

SOUTH AFRICA / JUDGMENT

Gauche v Road Accident Fund (38422/15)

[2025] ZAGPPHC 595 (30 May 2025)

[2025] ZAGPPHC 595**COURT**

North Gauteng High Court, Pretoria

BEFORE

P D Kekana

CASE / FILE NUMBER

38422/15

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 38422/15

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

30.05.2025

In the matters between: -

TEAGAN GAUCHE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KEKANA AJ

INTRODUCTION

- [1] This is a claim in which the plaintiff claims damages against the defendant. The Notice of Set Down for trial on 10 February 2025 was served on the defendant by hand delivery and by electronic means (e-mail) on 25 April 2023 and 26 April 2023, respectively. There was no appearance on the side of the defendant.
- [2] The issues for determination are twofold: first, whether the defendant is liable for the plaintiff's damages; and second, if liability is established, the quantification of the plaintiff's claim in respect of future medical expenses, past medical expenses, general damages and loss of earnings. The plaintiff seeks an order directing the defendant to compensate him for 100% of his proven damages.
- [3] The defendant did not admit the RAF 4 serious injury assessment of the plaintiff, consequently, the plaintiff requested that the issue of General Damages be postponed sine die.

RULE 38(2) APPLICATION

- [4] The Plaintiff brought an application that the evidence relating to the issues of liability and the extent of damages, in particular, the affidavits of the independent witnesses and that of the Plaintiff and the medico-legal reports of the medical experts and the actuarial report of the Actuary, be allowed by affidavit in terms of the provisions of Uniform Rule of Court 38(2). The court granted the application in respect of the medical experts and the actuary.

MERITS

- [5] The plaintiff testified and did not call any witnesses. He testified that on the 21st December 2013, he was the driver of a motor vehicle with registration letters and numbers S[...]. He was in the company of Caela Gauche and Zander Lombard. He was driving on Beacon Way Drive when a minibus taxi travelling in the opposite direction, encroached on his lane of travel. He swerved to the left to avoid a head-on collision. His vehicle went off the road, over a drop-off and landed upside down on its roof. He sustained serious injuries because of the accident and was treated for his injuries.
- [6] He testified that the collision was caused by the negligent driving of the driver of the taxi in that the driver of the taxi drove on the incorrect side of the road. There was nothing he could have done to avoid the collision. He had not been able to identify the vehicle or the driver of the taxi that caused the collision.
- [7] Plaintiff further testified that at the time of the collision, he was a 21-year-old amateur golfer. Pre-collision, he was expected to become a professional golfer with effect from April 2014. He had to take two years of recuperation after the motor vehicle collision and was obliged to withdraw from events owing to pain. He became a professional golfer and played professionally with effect from 2017. He discontinued his professional golfing career during September 2022, as he was unable to earn an income playing golf, owing to his collision-

related injuries and the sequelae thereof. He pursued an alternative career path in the maritime sector as a deckhand. He testified that at the time of the hearing, he was employed as a senior deckhand.

- [8] According to the hospital records, the plaintiff sustained a fracture dislocation of the cervical spine at the C3/C4 level as a result of the accident. He was transported by ambulance to the Plettenberg Bay Hospital, where he was stabilised at the casualty department and X-rays taken. He was thereafter transferred to Life Knysna Private Hospital, where an anterior C3-C4 decompression and instrumented fusion with plate and screws (bone graft taken from right hip) was performed on 21 December

2013. He was hospitalised and ultimately discharged with a hard neck collar.

- [9] The plaintiff bears the onus to prove that the RAF is liable to compensate him for damages suffered by him as a result of the injuries sustained in the collision. The accident report confirms the plaintiff's version regarding the date, the place and how the accident occurred. In the absence of any evidence to the contrary, I find that the plaintiff has proved on a balance of probabilities that the insured driver was the cause of the accident.

QUANTUM

- [10] The plaintiff's claims damages in the sum of R17 306 196.10 made up as follows:

Past medical and hospital expenses

R106 196.11

Future medical and hospital expenses

R200 000.00

Estimated loss of earnings

R15 000 000.00

General damages

R 2 000 000.00

R17 306 196.10

The plaintiff relied on the evidence of the below-mentioned experts and a summary of their evidence follows herein below.

ORTHOPAEDIC SURGEON - DR SENSKE

- [11] Dr Senske first examined the plaintiff on the 28 May 2018 and compiled his report. Dr Senske opined that the plaintiff's

symptoms will improve with successful conservative or surgical treatment. In his addendum following a subsequent evaluation on the 13 January 2022 Dr Senske maintained that successful conservative / surgical treatment will improve the plaintiff's productivity.

