

SOUTH AFRICA / JUDGMENT

Dila v Road Accident Fund (31487/14) [2017] ZAGPPHC 1289 (9 May 2017)

[2017] ZAGPPHC 1289

COURT

North Gauteng High Court, Pretoria

BEFORE

Wright

CASE / FILE NUMBER

31487/14

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA,
GAUTENG
DIVISION,
PRETORIA
CASE
NO: 31487/14
NOT
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
REVISED
In

the matter between:

JOHAN
DILA
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

JUDGMENT

Wright J 9 June 2017

1.

By agreement between the parties this judgment is based on the written heads of argument presented by Plaintiff's counsel. There are only two very narrow issues to be decided. All the facts referred to below are common cause.

2.

The Plaintiff, JOHAN DILA, was, prior to the relevant motor vehicle accident, a construction worker who was born on 13 February

1983. He is currently 34 years of age. The Defendant is the ROAD ACCIDENT FUND, a statutory body established in terms of the Section 2(1) of the Road Accident Fund Act, 56 of 1996 with its principal place of business situated at 38 Ida Street, Menlo Park, Pretoria, Gauteng.

3.

The Plaintiff instituted action against the Defendant for damages suffered as a result of personal injuries sustained in a motor

vehicle collision that occurred on 7 November 2011 between:

3.1 A motor vehicle with registration details FMC 411 MP, there and then driven by T Hlatshwayo; and

3.2 A motor vehicle with an unidentified registration number; and

3.3 The Plaintiff who was a pedestrian at the time.

THE MERITS:

4.

The merits of the Plaintiff's action have been resolved on the basis that the Defendant undertakes to pay 70% of the Plaintiff's proven or agreed damages.

THE QUANTUM

5

The Plaintiff has obtained medico-legal reports from the following experts in support of his claim:

5.1 Prof JH Flemming (Orthopaedic Surgeon);

5.2 Dr VM Close (Orthopaedic Surgeon);

- 5.3 Dr Verschave (Cardiothoracic Surgeon);
- 5.4 Dr KD Rosman (Neurologist);
- 5.5 B van Zyl (Neuropsychologist);
- 5.6 Dr T Bingle (Neurosurgeon);
- 5.7 Dr L Berkowitz (Plastic and Reconstructive Surgeon)
- 5.8 R Nel (Clinical Psychologist);
- 5.9 F du Toit (Occupational Therapist);
- 5.10 F van der Westhuizen (Industrial Psychologist)
- 5.11 GRS Consulting (Actuary).

6.

INJURIES SUSTAINED:

- 6.1 A primary diffuse mild brain injury together with a possible degree of secondary brain damage as a result of respiratory problems.
- 6.2 Fracture of the right femur.
- 6.3 Fracture of the pubis (pelvis) on the left and right.
- 6.4 Fracture of the left tibial plateau.
- 6.5 Fractured ribs.
- 6.6 Hemopneumothorax.
- 6.7 Fracture of the clavicle on the right.
- 6.8 Fracture of the scapula on the right.
- 6.9 Lung contusion.
- 6.10 Blunt chest trauma which required the insertion of bilateral intercostal drains.
- 6.11 Intra-articular fracture of the left knee with subsequent secondary posttraumatic osteoarthritis and a significant loss of movement.
- 6.12 A severe chest trauma that resulted in decrease in permanent lung function of 30% to 40%.
- 6.13 Severe depression with suicidal ideation.
- 6.14 The Plaintiff presents with the following unsightly scars due to the accident:
 - 6.14.1 Unsightly bilateral intercostal drain scar;
 - 6.14.2 Severe laceration scar of his trunk and limbs;

6.14.3 Unsightly scar in his right iliac fossa;

6.14.4 Unsightly, multiple surgical scars involving his right thigh and in relation to his left knee;

6.14.5 Unsightly and significant abrasion scars of his left lower leg.

6.15 Soft tissue injury of the cervical spine.

6.16 Soft tissue injury of the thoracic spine.

6.17 Laceration of the head.

6.18 Injury to the right hand.

7.

TREATMENT RECEIVED:

7.1 The Plaintiff was rendered unconscious after the accident. He was taken to the Rob Ferreira Hospital where he stayed for 2 months.

