

SOUTH AFRICA / JUDGMENT

Phiri v The Road Accident Fund (6521/2022) [2024] ZAGPJHC 1312 (19 November 2024)

[2024] ZAGPJHC 1312**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Weideman

CASE / FILE NUMBER

6521/2022

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Source record**IN THE HIGH COURT****OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NO: 6521/2022****DATE:**

19-11-2024

(1)

REPORTABLE: YES / NO.

(2)

OF INTEREST TO OTHER JUDGES: YES / NO.

(3)

REVISED.

In

the matter between

PHIRI,

ANNA

Plaintiff

and

THE ROAD ACCIDENT

FUND

Defendant

JUDGMENT

WEIDEMAN, AJ: This matter was number 19 on the roll for the week of 8 October 2024.

Counsel commenced by moving an application in terms of Rule 38(2) and which was granted.

Plaintiff was born on 27 May 1978 and the accident from which the claim arose occurred on 30 April 2021 in Wadeville, Germiston. All issues were in dispute.

Negligence:

There is in essence only two documents available and in terms of which negligence may be considered. The first is the plaintiff's statutory affidavit. Her version of events as uplifted from paragraph 3 of her affidavit, reads as follows:

"I was crossing the road when a motor vehicle with registration number PYP336GP then and there driven by one van Eeden, approaching at high speed and knocked me down."

The difficulty with this version is that the only fact that could be extracted is that both the plaintiff and the insured driver were on the road at the same time and at the same point.

If one seeks more detail, the versions contained in the OAR must be considered. Here, the driver's version was:

"On his way to work when a female pedestrian just entered the roadway without observing, with the intention to cross the road..."

The directions indicated by the driver suggested that the pedestrian entered from the left-hand side, looking at it from the driver's perspective.

The plaintiff stated:

"The pedestrian alleged that she was knocked down by a vehicle A as she was crossing the road from north to south direction."

This is the same direction as the driver.

With the pedestrian entering from the driver's left-hand side, the opportunity for the driver is much less to avoid the accident, than if the pedestrian crossed from his right and in which case he would have been able to observe the pedestrian for a far longer period of time.

Having considered the limited facts that are available, the apportionment between the plaintiff and the insured driver will be on the basis that the defendant will be liable for 40 percent of such damages as the plaintiff may be able to substantiate, that is 60/40 against the plaintiff.

Quantum:

The injuries as recorded in the particulars of claim consist of the following:

A fracture of the proximal left fibula,

An injury to the left knee,

Injury to the left shoulder.

The only aspect of quantum that is relevant for the purpose of this judgment is the claim for loss of income.

The plaintiff is still employed at the same company in the same position as she was before the accident and there is no indication from the documentation available to the Court that her position is at risk. There is therefore no direct future loss of income, as she is in the same position as she was before the accident. However, one cannot think away the injuries and they have and will in future have an effect on the plaintiff's ability to retain her position. Should she, for whatever reason, have to re - enter the labour market, then she will have some disadvantages.

Having considered all the expert evidence available, the Court awards the plaintiff the sum of R130 000 for impairment of earning

capacity. This amount is pre the apportionment on liability.

The net amount after applying the apportionment on liability will be R52 000.

The order is thus as follows:

1. The aspect of negligence is resolved on the basis that the defendant shall be liable for 40 percent of such damages as the plaintiff may be able to substantiate;
2. The defendant shall pay the plaintiff the amount of R52 000 in respect of loss of earning capacity;
3. The plaintiff is awarded her party and party costs as taxed or agreed.

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE:

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