Dr Senske concluded that there will be no early retirement due to the orthopaedic injuries sustained in the accident.

PHYSIOTHERAPIST

- MS C STEENKAMP

[12] Ms Steenkamp opined that with successful treatment and rehabilitation, plaintiff's functional abilities should improve.

OPHTHALMOLOGIST

- DR VAN ZYL

[13] The plaintiff informed Dr Van Zyl that he had noted blind spots in the left eye soon after the accident. He sought care a few months later and saw an ophthalmologist at the Pretoria Eye Institute. After extensive testing, he was told that he most likely has an optic neuropathy and that recovery was unpredictable.

[14] Dr Van Zyl noted during examination that "the macula on the left showed paracentral (nasal) pigmentary changes with loss of the foveal reflex". Dr Van Zyl concluded that the plaintiff sustained no ophthalmological injury due to the accident. He also found that the plaintiff suffered from a refractive error (myopia and astigmatism which was not related to the accident. He stated that the plaintiff's whole person impairment score from an ophthalmological point of view is 0%.

[15] In the addendum report dated 30th January 2025, Dr Van Zyl stated that the plaintiff continued to play professional golf until September 2022. Further, the plaintiff stopped playing golf for reasons unrelated to his vision, and he has since been working on yachts.

[16] Regarding the blind spot in the left eye, Dr Van Zyl stated that it is 'most probably due to an injury involving the peri-foveal region secondary to the injury he sustained in the accident. He stated that the plaintiff's whole person impairment score from an ophthalmological point of view is 2%.

NEUROSURGEON – DR HOFMANN

[17] The plaintiff informed the neurosurgeon that he sustained a neck fracture and a bruised left arm. Dr Hofmann noted that there was no evidence of head injury. Dr Hofmann recorded the plaintiff's complaints as the blind spots in his left eye, headaches and neck pain. Dr Hofmann stated that there were no neurological symptoms.

[18] Dr Hofmann, noted that the plaintiff was prescribed Serdep, a drug used for anxiety disorder and Wellbutrin, an antidepressant. Dr Hofmann opined that the plaintiff was on the abovementioned medication, possibly as a result of the plaintiff taking Roaccutane,

a drug used for acne, which the plaintiff started taking at the age of 15.

[19] Dr Hofmann further noted that the plaintiff returned to playing golf in December 2014 and started playing competitively in

2015. He fell down the rankings after his accident, from the top 3 to number 14. Dr Hofmann stated that the plaintiff was playing golf well and had many touring options.

NEUROLOGIST

- DR MANESH PILLAY

[20] Dr Pillay compiled a report dated 9th October 2018. Dr Pillay recorded that the plaintiff was transferred from Plettenburg Hospital to Knysna Hospital on the 21st December 2013. He had a GCS of 15/15 and normal vitals. He was sent for an MRI. Further, he had no history of loss of consciousness or neurological deficits. Dr Pillay noted that no neurological impairments or complications were noted during admission at Life Knysna Hospital.

[21] Regarding the plaintiff's complaints at the time of assessment, Dr Pillay indicated that the plaintiff's memory was good and he had no cognitive complaints. Further that there had been no change in the plaintiff's mood, personality or behaviour. He had reduced vision in his left eye.

[22] Dr Pillay concluded that the plaintiff did not sustain a significant head injury based on the fact that he had no loss of consciousness,

amnesia or external head injury. It was Dr Pillay's opinion that the plaintiff had no objective cognitive, neuropsychiatric or physical neurological deficit as a result of his accident.

[23] Regarding the neurological effects of the accident, Dr Pillay stated that he does not foresee any loss of employment due to his neurological injuries.

OCCUPATIONAL THERAPIST - MS ML BUTLER

[24] Ms Butler evaluated the plaintiff on 04 April 2018. After considering Dr Pillay and Dr Hofmann's prognosis and the plaintiff's

residual capacity, Ms Butler recorded that the plaintiff has had excessive and successful physiotherapy, with no alteration to his current life other than a delay in reaching his goal of being number 1 golf player. She concluded that the plaintiff is not disabled from playing golf on a professional level, nor working in any physical capacity up to heavy range work.

[25] Ms Butler concluded that the plaintiff was suited to his pre-accident vocation from a physical, cognitive and psychological perspective with no pain or deficits reported.

OCCUPATIONAL THERAPIST - MS T GIDINI

[26] Ms Gidini prepared the plaintiff's addendum report dated 22 June 2022. She stated that "Should the pain be aggravated or his injury become degenerative, his functional capacity will deteriorate, and he is not expected to cope in employment that

requires frequent dynamic positions such as required in his current work. He would not be able to sustain frequent static and dynamic

postures to competitive standards required in his work and early retirement would be expected".