7.2 He was resuscitated and given a blood transfusion.

7.3 He was moved into the intensive care unit (ICU).

7.4 Intercostal drains were placed in both chests in the mid-lateral position.

7.5 The laceration on his scalp was sutured.

7.6 He was given oxygen and was catheterised.

7.7 The Plaintiff had a chest drain inserted in the left chest and also had a tracheostomy.

7.8 As a result of his fracture of the clavicle, his arm was immobilised.

7.9 In addition, the Plaintiff was given analgesics.

7.10 The Plaintiff further underwent an operation and had a pin inserted in the right femur.

7.11 He also had an operation and a metal plate inserted in the left leg.

7.12 The Plaintiff also fractured both left and right pubis.

7.13 The Plaintiff was given bed rest.

7.14 A full-length plaster of Paris cast was applied to the left leg until the 25th of January 2012.

7.15 In addition, the Plaintiff wore a soft neck collar.

7.16 Initially the Plaintiff was immobilised in a wheelchair for 3 months followed by the use of one crutch which he still uses at time.

7.17 Bilateral underwater drains were inserted.

8.

TREATMENT ENVISAGED IN THE FUTURE:

8.1 The Plaintiff require a total knee arthroplasty due to the extreme pain and sensitivity in his left knee combined with lack of movement to 25°.

8.2 At an appropriate time the Plaintiff's internal fixation in the right femur should be removed.

8.3 In addition, the Plaintiff requires conservative treatment for aches and pains.

8.4 Provision will have to be made in the future for further surgical interventions, such as:

8.4.1 Removal of the Plaintiff's fixative devices which will require 1 month's sick leave if he is working.

8.5 The Plaintiff will have to undergo a total knee replacement in future coupled with 3 months sick leave if he is working.

8.6 The Plaintiff will require conservative treatment for follow-up treatment including general practitioner consultations, specialist's consultations, x-rays, pain medication, a knee brace, physiotherapy and a rehabilitation program.

8.7 The Plaintiff requires aggressive management of the mood disorder, treatment to be a combination of psychotropic medication and psychotherapy; given his relative rural unsophistication, it would be more appropriate for him to receive pastoral counselling.

8.8 According to Dr Berkowitz the Plaintiff has been left with 16 different scars as more fully set out in pages 4 - 5 of his report. Only 11 of these are amenable to improvement by means of surgical revision.

9.

COMPLAINTS/SEQUELAE:

Head I cognitive:

9.1 The Plaintiff's short-term memory is impaired and his intermediate memory is severely impaired.

9.2 During the assessment by the Neuropsychologist, t B van Zyl, the Plaintiff presented as cognitively dull and was confused a great deal of the time. He had difficulty understanding abstract concepts, both verbal and non-verbal and he required undue repetition of test instructions and items.

9.3 The Plaintiff was perseverative in his response, thereby demonstrating poor cognitive flexibility.

9.4 The Plaintiff is forgetful and he also seemed " quite distanf" during the interview with Dr Close.

9.5 During the interview with Dr Close the Plaintiff appears to be mentally " slow" .

9.6 According to F du Tait (Occupational Therapist) the Plaintiff during assessment, appeared disorientated, drowsy and incoherent.

9.7 He has limited drive and motivation in terms of future work capacity and earning potential.

9.8 The Plaintiff has memory problems.

9.9 He suffers from headaches.

9.10 The Plaintiff's level of focus and concentration were inadequate.

9.11 He was unable to work with independence.

9.12 The Plaintiff's pre-morbid intellectual functioning is estimated to have been in the borderline to low-average range.

9.13 According to B van Zyl the Plaintiff's profile reflected depressed scores in isolated domains and is one of a severe brain injury.

9.14 The Plaintiff presents with poor memory post-accident.

9.15 He complains of headaches in hot weather conditions.

Legs and hip:

9.16 The Plaintiff has constant pain in his left knee.

9.17 The Plaintiff walks with a markedly antalgic gait and the left leg does not straighten.

9.18 The Plaintiff's right leg is 1cm shorter than the left.

9.19 According to Prof Flemming the Plaintiff is a cripple at the present stage, because of the traumatic osteoarthritis in his left knee.

