

SOUTH AFRICA / JUDGMENT

Ngcobo v Road Accident Fund (20240/18) [2021] ZAGPPHC 588 (14 September 2021)

[2021] ZAGPPHC 588**COURT**

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

20240/18

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****(1)****REPORTABLE: NO/YES****(2)****OF INTEREST TO OTHER****JUDGES: NO/YES****(3)****REVISED. NO/YES****14****SEPTEMBER 2021****Case****Number: 20240/18****In**

the matter between: SITHEMBISO
 MARTIN
 NGCOBO
 Plaintiff
 And
 ROAD
 ACCIDENT
 FUND
 Defendant

JUDGMENT

MAKHOBHA J

1. The plaintiff instituted an action for damages suffered as a result of injuries sustained in a motor vehicle accident on the 17th October 2015.
 2. The merits of the matter have been settled between the parties 100% in favour of the plaintiff. The defendant was not represented on the date of trial and the attempt to settle the matter did not yield any results. On behalf of the plaintiff counsel asked for the plea to be struck out and to proceed asking for default judgment. The application was granted. Matter proceeded via video link no oral evidence was led.
 3. Counsel addressed the court and referred the court to her heads of argument I was asked to decide the matter on the basis of the papers before me.
 4. The plaintiff is only claiming for an undertaking limited to 90% in terms of section 17 (4) (a) of Act 56 of 1996 and loss of earnings and earning capacity.
 5. The plaintiff filed the following medico-legal reports of the following experts
 - 5.1 Dr H. Senseke- Orthopaedic surgeon
 - 5.2 A. Ndabambi (Bester Putter)- Occupational therapist
 - 5.3 J. White –Industrial Psychologist
 - 5.4 K.Pretorious – Actuary
 - 5.5 Dr O.J Kruger- Dentist
 - 5.6 Dr J.M Steyn- Neurosurgeon
 - 5.7 L.Prinsloo- Neuropsychologist
- There are no reports on behalf of the defendant.

6. According to hospital records the plaintiff was admitted one night and discharged. On page 24 of the report the doctor says “The patient’s symptoms will improve with successful conservative treatment. This will improve the patient’s productivity” par 11.3 the doctor says “there will be no early retirement due to the orthopaedic injuries sustained in the accident”
7. The plaintiff resigned from his employment due to a salary dispute. He is currently with his in-service training of which the practical

training comes to an end in January 2022. The plaintiff is in a process of obtaining a N6 public management Diploma which he began in

2018. He is in a process of completing this theoretical aspect of this qualification.

8. The industrial psychologist Ms White suggested that the plaintiff be compensated from one week after the accident until December 2017.
9. Contingencies protect the individual from consequences that come as a result of motor vehicle collisions. The locus classicus with regard to contingencies is the judgment of Nicholas JA at 116-117 of the decision in Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) the court said “where the method of actuarial calculations 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”. Zulman JA, with reference to various authorities including Southern Assurance decision, said the following in Road Accident Fund v Guedes (611/04) [2006] SCA 18 RSA “The calculation of the quantum of the future amount, such as loss of earning capacity, is not as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, southern insurance Association Ltd v Bailey NO) courts have adopted the approach that, in order to assist in such calculation, amount to be awarded as compensation and the figure arrived at depends on the Judge’s view of what is fair”.

10. In De Jongh v Du Pisane 2004 5 QOD J2-103 (SCA) the plaintiff was 35 years old at the time of the collision. The Supreme Court of Appeal found that contingency factors cannot be determined with mathematical precision. The court found further that contingency deductions are discretionary. The court confirmed 10% (ten percent) contingency deduction applied by the trial court.
11. In Van der Plaats v South African Mutual Fire and General Insurance Company Limited 1980 (3) SA 105 (A). The Plaintiff was 33 years old at the time of the collision 10% (ten percent) contingency deduction was applied.
12. In Southern Insurance Limited v Bailey NO 1984 (1) SA 98. The injured person was 2 (two) years old at the time collision 25% contingency deduction was applied.

13. In this matter before me the plaintiff a 31-year-old was 25 years old at the time of the collision he resigned from his employment due to a salary dispute not because of physical disability due to the motor vehicle accident. He was not admitted to hospital and did not sustain serious injuries. He is was studying and about to complete his studies.
14. Dr Senske opines that the plaintiff's symptoms will improve with treatment. It is evident from the expert reports that indeed the plaintiff was not seriously injured and he is still young and employable.
15. In my view the fair and reasonable amount in regard to loss of earnings capacity in the circumstances is R 400 000 (three hundred thousand rands only).

In the premises, the following order is made:

MERITS:

The defendant is ordered to pay the plaintiff 100% of his proven damages.

