

SOUTH AFRICA / JUDGMENT

Coetzee v Road Accident Fund (71483/2016) [2020] ZAGPPHC 179 (25 May 2020)

[2020] ZAGPPHC 179

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

71483/2016

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

Case number: 71483/2016
25/5/2020
In the matter between
LLOYD KENNETH
COETZEE
PLAINTIFF
versus
ROAD
ACCIDENT FUND
DEFENDANT

JUDGMENT**MAKHOB A J**

1. The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor

vehicle accident that occurred on the 26th April 2015. Plaintiff was hit by a motor vehicle whilst walking on the Thaba-Nchu road in Bloemfontein.

2. The merits of the matter have been settled between the parties 90% in favour of the Plaintiff. General damages were referred to HPCSA (Health Professionals council of South Africa) for determination and it was determined that the plaintiff does qualify for General damages.
3. The matter was heard via video link. Both parties agreed not to lead oral evidence but made submissions to the court and filed heads of argument. Only Plaintiff filed expert reports defendant did not file any reports.
4. The only dispute between the parties is general damages, loss of earnings and defendant submits to this court that the court must award punitive costs against the defendant because of the increased claim on general damages without amending the pleading. Furthermore, counsel for the plaintiff asks that the court to penalise the defendant for arguing for R500 000 award in general damages knowing that it is not justified by the case law.
5. Both parties in their heads of arguments submitted and referred to case law in supporting their views on loss of earnings on behalf of defendant. It is submitted that the defendant is employable and therefore the court should not award a higher amount. In contrast Counsel for the defendant dealt in detail why he is rejecting the figures submitted on behalf of the defendant on both general damages and loss of earnings.
6. In *Road Accident Fund v Marunga* 2003 (5) the court said that there was no hard and fast rule of general application requiring the court or a court of appeal to consider past awards. The court further said that awards on decided cases might be of some use and guidance. In *Sandler v Wholesale Coal supplier Ltd* 1941 AD, the court held that the amount to be awarded as compensation and the figure arrived at depends on the Judge's view of what is fair in all circumstances.
7. Counsel for the defendant in his heads of argument refers the court to a number of decided cases wherein ankle injury was specifically dealt with and submitted that in this matter the court should consider awarding general damages to the amount of R200 000 based on previous awards and facts of this case.
8. I am persuaded by Counsel for the defendant in his submissions. I have read the cases he referred me to and I without any doubt agree that the claim of R500 000 for general damages is not justified taking into account the nature of the injury and the fact that he is healing. The award of R160 000 (hundred and sixty thousand Rands only), in my view, is reasonable under the circumstances.
9. The locus classicus with regard to contingencies is the judgment of Nicholas JA at 116- 117 of the decision in *Southern Insurance*

Association v Bailey NO 1984 (1) SA 98 (A) the "Where the method of actuarial calculation is adopted, it does not mean that the trial Judge is "tied" down by inexorable actuarial calculations. He has a large discretion to award what he considers right". Zulman JA, with reference to various authorities including *Southern Assurance* decision, said the following in *Road Accident Fund v Guedes* (611/04) [2006] ZASCA, [2006] SCA 18 (RSA) " 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 insurance Association Ltd v Bailey NO) courts have adopted the approach that, in order to assist in such calculation, an actuarial computation is a useful basis for establishing the quantum of damages". Furthermore, in Rudman v Road Accident Fund 2003 (2) SA 234 (SCA) the court held that where a person's earning capacity was compromised that incapacity constituted a loss if such loss diminished his estate and he is entitled to be compensated to the extent that his patrimony was diminished.

10. With respect, Counsel for the Plaintiff in his heads of argument in dealing with loss of earnings, he failed to consider the

plaintiff's earning capacity as a whole but instead isolated plaintiff's elements of the ability to earn a living that had been compromised and then placed a monetary value on them. The plaintiff continued to work after the injury in another capacity,

furthermore, he has a degree in Social Sciences and he is employable according to his own experts. On costs on behalf of the defendant, it is submitted that the plaintiff failed to amend his pleadings in line with the amount claimed on the papers before court. Furthermore, the argument and submissions on general damages was unreasonable and the court must make appropriate cost order. I agree with this submission however, it must also be taken into account the conditions and the manner in which the matter was brought to me due to the difficult logistics caused by the Covid-19 pandemic the plaintiff had to forgo the calling of witnesses in order to bring this matter to finality. For that reason, it is my view that Plaintiff should not be punished with a cost order.

11. In regard to the claim on loss of earnings I am inclined to accept the submissions by counsel for the plaintiff on paragraph 8.4 of his heads of arguments.

12. In the premises, the following order is made in favour of the plaintiff.

Order:

12.1 General damages R160 000 (Hundred and sixty thousand)

12.2 Loss of earnings: R428

298

Award:

R 588 298

Less Merits apportionment 10% R588 298

R58829.8

Total R

529 469

12.3 Costs of suit.

D MAKHOBHA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION

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Prepared on 9 October 2026 · Esheria