

SOUTH AFRICA / JUDGMENT

# Disele v Road Accident Fund (53845/11) [2017] ZAGPPHC 677 (13 October 2017)

**[2017] ZAGPPHC 677****COURT**

North Gauteng High Court, Pretoria

**BEFORE**

N M Mavundla

**CASE / FILE NUMBER**

53845/11

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**Policy****IN****THE NORTH GAUTENG HIGH COURT, PRETORIA****[REPUBLIC****OF SOUTH AFRICA]****CASE****NUMBER: 53845/11****DATE:** 13/10/2017

In

**the matter between:**

DISELE

T

D PLAINTIFF

And

ROAD

ACCIDENT

FUND DEFENDANT

**JUDGMENT**

Mavundla, J.

[1] The plaintiff is an adult male born on [...] 1964 sued the defendant for damages he suffered as a result of the injuries

sustained in a motor vehicle accident which occurred on the 16 November 2007 when a motor vehicle with registration number [F...],

then and there driven by one C Mbodli, in which the plaintiff was a passenger, overturned at or around Hartebeesfontein.

[2] The plaintiff claimed for the alleged injuries he sustained, damages in an amount of R1, 626, 419. 00, which is computed as follows:

2.1 Estimated future medical costs an amount of R100 000. 00;

2.2 Estimated future loss of earning capacity R976 419 . 00;

2.3 Estimated general damages in an amount R500 000 . 00;

2.4 Past medical costs

R50 000. 00

Total

R1, 626, 419. 00

[3] Most of the issues have since been resolved and fallen off along the way as per settlement agreements made

**orders**

of the Court on the 25 November 2013 by Ledwaba DJP and by this Court on the 1 February 2017. The essence of these two orders was inter alia, that :

1. the defendant was 100% liable to the plaintiff's proven or agreed damage;s
2. the defendant is to pay the plaintiff 's attorneys the sum of R662 980. 75 in respect of general damages (R600 000. 00) and past medical and hospital expenses (R62 980.00);
3. the defendant to provide the section 17(4) (a) of Act 56 of 1996 undertaking in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplied goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 16 /11/ 07;

4. the defendant to pay all the costs the details of which are fully captured in the respective orders referred to herein above.
5. The only outstanding issue to be determined by this court is the future loss of earning capacity.
- [4] The outstanding issue is the loss of future earnings. To prove his claim in this regard, the plaintiff relied on, inter alia, his own evidence, that of Dr A C Strydom an industrial psychologist, various medico legal reports amongst which are of Dr Oelofse the Orthopaedic surgeon; Dr Pieter Repko a Neurosurgeon and Johan Sauer the actuaries & Consultants.
- [5] According to the plaintiff, prior to the accident, he worked at the mines but is working there as he was retrenched after the accident because his poor performance. Complaints against him were regularly submitted. He was away from work after the accident until 2008. He was reporting to one Mr Benedict Mkhathane until 2010, and got a promotion and reported to Van Heerden. Because of poor performance he was transferred to HR and removed from the group of Mokhatane. His salary was however not increased. He has been to so many specialists including Dr Strydom. When he was retrenched his supervisor was Van Heerde then. He was hospitalized from the date of the accident in November and discharged in December 2007 and readmitted in December 2008. He was retrenched as the result of being forgetful subsequent to the accident.
- [6] Dr Anna Cornelie Strydom, the industrial psychologist testified in her medico legal report and confirmed that she was appointed to evaluate the injuries of the plaintiff and the sequelae. She first interviewed the plaintiff while he was still employed at the mine in May 2013. Strydom subsequently saw him again on receiving further documentation that he has since been retrenched. According to the employer's documents the plaintiff had resigned from Ashanti mine. She further concluded during the second interview of the plaintiff that he was no longer employable in the open market and that he has total loss of income.
- [7] Under cross examination Strydom stated that she did not know of any reason of the plaintiff's retrenchment, but the employer was assisting in looking for another work for the plaintiff. In her final report compiled on 13 September 2015 that according to the employer there was a decline on scale of 7/10 on the part of the plaintiff. According to Benedict the plaintiff could still be promoted. She said that it was reasonable that there was a downward grading on performance on the part of the plaintiff. The plaintiff's salary did not increase after the accident although there was lateral movement on his part.
- [8] In her medico report Dr Strydom chronicles that the plaintiff was employed at Anglo Gold Mine under the control of Benedict

Mokhathane. The plaintiff regarded himself not suffering from any affliction or handicap. He did not have any restriction in performing his work. His affliction was that his concentration was poor after the accident. He had lost his sense of smell as a result of the accident. Strydom referred to Dr Oelofse's report which stated that plaintiff had a head injury which left him with

emotional symptoms and loss of smell. Injury of the Cervical Spine : severe tenderness in the middle of C3-T1. Severe tenderness in the paravertebral area on the left sides; severe muscle spasm in the neck as well as in trapezius muscles. Congenital Fusion of C5, C6 and C7. Lumbar spine; THERE IS ROTATION SCOLIOSIS; There is severe tenderness in middle of L3-S1. Severe tenderness over the S1-Joints There is severe tenderness in the paravertebral area on the left and right side of lumbar spine. There is severe muscle spasms in the back. Soft tissue injury with congenital deformity of the lumbar spine. According to the patient, the above impairment causes a 30% loss of productivity."

Further, according to Strydom, the plaintiff's premorbid salary per month was R5000.

00 + pension, medical, housing and overtime; calculated manually R60 000 per annum excluding housing allowance in this regard. His post morbid salary earnings were R140 904. 00 per annum. He was an underground assistant prior to the accident and after the accident a supervisor and time attendant. His basic earnings correlate with 83/ 4 levels of the PE Corporate Services Paterson grade.