[27] Ms Gidini opined that the plaintiff is expected to experience difficulties with participating in his work with regard to "physical dysfunction, cognitive complaints, and psychosocial disturbances due to limitations found on assessment and those expressed".

CLINICAL PSYCHOLOGIST - FERREIRA TEIXEIRA

[28] Mr Teixeira noted that in 2015 the plaintiff was diagnosed with depression (post-accident) by a psychiatrist and was prescribed

anti-depressants Wellbutrin. The plaintiff indicated to Mr Teixeira that the accident may have been a contributing factor to his

depression.

INDUSTRIAL PSYCHOLOGIST - B GROBELAAR

[29] Ms B Grobelaar assessed the plaintiff during April 2018. She recorded that the plaintiff earned R3000 000 per annum as an amateur golfer between 2011 and 2014. He became a professional golfer from 2015, earning R30 000 per month (no proof available), as at November 2021 he was earning approximately R10 000 per month (per bank statements). She stated that the plaintiff was unable to participate on the PGA tour (a 12-month golfing season) owing to COVID-19 restrictions and have not been able to earn his entry ticket for such.

[30] She concluded that the plaintiff could have advanced to the level of a professional golfer with an equivalent high international ranking (probably PGA player Midpoint), she based this on the plaintiff's age, aspirations towards playing professional golf and ranking collateral provided by his coach.

PLASTIC AND RECONSTRUCTIVE SURGEON - PROF COETZEE

[31] Prof Coetzee noted a traverse scar on the right side of the neck, 70 x 10mm hypertrophic and pinkish in colour with alopecia and a traverse scar on the right side crista iliaca of the pelvis, 60 x 7mm hypertrophic, hyperpigmented. He stated that the plaintiff will require surgical revision of scar on the right side neck followed post-operative by an anti-scarring regimen and sunscreen protection for six months.

INDEPENDENT MEDICAL EXAMINER - DR ENGELBRECHT

[32] Dr Engelbrecht evaluated the plaintiff on the 03rd April 2018 and recorded the plaintiff's injuries as blunt head trauma, blind spots in the left eye and C3/C4 fracture dislocation.

He recorded the plaintiff's complaints as neck pain associated with tension-type headaches and loss of vision in his left eye. He recorded that the plaintiff had reached Maximum Medical Improvement.

THE LAW

[33] Section 17(1)(b) of the Road Accident Fund Act provides as follows:

“The Fund or an agent shall, subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.”

[34] It is trite that the plaintiff bears the onus to prove how the injuries have affected his earning capacity. The enquiry into damages for loss of earning capacity is, by its nature, speculative as stated in *Southern Assurance Association Ltd v Bailey* NO 1984 (1) SA 98 (A) at 113 G-H. Nicholas JA went on to state that: “All that the Court can do is make an estimate of the present value of the loss. It has open to it two possible approaches. One is for the judge to make a round estimate of an amount that seems to him to be fair and reasonable. This is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. There are cases where the assessment by the court is little more than an estimate; but even so, if it is certain that pecuniary losses has been suffered, the court is bound to award damages.”

INJURIES SUSTAINED

[35] There is a material difference in the medical records concerning the nature and extent of the injuries sustained by the plaintiff. The hospital records reflect that the plaintiff sustained a fracture-dislocation at the C3/C4 vertebral level and was treated accordingly. There is no reference to a head injury or eye injury in those records.

[36] Conversely, the RAF 4 Form compiled by Prof Engelbrecht refers to "blunt head trauma" and a "blind spot in the eye", while the physiotherapist, Ms Steenkamp, noted a "nerve injury to the eye". These discrepancies are unexplained. Notably, Dr Van Zyl initially recorded no ophthalmological injury as a result of the accident, after noting the blind spot, but later attributed a left visual field defect to the accident without furnishing any underlying rationale or assumptions.

[37] Regarding the head injury, Dr Pillay indicated that the plaintiff did not sustain a significant head injury based on the fact that he had no loss of consciousness, amnesia or external head injury. Dr Hoffman also stated that there was no evidence of a head injury.

[38] The role of the expert is to assist the court, and their evidence will be admissible when the court can receive 'appreciable'

help from that witness on a particular issue. See *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (AD) at 616H.

[39] In the absence of contemporaneous hospital documentation or corroborating evidence, and given the lack of consistent expert

opinion, I am not persuaded that the alleged eye or head injuries have been established on a balance of probabilities.

