

SOUTH AFRICA / JUDGMENT

Esitang v Road Accident Fund [2023] ZAGPPHC 328; 8336/2021 (31 March 2023)

[2023] ZAGPPHC 328

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

8336/2021

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

Source record

FLYNOTES:

ACTUARIAL – loss of income – Insufficient proof –
Age 21 at time of accident with manicure business
– Fracture
of clavicle and hip – Proof of income lacking –
Plaintiff might have to retire at the age of
60 years due to
injuries – No exact calculation of what the future loss may
be if she does obtain the certificate she
is studying for and she
is employed – Past loss of income dismissed – Court
making rough estimate for future
loss of income of R900,000.

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO. 8336/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER

JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 31/3/23

SIGNATURE:

In

the matter between: BOIKETLO
 PRUDENCE ESITANG
 APPLICANT
 AND
 ROAD
 ACCIDENT FUND
 RESPONDENT

JUDGMENT

MAKHOBHA J

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

collision that occurred on the 16th December 2018.

- 2) The merits of the matter have been settled between the parties 100% plus section 17 (4) (a) undertaking. The only issue raised by the plaintiff is general damages, past and future loss of income.

- 3) On the date of the trial, the defendant was not represented and the attempt to settle the matter did not yield any results except a concession on the merits and section 17(4)(a) undertaking.

- 4) The plaintiff testified that she was 21 years old at the time of the accident and was currently 25years old. She is currently studying at the Cape Peninsula University of technology for a diploma in journalism. At the time of the accident, she was a student at UNISA

studying for a two-year higher certificate.

- 5) In march 2018 She started a nail technician business after the accident she could not work in her business for three months. She returned to work in April 2019 but closed her business in July 2019 as the physical demands of her work was too much due to the injuries she sustained.

- 6) After the oral evidence by the plaintiff counsel addressed the court and asked for default judgement on the following:

Past loss of income R1562.75

Future loss of Income R1661 656 80

Total loss R1663219.55

General damages R700 000

Total

R2 363 219.55

7) The orthopaedic surgeon Dr DA Birrel records the following injuries Sustained by the plaintiff (case-lines 007-13)

7.1 Fracture of the right clavicle

7.2 Fracture of the left hip

She was discharged on the 28th December 2018' 29 January 2019 she was discharged from treatment.

8) Dr Birrel says in his conclusion that because of the hip injury she might have to retire at the age of 60 years.

9) The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.

10) It is indeed so that even though defendant is not represented in the proceedings the court cannot simply grant the order as requested, the court must see to it that the requested order is in accordance with justice.

11) It is trite law that the amount to be awarded in respect of general damages are within the courts discretion however the court is not bound but is guided by past awards in other similar matters.

12) Taking into account the cases referred to by counsel for the

Plaintiff in paragraph 10.6 of the heads of argument, I am of the view that the appropriate amount to be awarded to the plaintiff for general damages is an amount of R600 000.00 (six hundred thousand rands only)

13) The evaluation of the amount to be awarded for loss does not

Involve proof on a balance of probabilities. Where a court is dealing with damages which are depended upon uncertain future event, which is generally the case in claims for loss of earning capacity, the plaintiff does not have to provide proof on a balance of probabilities.

14) The parties routinely seek to assist the court in assessment of the amount payable and resort to the expertise of an actuary. This is not an obligatory approach to the quantification of damages and a court should be careful not to treat these reports as if they are scientific data.

15) It is trite that the onus rests on the plaintiff to prove her case on the balance of probabilities see Pillay V Krishna, 1946 SA 946. Thus the duty is on the plaintiff to produce evidence that because of the injury, she has suffered loss of income.

16) I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability.

- 17) I am of the view that the plaintiff failed to prove in this court that she had a business and she was earning a salary or income in her modelling career. I say this for the following reasons.

Nail/Manicure business

She only refers to photos of nail products and a bank statements of one or two amounts. There is no income and expenditure statement or tangible proof of income. There are no receipts as proof of paying for the products or receipt of monies from clients (See 005-14,12,13 on case-lines)

Modelling business

There is no proof of what she earned under this heading only an enrolment form with the SNYC Model management (See 005-11 on case-lines)

- 18) Thus therefore in my view the plaintiff failed in her duty to satisfy the court that she has lost any past or future loss of earnings as per the submissions of her counsel in the heads of argument.
- 19) However she is currently studying (See 005-9 on case-lines). The orthopaedic surgeon says she might have to retire at the age of 60 years. There is no exact calculation of what the future loss may be if she does obtain the certificate and she is employed. In my opinion the rough estimate for future loss of income is R900 000.00 (nine hundred thousand rands only)

- 20) I make the following order

20.1) The defendant is liable for 100% of the plaintiffs proven liability

20.2) The defendant shall pay the plaintiff an amount of R600 000(six hundred thousand rands only) for general damages.

20.3) Future medical expenses: undertaking section 17 (4)(9)

20.4) The defendant shall pay the plaintiff an amount of R900 000.00 (nine hundred thousand rand only) for future loss of income

20.5) The plaintiffs past loss of income is dismissed

20.6) Costs of suit

D. MAKHOB A

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiff: Adv Maryke van Rooyen Instructed by Savage Jooste & Adams For the

Defendant: Adv Instructed by: State Attorney Pheena Brenda Rangata

Date heard: 20/02/2023

Date delivered: 31/3/2023

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/2023/328.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/esitang-v-road-unknown-topic-agpphc-2023>

Prepared on 10 October 2026 · Esheria