

SOUTH AFRICA / JUDGMENT

Stander J v Road Accident Fund (12419/2016) [2017] ZAGPPHC 480 (7 August 2017) [2017] ZAGPPHC 480

COURT

North Gauteng High Court, Pretoria

BEFORE

JJ Strijdom

CASE / FILE NUMBER

12419/2016

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 12419/2016

DATE: 7/8/17

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

In the matter between:

STANDER,J PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT:

STRIJDOM AJ

1. The Plaintiff is Jaco Stander, an adult male, born on 24 June 1994. He instituted an action against the Defendant in terms of the Road Accident Fund Act, Act 56 of 1996 (the "Act") for damages as a result of injuries he sustained arising out of the driving of a motor vehicle driven by one C Lubbe in which the Plaintiff was a passenger.

2. The merits have already been finalised in favour of the Plaintiff on the basis of 100 percent liability on Defendant's part.

3. Plaintiffs claim was quantified as follows:

3.1. Past hospital expenses:

R300,000.00

3.2. Estimated future medical expenses:

R250,000.00

3.3. Past loss of earnings:

R9,000.00

3.4. Estimated future loss of earnings:

R2,430,000.00

3.5. General damages:

R500,000.00

4. The parties have settled Plaintiffs claim under the following heads of damages:

4.1. Defendant is liable to the Plaintiff for 100% of the Plaintiff's proven damages.

4.2. General damages:

R400,000.00

4.3. Estimated future medical expenses. An undertaking in terms of Section 17(4)(a) of the Act.

5. The only issue that remain for determination are the claim for future loss of earnings.

6. Regarding the determination of the outstanding issues it was agreed between the parties that reference would be made by both parties to the reports of the respective expert witness submitted as part of a bundle of documents

filed into court. No oral evidence was tendered regarding any of the expert witnesses.

7. This claim arises from a motor vehicle accident which occurred on 28 February 2014 on the R380 Kathu Hotazel road, near Sishen, Northern Cape.

8. The following expert reports were obtained by the Plaintiff:

8.1. Dr. Barlin (Orthopaedic Surgeon);

8.2. Dr. Naidoo (Psychiatrist)

8.3. Dr. Berkowitz (Plastic Surgeon);

8.4. K Naidoo (Occupational Therapist);

8.5. E Rossouw (Industrial Psychologist);

8.6. I Kramer (Actuary).

The following expert reports were obtained by the Defendant:

8.7. M Seleke (Occupational Therapist);

8.8. B Lekhuleng (Industrial Psychologist);

8.9. W Loots (Actuary).

9. The Plaintiff was 19 years old when the accident occurred and from a synopsis of the reports of the experts he suffered the following

injuries: T12 unstable compression fracture, L1 fracture, psychological sequelae and scarring on his back.

10. He was admitted at Glynnwood Clinic where he underwent a posterior T10 L2 fusion employing instrumentation.

11. Prior to the accident Plaintiff had no notable injuries or complaints but the general consensus of the experts was that his level of efficiency had deteriorated.

12. At the time of the accident he was working as a site manager. His work as a site manager involve driving for long distances. He is currently working as a machine operator at Maizey Plastic Company. His work as a machine operator involves standing for prolonged period.

13. According to the experts Dr. Barlin and Naidoo the Plaintiff is now unable to meet the full demands of his current employment without assistance. Ms Naidoo opined that he is unable to perform work duties that extend above the medium physical demand. Furthermore he is illsuited for occupations of heavy physical demand, as well as activities requiring stooping and forward bending on occasional basis. The restriction to work that conforms to the light physical demand category poses a severe limitation on the Plaintiffs future career choices.

14. The Industrial Psychologists reiterates the view that the Plaintiff was no longer performing on the same level as prior to the accident. Dr. Sekele and Ms Naidoo opine that the Plaintiff is unable to meet the full demands of his current employment without assistance.

15. Mr Louise Schubert, an Industrial Psychologist, concluded that the

accident has been a setback on the Plaintiff's career, which will impact negatively on his future career progression. He is illsuited

for occupations of heavy physical demand, as well as activities requiring stooping and forward bending on occasional basis. The

restriction to work that conforms to the light physical demand category poses a severe limitation on the Plaintiff's future career choices.

