

SOUTH AFRICA / JUDGMENT

Madonsela v Road Accident Fund (59223/2020) [2024] ZAGPPHC 1026 (8 October 2024) [2024] ZAGPPHC 1026

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

59223/2020

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THE

REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

HIGH COURT DIVISION, PRETORIA

Case

no: 59223/2020

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE:

8/10/2024

SIGNATURE

In

the matter between:

SIYABONGA

EXCELLENT MADONSELA

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

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 accident that occurred on 11 December 2018
- [2] The merits of the matter have been conceded between the parties 100% in favour of the plaintiff. The only issue before court by the plaintiff is future loss of income. The amount claimed is R 1 902 548.55.
- [3] On the date of trial, the defendant was not represented and attempt to settle the matter did not yield any results. Counsel for the plaintiff asked the court for default judgment in favour of the plaintiff. He addressed the court.
- [4] The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.
- [5] 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.
- [6] The evaluation of the amount to be awarded for loss does not involve proof on a balance of probabilities. It is a matter of estimation. Where a court is dealing with damages which are dependent upon uncertain future events, 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.
- [7] It is trite that the onus rests on the plaintiff to prove his case on 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, he has suffered loss of income.
- [8] 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.
- [9] The plaintiff at the time of the accident was unemployed, He was in Grade 11.
- [10] The prognosis by the orthopaedic surgeon is that the plaintiff “sustained soft tissue injuries to the left wrist and cervical spine which were treated conservatively. The soft tissue injuries have healed with residual pain. No future surgery is foreseen” (CaseLines 006 – 122).
- [11] The industrial psychologist says that the plaintiff “commenced working at Kwandeni Football Club as a defender in November 2020. He stated that he was earning a salary of approximately R 500.00 per week”.

[12] In my view the injuries sustained by the plaintiff are not serious enough to inhibit him from earning income in the future. This is supported also by the plaintiff's employment after the injuries he sustained.

[13] It is further my view that since the plaintiff was employed as a soccer player after his injuries, this confirms that he has completely healed.

[14] Again it is my view that the plaintiff failed to prove on balance of probabilities that he has suffered future loss of income.

[15] I make the following order:

15.1 The claim for future loss of income is dismissed.

15.2 Defendant to furnish to the plaintiff an undertaking in terms of Section 17(4)(a) of the RAF Act 56 of 1996.

15.3 General damages postponed sine die.

15.4 Defendant to pay plaintiff's cost including for 3 October 2024 on sale "A".

MAKHOB A J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 26 AUGUST 2024

JUDGMENT

HANDED DOWN ON: 08 OCTOBER 2024

Appearances:

For the Applicant: Adv L Maphlela (instructed by) Chuene Attorneys

For the Respondent: N/A

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