DEPRESSION

[40] The clinical psychologist assessed the plaintiff on 12 January 2022 and noted that the plaintiff was experiencing symptoms of depression and was prescribed Wellbutrin. The plaintiff reported to the clinical psychologist that the depression was possibly a result of the accident. The clinical psychologist did not provide an independent opinion regarding the cause of the depression. He merely recorded what the plaintiff told him.

[41] The neurosurgeon, Dr Hofmann, noted that the plaintiff was prescribed Serdep, a drug commonly used to treat anxiety disorders and Wellbutrin, an antidepressant. Dr Hofmann opined that the plaintiff was on the abovementioned medication, possibly as a result of the plaintiff taking Roaccutane,

a drug used for acne, which the plaintiff started taking at the age of 15. He stated that the side effects of Roaccutane were well known without mentioning them.

[42] Both Dr Hofmann and Dr Pillay confirmed that there was no neurological impairment. There is no medical evidence linking the

plaintiff's depression to the accident. On the contrary, the available medical evidence supports Dr Hoffmann's view that the depression more likely stems from the plaintiff's prolonged use of Roaccutane rather than from the accident.

FUTURE MEDICAL TREATMENT

- [43] According to Dr Senske, Prof Coetzee and Ms Schepers, the plaintiff will require future medical treatment for his neck injury in the form of anterior cervical fusion, surgical revision of the scar on the right side of the neck and physiotherapy.

DELAY IN TURNING PROFESSIONAL

- [44] The plaintiff testified that he was a 21-year-old amateur golfer at the time of the accident, ranked among the top four in South Africa. He claims that he was expected to become a professional golfer in
2014. He stated that the accident delayed his transition to professional status, which only materialised in 2017.
- [45] However, the evidence adduced does not support this timeline. The neurosurgeon, Dr Hofmann, recorded that the plaintiff resumed playing golf in 2014 and was competing professionally by 2015. The industrial psychologist and the Neurologist also recorded that the plaintiff started playing professionally in 2015.
- [46] Ms Steenkamp confirmed that the plaintiff reported no loss of income but rather a two-year delay in obtaining a European Tour Card. The evidence before the court is that at the time of the accident, he was playing golf but was not receiving an income. Ms Steenkamp stated that “According to Mr Gauche he did not lose any income but it took him 2 years to obtain his European Card and to become a professional golfer”.
- [47] The claim that the plaintiff’s professional career only commenced in 2017 is, therefore inconsistent with the medical and vocational evidence. Admittedly, the accident and recovery period may have caused some disruption to his golfing career, but the evidence does not establish that he suffered loss of income. Especially because the plaintiff was not receiving remuneration as an amateur golfer and started earning an income with effect from 2015.

LOSS OF EARNINGS/EARNING CAPACITY

- [48] The plaintiff alleges that he was compelled to retire from professional golf in 2022 due to persistent physical limitations

allegedly arising from the motor vehicle accident. As at the date of the hearing, he was employed as a Senior Deckhand. In support of his asserted loss of earnings and earning capacity, the plaintiff relied on the opinions of Mr Van Leeuwen and Mr Loxton regarding his career trajectory and earning potential.

- [49] Mr Van Leeuwen, who coached the plaintiff, stated that the plaintiff was on the brink of turning professional at the time of the accident and ranked among the top four amateur golfers in South Africa. He compared the plaintiff's potential to that of established

professionals such as Brandon Stone, Heyden Porteous, JC Ritchie, Jacques Kruiswijk, and Zander Lombard. He further opined that the plaintiff could have reached the level of Christiaan Bezuidenhout and earned in the region of R3 million per annum. According to him, the plaintiff's golfing performance was negatively impacted by a neck injury affecting his swing and a blind spot in his left eye affecting his short game. However, the court has already found that there is no objective medical evidence substantiating an eye injury caused by the accident. Accordingly, any opinion evidence based on the alleged visual impairment is inadmissible and must be disregarded.

Mr Loxton's evidence is that the plaintiff's sponsorships have been reduced from R100, 000 to R20, 000.

[50] Occupational therapist Ms Gidini, in a 2022 addendum report, opined that the plaintiff was likely to encounter difficulty in employment due to physical dysfunction, cognitive complaints, and psychosocial disturbances. She predicted that early retirement was foreseeable. However, her conclusions are contradicted by multiple sources. In 2018, Ms Butler, a fellow occupational therapist, found that the plaintiff was fit for his pre-accident vocation without any physical, cognitive, or psychological limitations. Her opinion aligns with that of Dr Senske, the orthopaedic surgeon, who stated that the plaintiff's symptoms would improve with conservative or surgical treatment and would not precipitate early retirement. Similar views were held by Ms Steenkamp (physiotherapist), Dr Pillay, Dr Hofmann, and Ms Grobbelaar.