9.20 The Plaintiff can never play sport again.

9.21 According to Prof Flemming the Plaintiff sustained severe polytrauma and has been lucky to survive with his life. He is left a permanent cripple.

9.22 Prior to the accident the Plaintiff enjoyed daily long-distance jogging as well as assisting with the cooking.

9.23 After the accident, the Plaintiff no longer jogs or cooks (He has right shoulder pain when preparing maize pap).

9.24 The Plaintiff still presents with pain in his left knee and it occasionally feels as if it will dislocate.

9.25 In addition, he has mild right hip pain.

9.26 Because of pain in the Plaintiff's left leg he cannot stand for more than 10 minutes.

9.27 In addition, he is unable to bend his left leg.

9.28 The Plaintiff walks with a significant limp indicating a stiff right lower leg and possibly a limb leg discrepancy.

9.29 During the examination, his gait was rechecked with him undressed and the limp was originating from a stiff left knee.

9.30 The Plaintiff's tibial plateau fracture resulted in a poor outcome and a markedly reduced range of movement in the left knee from 20° to 50°.

9.31 X-rays of the Plaintiff's femur reveal that the metal place is mal-positioned and is placed too proximally and is impinging on a distal edge of the femur medially.

9.32 There is significant residual slope to the medial tibial plateau with marked degenerative change of the medial compartment.

9.33 There is also a bony irregularity of the lateral aspect of the tibial plateau. This represents, radiologically, an unsatisfactory result.

9.34 According to Dr Close the Plaintiff sustained serious life-threatening poly trauma with multiple fractures.

9.35 The Plaintiff experiences chronic pain mostly in the left knee aggravated by cold and inclement weather and on direct questioning he reported weakness in his left leg.

9.36 He cannot stand for prolonged periods of time or walk long distances.

9.37 The Plaintiff experiences chronic pain in his right thigh aggravated by cold and inclement weather with a detrimental effect on his physical capabilities.

9.38 The Plaintiff continues to make use of 1 crutch when he experiences pain in his left leg. He complains of pain in his left leg after standing for extended period, running or walking longer distances.

9.39 The Plaintiff suffers from poor balance as he is still not able fully to bare weight on his left leg, which prevents him from climbing on ladders or scaffolding as required in his former profession as a brick-layer.

9.40 His poor balance also prevents him from carrying heavy objects such as a bag of cement or pushing a wheelbarrow.

9.41 The Plaintiff continued to rely on crutches for more than 5 years after the accident, which had a marked limiting effect on his manoeuvrability.

Shoulder;

9.42 The Plaintiff also has right clavicle/scapula pain and also complains of pain in the left shoulder.

9.43 He has continuous pain in his chest, particularly when he coughs.

9.44 The Plaintiff experiences bilateral shoulder pain.

9.45 On palpation, there is mal-union of the outer third of the left clavicle fracture and he complains of pain to palpation of the left humeral shaft.

Chest/ lungs:

9.46 A severe chest trauma that resulted in decrease in permanent lung function of 30% to 40%.

9.47 The Plaintiff's chest hurts when he coughs.

9.48 The Plaintiff also has chest pain with effort or when coughing.

9.49 The Plaintiff also experiences undue physical fatigue.

9.50 The Plaintiff complains of pain in the right upper leg as a result of which he has difficulty lying on his right side.

9.51 In addition, the Plaintiff experiences chronic pain on the left side of his chest, especially when coughing. ·

9.52 The Plaintiff's social activities had decreased since the accident and he finds himself socially withdrawn.

9.53 After the accident, the Plaintiff does not participate in any sport.

9.54 The Plaintiff complains that he does not hear well.

Arms/ hand:

9.55 The Plaintiff complains of a painful right hand.

9.56 He has a complete loss of sensation in the left arm.

9.57 Pain in the right wrist prevented testing of the strength of the right arm.

9.58 The Plaintiff also experiences pain at the left humerus.

9.59 He has decreased hand grip strength on the right.

Scarring and disfigurement:

