

SOUTH AFRICA / JUDGMENT

Lee v RAF (5902/2015) [2017] ZAGPPHC 1070 (16 August 2017) [2017] ZAGPPHC 1070

COURT

North Gauteng High Court, Pretoria

BEFORE

Strijdom

CASE / FILE NUMBER

5902/2015

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

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 5902/2015

16/8/2017

(1) Reportable: No

(2) Of interest of other Judges: No

In the matter between:

LEE, FA PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

HEARD ON: 16/05/2017

JUDGMENT:

16/08/2017

STRIJDOM AJ

1. The Plaintiff is Frederick Antonie Lee, an adult male born on 24 September

1971. He instituted an action against the Defendant in terms of the Road Accident Fund Act, 56 of 1996, as amended (the "Act"), for damages as a result of injuries he sustained in a collision between his vehicle with registration number DHG 897 MP of which he was the driver and an unknown motor vehicle.

2. The merits have already been finalised in favour of the Plaintiff on the basis of 100% liability on Defendant's part.

3. Plaintiffs claim was quantified as follows:

3.1. Medical and hospital expenses R129,799.42

3.2. Future medical expenses - An Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.

3.3. Loss of earnings and/or earning capacity R4,810,522.00

3.4. General damages R900,000.00

4. The parties have settled Plaintiff's claim under the following heads of damages:

4.1. Past hospital and medical expenses;

4.2. Estimated future medical expenses - An undertaking in terms of Section 17(4)(a) of the Road Accident Fund At, 56 of 1996.

4.3. General damages

5. The only issues that remain for determination is the claim for future loss of earnings.

6. Regarding the determination of the outstanding issue it was agreed between the parties that reference would be made by both parties to the reports of the respective expert witness submitted as part of a bundle of documents filed into court. The Plaintiff tendered oral evidence regarding the expert witness Natalie Brink and the Plaintiff.

7. This claim arises from a motor vehicle accident which occurred on 10 July

2013 at the T-junction of N4 and the Machadodorp road between an unknown motor vehicle and the Plaintiff's vehicle.

SUMMARY OF ORAL EVIDENCE TENDERED BY THE PLAINTIFF:

8. Frederik Antonie Lee testified that he lost his job at Longtom Nissan as a direct consequence of the accident. He also testified that he could not cope with the job demands and that his recovery was taking too long. He later found employment at a previous employer.

9. He further testified about the commission that he would be able to earn as the regional manager at Longtom Nissan and Hundai. He stated that previous branch managers were able to achieve similar commissions. He himself has achieved the goal and earned commissions similar to what was offered to him by Longtom in his previous jobs as general

manager.

10. The Plaintiff also testified that in his new venture, he employs four people. His partner holds 30% of the business and also actively works in the workshop. His wife is responsible for doing the administration of the business and his son is an assistant. The assistant costs more or less R4,000,000.00 per month.
11. The Plaintiff testified that he started his business in August 2015 and that he now earns ±R15,000.00 per month.
12. He further testified that he can no longer do the heavy duty of the mechanical work and therefore would need an assistant. Had it not been for the accident, he would have saved the expense by doing the work himself.
13. Mr Lee was duly cross-examined by counsel for the Defendant, however, his credibility was not seriously contested.
14. The criticism against the Plaintiff is mostly levelled at the fact that he changed from jobs often. It was submitted by counsel for the Plaintiff that he always changed his job for a better proposition. I must agree with this submission.
15. His evidence is also corroborated by the experts that he can no longer do the heavy part of the mechanical work and therefore would need an assistant.
16. For me the Plaintiff was an extremely good witness. His evidence was simple and straight forward and his memory served him very well. I am satisfied that this witness is trustworthy and credible.

THE EVIDENCE OF NATALIE BRINK:

17. The witness testified as per her report (Annexure "F"). The credibility of this witness is not in dispute.
18. The Plaintiff agrees with the Defendant's Industrial Psychologist's conclusions and therefore no real disputes existed.
19. In a joint minute both Industrial Psychologists N Brink and C du Toit agree on the following:

PRE-ACCIDENT:

19.1. That Mr Lee was 41 years of age at the time of the accident in July 2013 and given his career history and that he had only just started in the job of Workshop Manager this is likely to have been his hierarchical career ceiling. His income is likely to have increased steadily, to the upper quartile earnings on Patterson C3 to be reached approximately age 50, with at least commensurate commission earnings. Based on collateral workplace feedback obtained from Mr Zeeman (Owner of Longtom Nissan,) the possibility clearly exists that Mr Lee may indeed have earned significantly higher commission in future.