[51] The SCA in MEC for Health and Social Development, Gauteng v MM obo OM

[2021] ZASCA 128 at para 17 reaffirmed that expert opinions must be properly reasoned and based on established facts. A bald opinion unsupported by verified data offers limited assistance to the court. In the present matter, Mr Van Leeuwen failed to provide objective documentation such as rankings, scores, or tournament achievements to support the plaintiff's alleged elite amateur status or future professional potential. Furthermore, he did not clarify how and when the plaintiff's injuries began to affect his performance.

[52] The neurologist recorded that the plaintiff resumed playing golf competitively in 2015 and noted that although his ranking dropped from number 3 to number 14, he was "playing golf well" and had "many touring options". The same expert noted no cognitive complaints, no personality or behavioural changes, and concluded that no employment loss was foreseen as a result of any neurological injury.

[53] Dr Van Zyl confirmed that the plaintiff ceased playing golf for reasons unrelated to the purported eye injury, which, in any event, has been found to be unproven.

[54] The suggestion by Mr Van Leeuwen that the plaintiff could have earned R3 million per annum is unsubstantiated, subjective, and of limited probative value. As Ms Grobbelaar correctly observed, the income of a professional golfer is inherently variable and dependent on numerous factors, including performance consistency, sponsorship availability,

international ranking, and qualifying criteria. It is not sufficient to assume that, because the plaintiff aspired to emulate a top-ranking golfer, he would have achieved comparable earnings.

[55] The plaintiff's post-accident work capacity has been assessed by various experts. Ms Butler classified the demands of a professional golfer as ranging from medium to very heavy physical exertion, and nonetheless concluded that the plaintiff remained suited for such work.

[56] The court further notes that the evidence of Mr Van Leeuwen and Mr Loxton was submitted via email and not through oral testimony. Their evidence was also not placed before the court in terms of Rule 38(2). As such, their opinions constitute inadmissible hearsay evidence and cannot be relied upon. In *Mathebula v RAF* [2006] ZAGPHC 261 at para 13, the court held that expert evidence must be based on facts established through admissible evidence during trial unless admitted or proven by competent witnesses. The failure to adduce oral evidence renders their opinions of no evidentiary weight.

[57] The industrial psychologist recorded that the plaintiff's inability to participate in tournaments was, at least in part, due to COVID-19 travel restrictions and the absence of a PGA Tour entry card. In a separate report, it was noted that the plaintiff discontinued professional golf due to financial constraints rather than physical disability.

[58] The orthopaedic surgeon, physiotherapist, neurosurgeon, and neurologist uniformly concluded that the plaintiff retained physical

and cognitive function equivalent to his pre-accident condition. Notably, the plaintiff resumed playing golf post-accident and turned professional in 2015. During his assessment in 2018, Dr Pillay noted that he was playing golf well and had many touring options.

[59] Dr Engelbrecht confirmed in 2018 that the plaintiff had reached Maximum Medical Improvement. Against this backdrop, Ms Gidini's

forecast of early retirement appears speculative and is inconsistent with the more reliable expert consensus.

CONCLUSION

[60] It is accepted that the plaintiff sustained a neck injury in the accident, which may have had some limited impact on his physical

condition. However, in light of the contradictions in the medical evidence, the lack of credible and admissible vocational expert

testimony, and the speculative nature of the asserted earnings potential, the plaintiff has failed to discharge the onus of proving,

on a balance of probabilities, that he suffered any quantifiable loss of earnings or diminution of earning capacity attributable to the accident.

In the result, I make the following order:

1. Application in terms of rule 38(2) is granted in respect of the medical expert reports and the actuary;
2. The defendant is liable for 100% of such damages as the plaintiff may be able to prove;
3. The issue of general damages is postponed sine die;
4. The issue of past medical expenses to be postponed sine die;
5. The plaintiff's claim for loss of earnings is dismissed;
6. The defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of the plaintiff in hospital or nursing home or treatment of or rendering of a service to the plaintiff or supply of goods to the plaintiff arising out of the collision that occurred on the 21 December 2013, after such costs have been incurred and upon proof thereof;
7. The defendant to pay costs on a party and party scale including costs of counsel.

P D KEKANA

ACTING JUDGE OF THE HIGH COURT

Heard on:

10 February 2025

Delivered on: 30 May 2025

Appearances:

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