9.60 Plaintiff has been rendered as a cripple;

9.61 The Plaintiff presents with the following unsightly scars due to the accident:

9.61.1 Unsightly bilateral intercostal drain sight scar;

9.61.2 Severe laceration scar of his trunk and limbs;

9.61.3 Unsightly scar in his right iliac fossa;

9.61.4 Unsightly/multiple surgical scars involving his right thigh and in relation to his left knee;

9.61.5 Unsightly and significant abrasion scars of his left lower leg.

9.62 The Plaintiff presents with numerous scars as a result of the accident related surgeries that he underwent.

9.63 According to Dr Berkowitz, a marked deformity of the untreated fracture of the left clavicle was noted.

9.64 The Plaintiff's friends regularly mock him and refer to him as a "cripple" or that he has "left his brains on the road".

Other:

9.65 The Plaintiff experiences lower back pain when he bends.

9.66 The Plaintiff presents with numerous scars as a result of his surgical interventions and intercostal drains.

9.67 The Plaintiff experiences pain with palpation and with percussion of the abdomen.

9.68 The Plaintiff experiences pain with palpation of the neck muscles.

9.69 The Plaintiff experiences frequent headaches, he struggles to walk and he has pain and discomfort in the left lower limb and right hip.

9.70 Sleeping habits have changed and the Plaintiff's sleep quality is restless due to pain and discomfort.

9.71 The Plaintiff presents with urinary problems since his discharge from hospital with strained and painful urination as the most prominent complaint.

9.72 The Plaintiff has neck pain.

Psychologically:

9.73 The Plaintiff experiences severe depression with suicidal ideation.

9.74 The Plaintiff's affect was flat and there was a superficial range of emotional expressions.

9.75 The Plaintiff has withdrawn socially, .post-accident.

9.76 According to B van Zyl the Plaintiff's neuropsychological difficulties are secondary to the combined negating effects of severe depression (secondary to a general medical condition), severely reduced physical function, chronic pain and discomfort, fatigue and intense frustration of living with thwarted goals with the former of such a severity as to mask and override all.

9.77 According to B van Zyl the Plaintiff is functionally unemployable on the open labour market secondary to his chest and lower limb injuries and severe mood disorder.

9.78 The Plaintiff experiences a short temper occasionally and he feels depressed and frustrated. He is also anxious when near traffic.

9.79 The Plaintiff suffers from insomnia due to chronic pain but does not take any sleeping tablets.

9.80 The Plaintiff's friends regularly mock him and refer to him as a "cripple" or that he has "left his brains on the road".

9.81 The Plaintiff feels lonely most of the time as his friends also started to avoid him due to his short temper.

9.82 The Plaintiff considers himself physically weak and unable to care for a partner and therefore mostly refrains from engaging in a romantic relationship.

9.83 The Plaintiff's biggest wish was to build a house and have a family of his own.

9.84 During the occupational assessment, the Plaintiff appeared to be disorientated, drowsy and incoherent. He showed very limited drive and motivation. It was noted that he will be sombre at times and laughed inappropriately during the interview.

10.

EFFECT ON EMPLOYMENT/LOSS OF EARNINGS:

10.1 At the time of the accident the Plaintiff was a construction worker. Even with all the future treatment the Plaintiff would not be able to manage the heavy work required for a construction worker.

10.2 The Plaintiff's qualifications include a Grade 6 when he left school.

10.3 According to Dr Close the Plaintiff cannot do construction type work, i.e., on scaffolding/ladders, traverse rough terrain.

10.4 According to Dr Close the Plaintiff is suitable for light work only.

10.5 After the Plaintiff undergoes a total knee replacement he would not be considered fit to return to working on construction sites as a builder, plasterer or bricklayer.

10.6 According to Dr Verschave the Plaintiff's work as a bricklayer is impossible, especially if one takes into consideration that he also experiences pain when doing physical efforts.

10.7 REPORT BY F DU TOIT (OCCUPATIONAL THERAPIST):

10.7.1 The Plaintiff was employed as a builder assistant for 2 years before he started work as a bricklayer.

10.7.2 He was performing bricklaying work since 2000 - 2011 at the time of the accident.

10.7.3 The physical demands of a bricklayer appear to be in the heavy capacity.

10.7.4 He was unable to resume his work after the accident due to the injuries he sustained.

10.7.5 During the assessment, it was noted that the Plaintiff had limited drive and motivation and gave up on all activities during the physical assessment.