19.2. They agree, regarding retirement, that he would in all probability have been able to continue working until age 65, which is the normal retirement age for employees of Longtom Nissan.

POST-ACCIDENT:

20. They agree on a loss of earning capacity.
21. Should Mr Lee wish to seek formal employment as a Service or Workshop Manager again he will have to compete with large numbers of unimpaired individuals for such employment and it is well-known that employers are generally hesitant to employ impaired individuals as opposed to non-impaired individuals. An individual that experiences pain and discomfort as well as suffering from a psychological perspective is at risk of experiencing fluctuating drive and motivation in work. It is further unlikely that he will be able to secure and maintain such employment in the open labour market again.
22. The Occupational Therapist (Ms Beukes) recommends the appointment of additional assistance of a qualified mechanic to execute the physical strenuous tasks on his behalf thus allowing him the opportunity to rather only supervise/manage his self-employment endeavour.
23. Physically, Dr De Graad is of the view that Mr Lee's earning capacity is now compromised. He will find it difficult to work where he need to stand and sit extensively or climb stairs.
24. Psychologically, Karen Adams reported that Mr Lee presented with symptoms characteristic of the presence of depression and adjustment difficulties. She concluded that the accident, the implications and consequences thereof, have detrimentally and to a pronounced degree impacted on all aspects of Mr Lee's life.
25. The general consensus of the experts was that the Plaintiff's level of efficiency has deteriorated significantly. Dr De Graad concluded that Mr Lee is excluded from more strenuous mechanical tasks. Reduced and

fluctuating earnings following the accident are probably also mainly accident related. At present, Mr Lee's physical constraints probably have an impact on his business.

26. The experts clearly expressed the view that Plaintiff was no longer performing on the same level as prior to the accident, his work capacity and career progression would definitely be affected.
27. The summary of the actuarial result are as follows:

SUMMARY OF RESULTS:

Past income Future income Total income Pre-morbid income R1,887,586 R9,281,022 R11,168,878
 Less contingencies R94,393 R1,392,153 R1,486,546 R1,793,463 R7,888,869 R9,682,332 Past-morbid
 income R847,447 R2,129,674 R2,977,121 Less contingencies R42,372 R638,902 R681,274 R805,075
 R1,490,772 R2,295,847 Loss of income R988,388 R6,398,097 R7,386,485 Capped loss of income
 R4,722,243

28. It was submitted by counsel for the Plaintiff that the court should apply a 15% contingency deduction pre-morbid and 30% post-morbid.

29. In *Goodal v President Insurance* 1978 (1)SA 389W at 392A and 393

Margo J states:

"In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part for the art of science of foretelling the future, so confidently practised by ancient prophets and soothsayers and by modern authors of a certain type of almanac, is not numbered among the qualifications for judicial office."

30. The fact is, there is no set formula in deciding these matters. Whatever deduction is finally made, it is a result of what can only be referred to as "an informed guestimate". It has to be informed inter alia by the expert reports but would ordinarily exclude "normal factors" such as liability for tax and life expectancy because such contingencies are included in actuarial calculation of the projected income.

31. The exercise would, however, include special factors such as inquiries and sequelae of injuries and functional impairment percentages or ratings. The latter, refers to consequences derived estimates that reflect the severity of the medical condition to perform common activities of daily living.

32. There is no consensus between Plaintiff and Defendant regarding contingency deductions. Whilst weighing their conflicting submissions the Court has to take cognisance of the views expressed in the expert reports, with particular reference to those of the Industrial Psychologists and the Actuary.

33. Bearing all the above factors in mind one has to try and construct a realistic picture of what is likely to happen in future especially with regard to the post-morbid scenarios.

34. In *Southern Association v Bailey* N.O. 1984

(1) SA 98 at 116G-117A

Nicholson JA held;

"Where the method of actuarial computation 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" (per Holmes JA in *Legal Assurance Co Ltd v Bates* 1963(1) SA 608 (A) at 614 F). One of the elements in exercising that discretion is the making of a discount for "contingencies"

or the "vicissitudes of life". These include such matters as the possibility that the plaintiff may in the result have less than a normal expectation of life and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See *Van Der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114-115. The rate of the discount cannot of course be assessed on any logical basis. The assessment must be largely arbitrary and must depend upon the Judge's impression of the case".

