court.

JJ STRIJDOM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Appearances:

For the plaintiff:

Adv C Nell

Instructed by:

Corne Nell Inc Attorneys

For the defendant:

No appearance

Instructed by:

The State Attorney

[1] Caselines: 007-26 to 007-33

[2] Caselines: 007-34 to 007-44

[3] Caselines: 007-45 to 007-121

[4] Caselines: 007-324 to 007-355

[5] Caselines: 009-234

[6] Caselines: 007-359

[7] Caselines: 007-371

[8] Caselines: 009-68

[9] Caselines: 009-140

[10] Caselines: 009-141 to 142

[11] Caselines: 009-224

[12] Caselines: 009-212

[13] 2003 (2) SA 234 (SCA)

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