10.7.6 Instructions had to be repeated several times during the physical assessment.

10.7.7 He reported severe pain in his right upper leg and left knee at the rib cage and in both arms during the physical assessment.

10.7.8 He was unable to kneel or crouch due to the limited movement and severe pain in his left knee.

10.7.9 He complained of pain in his right upper leg when he had to stand in a stooping position as well as pain in his left knee with prolonged walking periods.

10.7.10 The Plaintiff's short-term memory was impaired and his intermediate memory was severely impaired.

10.8 REPORT BY F VAN DER WESTHUIZEN (INDUSTRIAL PSYCHOLOGIST):

10.8.1 The Plaintiff reported that at the time of the accident he was earning R2 000.00 per month as a semi-skilled bricklayer.

10.8.2 At the time of the accident the Plaintiff was 31 years of age and had been functioning in the informal/non-corporate labour sector in a self-employed capacity as a semi-skilled bricklayer doing contract work for approximately 12 years since 1999.

10.8.3 His reported earnings at the time of the accident compares favourably to between the lower and median quartiles of semi-skilled workers at approximately R24 000.00 per annum (2011 terms) not calculating any normal CPI increases.

Pre-morbid postulation:

10.8.4 Accordingly, it is postulated that the Plaintiff would have continued to function in a self-employed capacity in the informal/non-corporate sector as semi-skilled bricklayer until the normal retirement age of 65 years.

10.8.5 The Plaintiff would have progressed to the median of semi-skilled workers by age 35 after which he would have qualified for normal inflationary increases.

Post-morbid career scenario:

Having regard to the severity of the Plaintiff's injuries and his sequelae, the Plaintiff has been rendered unemployable in the open labour market in any capacity.

ACTUARIAL CALCULATION:

11.

11.1 By agreement the Plaintiff's actuarial report was admitted into evidence as Exhibit "A". The Defendant admits the correctness of the report. The actuary has not included contingencies in his calculations.

11.2 The Plaintiff contends that the following contingencies should be applied in the actuarial calculation:

Past loss of income

5%

Future income (but for the accident)

15%

11.3 The Defendant agrees with the 5% suggested by the Plaintiff to be deducted for contingencies from past loss of income. The Defendant contends that a pre-morbid contingency of 20% should be applied in respect of future loss.

11.4 When the aforementioned contingencies, as suggested by the Plaintiff are applied, the following loss is calculated:

11.4.1 Past loss of income

R202,768

11.4.2 Future loss of income

R909,403.10

Total loss of income

R1,112,171.10

11.5 Applying the 20% deduction as suggested by Defendant's counsel gives a total loss of income of R1,058,676.80 . After deducting the 30% agreed apportionment against the Plaintiff the final loss of earnings figure is, according to the Plaintiff therefor R778,519. 77.

11.6 After deducting the agreed 30% apportionment from the total loss of income as suggested by the Defendant the final loss of earnings would be R741 ,073.76.

GENERAL DAMAGES:

12.

12.1 Plaintiff's counsel submitted that an amount of R1 200 000 is fair and reasonable in respect of general damages.

12.2 Defendant's counsel submitted that an amount R1 000 000 is fair and reasonable.

13.

13.1 In my view an amount of R1 000 000 is fair and reasonable for general damages subject to a 30% appointment.

13.2 In my view the correct percentage deductions for contingencies are suggested by the defendant.

These contingencies are standard and there is no reason to deviate

Accordingly, the loss of income is R778 519,77.

13.3 The parties gave me a draft order including provision for an Undertaking under section 17(4) (a) of the Road Accident Fund Act 56 of 1996 covering the agreed 70% of the Plaintiff's future medical expenses.

13.4 The draft also catered for costs, the creation of a trust and ancillary matters.

14.

Order:

An order is made in terms of the draft marked "X" .

Counsel for Plaintiff:

Adv SG Maritz

Counsel for Defendant:

Adv JG van den Berg

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/1289.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/dila-v-road-unknown-topic-agpphc-2017>

Prepared on 25 October 2026 · Esheria