35. Having considered the various medico-legal reports and submissions made by counsel I am persuaded that:

35.1. A 15% pre-accident contingency be applied.

35.2. A 30 post-accident contingency be applied.

35.3. The total nett loss of R4,722,243.00 is awarded to Plaintiff.

36. In the result,

The Draft Order annexed hereto marked "X" is made an Order of Court.

JJ STRIJDOM

ACTING JUDGE OF THE HIGH COURT PRETORIA

DATE:

APPEARANCES:

Counsel for Plaintiff: Adv

M de Meyer

Attorney for Plaintiff: Oosthuizen

& Steyn

Counsel for Defendant: Adv

SM Tisani

Attorneys for Defendant: Rambevha

Morobane Attorneys

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 5902/2015

Before the Honourable Acting Judge Strijdom

On this the 16th of May 2017

FREDERIK ANTONIE LEE

Plaintiff

THE ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

HAVING HEARD COUNSEL FOR BOTH PARTIES, IT IS ORDERED:

1. The Defendant shall the Plaintiff the sum of R4,722,243.00 (Four million seven hundred and twenty-two thousand and two hundred and forty three rands) for loss of earnings.
2. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.5% per annum, calculated from the 15th calendar day after the date

of this Order to date of payment.

3. The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale, subject thereto that:

3.1. In the event that the costs are not agreed:

3.1.1. the Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

3.1.2. the Plaintiff shall allow the Defendant 14 (fourteen) Court days from date of allocator to make payment of the taxed costs.

3.1.3. should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the taxed or agreed costs from date of allocator to date of final payment.

3.2. such costs shall inter alia include, but is not limited to:

3.2.1. the costs incurred in obtaining payment of the amounts mentioned in paragraphs 1 and 2 above;

3.2.2. the costs of counsel, including counsel's charges in respect of her full day fees for 16, 17 and 18 May 2017, as well as reasonable preparation;

3.2.3. the cost to date of this order, which costs shall further include the costs of the attorney and the correspondent attorney which include necessary travelling costs and expenses (time and kilometers), preparation for trial and attendance at Court which shall include all costs previously reserved, reasonable costs of consulting with plaintiff to consider the offer, the cost incurred to accept the offer and make the offer an order of Court to the discretion of The Taxing Master;

3.2.4. the costs of all medico legal reports and actuarial calculations furnished to the Defendant and/or to the knowledge of the Defendant and/or its attorneys, as well as all reports/calculations in their possession and all reports/calculations contained in the Plaintiff s bundles;

3.2.5. the costs consequent to the Plaintiff s trial bundles and witness bundles, including the costs of 6 (six) copies thereof;

3.2.6. the costs of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the Plaintiff and the Defendant, including counsel's charges in respect thereof;

3.2.7. the costs of and consequent to compiling all minutes in respect of pre-trial conferences;

3.2.8. the costs and related expenses of the Plaintiff attending all medico legal examinations;

3.2.9. the preparation, reservation and appearance fees and related costs for Ms N Brink of PC Diedericks (IndustrialPsychologist);

3.2.10. the Plaintiff be declared a necessary witness and all the Plaintiff's reasonable expenses (traveling, accommodation and subsistence) to testify on 16 May 2017.

3.2.11. The costs of an interpreter, if any.

4. The amounts referred to in paragraphs 1, 2 and 3 will be paid to the

Plaintiff's attorneys, Oosthuizen & Steyn Attorneys, by direct transfer into their trust account, details of which are the following:

Name:

Oosthuizen & Steyn Attorneys Trust Acc

Bank:

Standard Bank

Account number: [...]

Branch code: 071445

Ref:

CN Oosthuizen/RG/LEE10/0001

BY ORDER OF THE COURT:

REGISTRAR

Counsel on behalf of Plaintiff: Adv. M. de Meyer

(083-228-6169)

On behalf of Defendant: Adv. Tisani (072-213-2300)

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/2017/1070.html>

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

Prepared on 23 October 2026 · Esheria