

SOUTH AFRICA / JUDGMENT

Mabelane v Road Accident Fund (86183/14) [2017] ZAGPPHC 295 (28 June 2017) [2017] ZAGPPHC 295

COURT

North Gauteng High Court, Pretoria

BEFORE

Malungana

CASE / FILE NUMBER

86183/14

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IN

THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC

OF SOUTH AFRICA]

CASE

NUMBER: 86183/14

Not

reportable

Not

of interest to other judges

Revised.

28

June 2017

In

the matter between

MABELANE :

ASINIA Plaintiff

And

ROAD

ACCIDENT

FUND Defendant

JUDGMENT**MALUNGANA AJ**

- [1] This is a third party claim instituted by Asinia Mabelani, a 37 years old female, against the Road Accident Fund in terms of the provisions of The Road Accident Fund Act 56 of 1996 as amended.
- [2] The claim arises out of the motor vehicle accident which occurred on 31 October 2011.
- [3] It is common cause that she sustained bodily injuries while she was being conveyed as a passenger in a motor vehicle which collided with another motor vehicle along the Penge-Burgersfort Road, Burgersfort.
- [4] For the reasons stated below it is not necessary for me to set out the circumstances surrounding the occurrence of the accident in question.

The Issues before the court

- [5] At the commencement of the proceedings, the parties indicated that the issue of merits and other sub-head of damages such general damages have been settled between the parties.
- [6] The only issue before me in this claim against the Road Accident Fund is the claim for loss of income. In this regard the parties agreed that no oral evidence was to be led and that the issues in dispute were to be determined by the court solely on documentary evidence filed of record.
- [7] In an attempt to narrow the issues the parties have agreed to provide me with the defendant's list of admissions. It is apposite for me to mention some relevant paragraphs contained in the defendant's admissions:

Defendant's Admissions

1. Plaintiff is unable to work.
2. Plaintiff's earning capacity :
 - 2.1 3 -4 days per week , May -September ;
 - 2.2 Picking oranges;
 - 2.3 R80.00 per day
- [8] In making his submissions counsel for the plaintiff relied on the actuarial calculations by Gerard Jacobson dated 26 August 2016[1] This report was filed on behalf of the plaintiff. He also relied on the defendant's admissions. The defendant did not file any report by an actuary.

[9] Evidently actuarial calculations were done based on the joint minutes compiled by the parties 'Industrial Psycholigists , Ms Vos (for the plaintiff) , and Ms Kheswa (for the defendant)[2]. Counsel for the plaintiff accepted the calculations done on the basis of the defendant's industrial's psychologist's opinion, save for the deduction based on the residual earnings capacity In the amount of R 108,718.[3] According to actuarial calculations the value of past income is R 97,841. The actuary applied a contingency deduction of 10% and that resulted in the net value of past income being R 88,057. The value of future income but f in R461,096. The value of income having regard to the accident is R 135,898, less 20% contingency results in the net value of R 108,718, having regard to the accident. Accordingly the Net Future Loss is R 352,378.

[10] Counsel for the plaintiff further submitted that in light of the admissions made by the defendant, in particular that the plaintiff

will not be able to work, there is no need for the deduction of R 108,718 as the said deduction was based on residual earning capacity

allegedly suffered by the plaintiff. The plaintiff contends that this deduction should fall away and plaintiff be compensated in full in this regard.

[11] Counsel for the defendant, on the other hand valiantly argued that the actuary should have taken into cognizance that the plaintiff is a seasonal farm labourer , and her loss of income should not have been calculated on an annual basis but on the assumption that she worked 70 days per year. Had the actuary considered that the plaintiff worked 70 days a year, this would have significantly reduced her loss of income as appears in the report.

[12] The point of departure is to determine the evidentiary material that is before this court as agreed between the parties. The defendant has not produced any evidentiary material in the form of actuarial calculations, and no oral evidence in support of its argument was led. In the absence of any reasonable explanation as to why the defendant elected to come to court and advance its case without the necessary evidence, this court will have to consider the evidence placed before it.

[13] There is no evidence placed before the court that the plaintiff worked 70 days per annum. Even if the court were to accept that this is a fact which falls within the range of ordinary persons usual experience In relation to how farm employees work, the defendant has not provided documentary evidence from which the court can determine the quantum of the plaintiffs loss of income based on its submission. It is so that when a court is called upon to exercise an arbitrary discretion that is largely based on speculated facts it must do so with circumspection. In the absence of contrary evidence in the form of expert reports I do not understand counsel for the defendant challenging the plaintiff's actuarial calculations. The caution was raised that the court should as far as possible stay away from a 'blind plunge Into the unknown ' or to entirely rely on 'guess work '. This case is a clear example of the court's refusal to embrace surmise.

See Southern Insurance Association Ltd v Bailey No 1984 (1) SA 98 (A) at 113H.

[14] For the reasons set out above, I agree with the plaintiffs counsel' submissions and reasoning insofar as it relates to the residual earning capacity deductions. The conclusion which I reach is that the plaintiff will not be able to work and accordingly her loss of income should be calculated as follows:

Pass loss

Value of Income but for accident R 97, 841

10% Contingency Deduction

R 9,784

Net Past Loss

R 88,057

Future loss

Value of Income but for the accident 576,370

20%Contingency Deduction

R 115,274

Net Future Loss

R 461,096

[15] Consequently, the following order is granted.

1. The defendant shall pay the plaintiff :

1.1 The sum of R 549 ,153,00 in respect of past and future loss of earnings;

1.2 Interests at the rate of 10,25% per annum from a date 14 (fourteen) days after date of judgment to date of payment ;

2. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996;

3. The defendant shall pay the plaintiff's taxed or agreed party and party costs.

P MALUNGANA

ACTING JUDGE OF THE HIGH COURT

DATE OF THE JUDGEMENT: 28 JULY 2017

PLAINTIFF'S COUNSEL: ADV IW MAKHUBO

Instructed By: MAFORI LESUFI INC

DEFENDANT'S COUNSEL: ADV H J STRAUSS

Instructed By: MARIVATE ATIORNEYS

[1] Page 60 of the suppl.index to plaintiff's expert bundle.

[2] Para.3 of G.Jacobson's report

[3] Page 5 of G.Jacobson's report.

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Prepared on 24 October 2026 · Esheria