[9] Dr Oelofse, the Orthopaedic surgeon in his medico legal report indicated that the plaintiff has medical. history of high blood

pressure for which he is on chronic medication, had an earlier accident at the mines relating to his index finger injury operation.

The plaintiff was taken from the scene of his motor vehicle accident to Kalafong hospital where he was admitted for one day and

transferred to the Wilmed Park Hospital and admitted for 3 weeks. X-ray was taken. He was on bed rest for 3 weeks and received no specific treatment; According to the MMF1 the plaintiff sustained intra cerebral bleeding; soft tissue injury to cervical spine and soft tissue injury to the lumbar spine. The current symptoms were that the plaintiff was complaining of severe gain in the cervical and lumbar area. He also has severe headaches and forgetfulness. He is aggressive and short tempered. He has painful and difficult rotation of the neck to the left side. He also has to slowly rotate his neck, especially to his left. Has difficulty in looking behind. He has a lumbar spine injury resulting in hi the plaintiff walking with difficulty, and in climbing stairs or handling heavy objects; difficulty in working with his knees flexed or extended. He cannot drive for long distances.

[10] The medico-legal report of Dr Pieter Repko a Neurosurgeon who interviewed the plaintiff on the 1/ 07 /

2013, stated, inter alia, that the plaintiff was admitted to hospital on 19-11-2007 at 22h00 as a transfer from Klerksdorp Hospital. On admission the Glasgow Coma Scale was registered as 12/ 15 and on admission lacerations to the head were already sutured. On admission the plaintiff was described as restless. The lacerations on admission were described as lacerations on the forehead on the right side and it was documented that both eyes were swollen and appeared red blue. There was also an injury to the right knee. On 22-11-2007 the plaintiff verbalized that he was

not suffering from pain but was described as disoriented. On 22-11-2007 he was described as difficult but not aggressive, although restless. On 26-11-2007 the plaintiff was discharged from hospital.

The neurosurgeon opined that the plaintiff suffered a serious head injury giving rise to cerebral haemorrhage and development of cerebral oedema and thus brain damage. The brain damage can firstly give rise to the development of post-traumatic epilepsy and although it has not appeared up to that stage it can develop at any time in his life. The possibility that it may do so must be considered at present between 3 and 5%. Should it develop the attack could be focal or generalised and they could be major or minor. No prediction can be made as far as this is concerned.

There is an indication that the plaintiff has a deterioration of his mental functions due to the brain damage. This can give rise to the problem in economic and social sphere. It was suggested that the plaintiff be referred to an industrial psychologist. The injuries sustained would have no influence on his life expectancy provided that he does not develop uncontrolled epilepsy.

[11] According to Johan Sauer, of the actuaries & Consultants, the loss of earnings of the plaintiff whose date of birth is [...] 1964: pre-morbid retirement age 65 and post

morbid 65; date of accident 2007 / 11/ 01. The plaintiff's actuarial report prepared by Mr Johan Sauer provided that the loss of income of the plaintiff, with deductions for general contingencies are as follows:

Had the accident not happened Now that accident happened the has Difference: Loss Past earnings 747 757 681548 66210 less contingency 37 388 34077 3310 deductions (5%/5%) 62900 Total loss of past 710 370 647 470 2396275 earnings 239627 Future earnings 2396275 0 less contingency 239627 deductions 0 (10%/24%) Total loss of future earnings 2156 647 0 2156647 Total loss of earnings

2219 54

[12] It is not in dispute that the plaintiff sustained a head injury. The defendant's Neurosurgeon, Dr I Martinus in his medico legal report confirmed he recorded that the plaintiff was diagnosed with post traumatic brain injury with possible temporal lobe epilepsy with emotional behavioural changes. The defendant did not through any evidence dispute that the plaintiff has since been retrenched.

[13] I take note of the fact that the plaintiff had a history of high blood pressure and on chronic medication prior to the accident. In as much as his retirement was packed at 65 years, there is always that possibility that because of his health he might not have reached that retirement age of 65. I also bear in mind the notorious fact that the plaintiff was employed in mining sector, where there is invariably high risk of industrial strikes and job losses. I also take note of the fact that according to Dr Pieter Repko, the plaintiff completed grade 10, with driver's licence and obtained a diploma in Human Resources from UNISA and trained as a disciplinary supervisory. I also take note of the fact that his employer was willing to

accommodate him in placing him in a supervisory function, and was also looking for another employment for him. With his qualifications in HR, in my view he would certainly find another employment, if not already so employed. I also take note of the medico legal report of Dr Strydom prepared on 17 October 2013 wherein she opined that "from an Orthopaedic point of view, it would seem that once Mr Disele underwent the suggested treatment, he be able to continue working until the normal retirement".

[14] In the matter of Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A) at 114D) the Appellate Court held that an 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 a crystal balls, soothsayers or oracles. All the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss'.

[15] In the result and in the exercise of my discretion, I am of the view that an award set out herein below would be fair and reasonable solatium for the plaintiff's future loss of earnings.

[16] In the result the following order is made:

1. That the defendant is ordered to pay the plaintiff an amount of R1, 200 000. 00 (one million and two hundred thousand rand) in respect of future loss of

earnings;

2. That the Defendant to pay the Plaintiff's taxed or agreed party and party costs, inclusive reasonable costs of obtaining all expert medico legal-, actuarial, and any other reports of expert nature which were furnished to the Defendant and or the reservation and attendance costs of such experts and those of Senior Junior Counsel . 8.3

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N. M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT : 13 / 10 /2017

APPLICANT'S ADV : ADV. Craig Cross

INSTRUCTED BY : JB GRIMBEEK VANZYL LE ROOX INC.

RESPONDENTS' ADV : ADV.

INSTRUCTED BY : TSEBANE MOLABA INC

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