

SOUTH AFRICA / JUDGMENT

Mafisa v Road Accident Fund (3064/2018) [2021] ZAFSHC 269 (15 June 2021)

[2021] ZAFSHC 269

COURT

Free State High Court, Bloemfontein

BEFORE

NS Daniso

CASE / FILE NUMBER

3064/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: 3064/2018

In

the matter between:

T.
MAFISA
Plaintiff
and
ROAD
ACCIDENT FUND
Defendant
HEARD

ON:

11 & 12 MAY 2021

JUDGMENT

BY: DANISO, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 14H00 on 15 June 2021.

- [1] On 31 January 2016 the plaintiff was a passenger in a vehicle with registration numbers and letters [...] driven by L KHATOE when it lost control and collided with a tree. He sustained a fracture of the left upper arm, abrasions of the lower back and scalp lacerations. He was 29 years old at that time.
- [2] On 15 June 2018 the plaintiff issued summons against the defendant for damages the plaintiff sustained as a result of being injured in the said collision. In the particulars of claim (as amended) the plaintiff claimed an amount of R2 387 568.00 made up as follows:

2.1. Past medical and hospital expenses: R5 000.00

2.2. Estimated future medical treatment: R45 000.00

2.3. Past loss of income:

R206 739.00

2.4. Estimated future loss of income:

R1 330 829.00

2.5. General damages:

R800 000.00

- [3] Messrs Maduba Attorneys defended the claim on behalf of the defendant, they however withdrew as attorneys of record on 25 September 2020 pursuant to the defendant's termination of the mandate of all their panel attorneys. The matter was ultimately enrolled for trial in respect of both the merits and quantum on 11 and 12 May 2021.
- [4] On the first day of the trial, I was requested to stand the matter down till the next day pending the receipt of the defendant's signed settlement offer.
- [5] On the next day the plaintiff's counsel stated that the matter has been settled between the parties and handed in a draft order (marked as "X"). In terms of the said draft order the defendant conceded merits 100% in favour of the plaintiff. With regard to quantum, the defendant tendered to provide the plaintiff with an undertaking for future medical costs in terms of section 17(4) (a) Road Accident Fund[1] and to pay the plaintiff R350 000.00 general damages, R1 302 715.70 for loss of earnings and interest and costs.

- [6] Upon the examination of the draft order I was satisfied that the award of damages tendered by the defendant is commensurate to the loss suffered by the plaintiff, except for the loss in respect of earnings. The circumstances under which the defendant made the tender to settle the damages herein[2] were not clear as there was no adequate proof that the plaintiff was employed pre-accident.
- [7] No oral evidence was led. The plaintiff relied on the Actuarial report by Mr Sauer to quantify the amounts R206 739.00 and R1 330 829.00 respectively. The calculations are based on the Industrial Psychologist's report which I find not to be persuasive under these circumstances. It is alleged that during the period 2013 to 2016 the plaintiff was self-employed in his own construction business earning about R2 500.00 per month. Inexplicably, it is also stated that towards the end of 2015 the plaintiff's business was not making enough money, the income was not constant as a result he started looking for work at various construction sites.
- [8] It does not end there, the damages claimed by the plaintiff herein are not even pleaded. At paragraph 6 of the plaintiff's particulars of claim the plaintiff merely alleged: "As a result of the injuries which the plaintiff sustained in the aforementioned accident, he suffers inter alia the following sequelae: ...May have a loss of earnings /earning capacity in future."
- [9] It is trite that no damages can be recovered for actual loss sustained unless it is alleged and proved that such loss is the necessary consequence and direct result of the injuries sustained by the plaintiff.[3] On the available evidence it can therefore not be said that the plaintiff's evidence has established on a balance of probabilities that pursuant to the injuries, the plaintiff has sustained damages in respect of both the past and future loss of earnings.
- [10] I accordingly find that the defendant's tender to settle the plaintiff's claim for loss of earnings on these terms is not justified.
- [11] In the result I make the following order:
- (1) The draft order annexed hereto as annexure "X" is made an order of court with the following amendments:

"1.2. The defendant shall pay the Plaintiff the sum of R350 000.00 (THREE HUNDRED AND FIFTY THOUSAND RAND) for general damages.

1.3. The defendant shall pay the amount of R350 000.00 (THREE HUNDRED AND FIFTY THOUSAND RAND) into the plaintiff's trust account."

NS DANISO, J

APPEARANCES:

Counsel on behalf of the plaintiff: Adv. NJ Potgieter

Instructed by:

VZLR Inc.

C/O DU PLOOY ATTORNEYS

BLOEMFONTEIN

Counsel on behalf of the defendant: No appearances

Instructed by:

[1] Act No. 56 of 1996

[2] Exhibit “A” is a copy of the defendant’s written tender and Exhibit “B” is a confirmation that the Draft Order can be made an order of court.

[3] Beck’s Theory and Principles of Pleadings in Civil Actions, 6th ed, pages 64 -66.

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Prepared on 23 October 2026 · Esheria