CAPITAL:

16.1 The defendant is ordered to pay the plaintiff the amount of R 400 000.00(four hundred thousand rand only), (hereinafter referred to as the "Capital"), in full and final settlement of delictual damages arising from injuries the plaintiff sustained in a motor vehicle accident which occurred on 17 October 2015, which amount is computed as follows:

CLAIM

AMOUNT

Past and Future Loss of earnings

R400 000

Total

R400 000

16.2 The Plaintiff's capital amount is payable by Defendant to the Plaintiff within 180 [ONE HUNDRED AND EIGHTY] days of date of this order by depositing same into Plaintiff's attorneys of record's trust account, the details of which are as follows:

ACCOUNT HOLDER :MACROBERT INC

BANK

:STANDARD BANK

TYPE OF ACCOUNT :TRUST

ACCOUNT NUMBER :[....]

BRANCH

:PRETORIA

BRANCH CODE :01-00-45

REFERENCE :M BROOKES/00017560

LINK

:4200717

CLAIM NUMBER :560/12417623/1032/1

INTEREST:

17.1 Subject to paragraph 3.2 below, the defendant will not be liable for interest on the outstanding capital amounts for the Plaintiff;

17.2 Should the defendant fail to make payment of the plaintiff's capital amount within 180 [ONE HUNDRED AND EIGHTY] days of this order, the defendant will be liable for interest on the amount due to the plaintiff at a rate of 7.00% per annum as from date of order until date of final payment.

COSTS:

The Defendant is ordered to pay the plaintiff's taxed or agreed party ad party costs on High Court Scale, which costs will include, but will not be limited to, the following:

18.1 The costs of all experts reports, medico-legal reports, addendum medico-legal reports, and combined joint reports, RAF4 Serious Injury Assessment Report(s) and radiology reports of all experts of whom notice has been given and/or whose reports have been furnished to the defendant and/or its attorneys and/or its attorneys as well as all reports in their possession and/or contained in the plaintiff's expert bundle. This shall include the following experts of whom notice been given, namely:

18.1.1.1 Dr H. Senseke- Orthopaedic Surgeon

18.1.1.2 Angel Ndabambi (Bester Putter)- Occupational Therapist;

18.1.1.3 Jabene White –Industrial Psychologist;

18.1.1.4 Kobus .Pretorius (Prima Actuaries) Actuary;

18.1.1.5 Dr O.J Kruger- Dentist;

18.1.1.6 Dr Jacobus M Steyn- Neurosurgeon and

18.1.1.7 Liza Prinsloo- Neuropsychologist

19. The reasonable fees for the plaintiff's senior-junior counsel in respect of preparation, pre-trial conference(s), drafting heads of argument and a day fee for 18 August 2021.

19.1 The reasonable fees in respect of preparation, pre-trial conference(s), and an attendance fee in respect of judicial case manage conferences for purposes obtaining and securing trial dates herein;

19.2 The reasonable travelling, subsistence and transportation costs including e-toll fees incurred by and on behalf of plaintiff for attending all the medico-legal examinations arranged on behalf of the plaintiff and defendant;

19.3 The costs of holding all pre-trial conferences, as well as roundtable meetings between the legal representatives for both the plaintiff and the defendant;

19.4 The costs of and consequences to compiling all minutes in respect of pre-trial conferences;

TAXATION:

20.1 Plaintiff is ordered to serve the notice of taxation of plaintiff's party and party bill of costs on defendant's attorneys of record;

20.2 The defendant is ordered to pay the plaintiff's taxed and or/agreed party and party costs within 180 (ONE HUNDRED AND EIGHTY) days from the date upon which the accounts are taxed by the taxing master and/or agreed between the parties;

20.3 Should the defendant fail to make payment of the party and party costs within 180 (ONE HUNDRED AND EIGHTY) days after service of the taxed accounts in the defendant's attorneys of record, defendant will be liable for interest on the amount due to the plaintiff at a rate of 7.00% per annum as from the date of taxation to date of final payment.

UNDERTAKING;

The Defendant is ordered to deliver to the plaintiff, within reasonable time, an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act, Act 56 of 1996, wherein the defendant undertakes to pay to 90% of the plaintiff cost of future accommodation in a hospital and/or a nursing home and/or treatment of, and/or rendering of a service and/or supplying of goods to the plaintiff pursuant to the injuries he sustained in a motor vehicle accident which occurred on 17 October 2015, after the costs have been incurred and on proof thereof.

CONTINGENCY FEE AREEMENTS:

The plaintiff and the plaintiff's attorneys of record did not enter into any contingency fee agreement.

D MAKHOB A

JUDGE OF THE GAUTENG DIVISION PRETORIA

APPEARANCES:

For the plaintiff: Advocate D Gianni

Instructed by:

MacRobers Attorneys

For the defendants: No-appearance

Instructed by:

Road Accident Fund

Date heard:

18 August 2021

Date of Judgment: 14 September 2021

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