16. In a joint minute both Occupational Therapists agree that the Plaintiff would be unable to meet the full demands of his occupation

without the assistance of his colleagues and that his persistent limitations might make it difficult for him to compete on all equal footing with his peers in the open labour market and may limit the progression of his career path.

17. In a joint minute both Industrial Psychologists agree that the Plaintiff recuperated at home for approximately six months and

returned to work towards the end of August 2014. He received his basic salary up until the end of August 2014, but he had been

subjected to a loss in overtime for the period of recuperation. They agree that the Plaintiff curtailed prospects to continue follow a career in any physically demanding work environment, will most likely cause a delay in his career progression.

With regard to the post accident contingencies working in a position he is unsuited for would increase his risk of under performance resulting in lower incentives, missed promotions and possible job loss over the span of his work life (retirement age 65).

18.

In *Goodal v President Insurance* 1978 (1) SA 389 W at 392A to 393 Margo J states:

"In the assessment of a proper allowance for contingencies, arbitration considerations must inevitably play a part for the art or science of foretelling the future, so confidently practiced by ancient prophets and soothsayers and by modern authors of a certain type of almanac, is not numbered among the qualifications for judicial office"

19. The fact is, there is no set formula in deciding these matters. Whatever deduction is finally made, it is a result of what can only be referred to as "an informed guestimate". It has to be informed inter alia by the expert reports but would ordinarily exclude "normal factors" such as liability for tax and life expectancy because such contingencies are included in actuarial calculations for the projected income.

20.

The actuary Mr Kramer has calculate a 15% contingency preaccident and a 30% post accident.

SUMMARY OF RESULTS: Future loss: Having regard to the accident Basis 1 Basis 2 No diploma
Diploma Net prospective loss R1,273,806 R1,888,464 Total loss of income R1,273,806 R1,888,464

21. The loss shown above takes into account the contingency deductions.

22. The summary of the actuary Wim Loots are as follows:

Scenario 1 Career ceiling at C1/C2

Loss of future income having regard to accident

139,342

Scenario 2 Career ceiling at C4

Loss of future income having regard to accident

232,313

23. Defendant's counsel submits that the contingency on pre and post accident should be the same and that the loss of income should be based on the scenario 1 in that it is unlikely that the Plaintiff would obtained a diploma.
24. There is no consensus between Plaintiff and Defendant regarding contingency deductions. Whilst weighing their conflicting

submissions

the court has to take cognisance of the views expressed in the expert reports, with particular reference to those of the Industrial Psychologists and the actuary for Plaintiff and Defendant.

25. Bearing all the above factors in mind one has to try and construct a realistic picture of what is likely to happen in future especially with regard to the postmortem scenario.
26. The approach which a court should adopt is found in a judgment by Nicolas AJA in Southern Insurance Association v Bailey N.O. 1984 (1) SA 98 at 113G to 114A in which he stated as follows:

"It has open to it two possible approaches. One is for a Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumption and they may vary from the strongly to probable to the speculative. It is manifest that either approach involves guesswork to greater or lesser extent. But the court cannot for this reason adopt a non possumus attitude and make no reward."

27. Upon consideration of the educational attainments of the Plaintiff's family, it was noted by the Industrial Psychologist (Louise Slabbert) that the majority of the Plaintiff's family members had completed a diploma which suggests that the family places a high value on education and may have motivated the Plaintiff to complete further studies. However the Plaintiff possesses a grade 12 level of education and has not engaged in any further academic pursuits following his exit from the schooling system.

28. Having considered the various medicolegal reports, the different legal approaches and the submissions by both counsel for Plaintiff

and Defendant, I am persuaded that:

28.1. A 15% preaccident contingency be applied;

28.2. A 30% postaccident contingency be applied;

28.3. That the total net loss as calculated by the actuary based on scenario 2 (no diploma) of R1,2732,806 is awarded to the Plaintiff.

29. Regarding general damages, the parties have settled the claim on R400,000.00

30. In the result,

The Draft Order annexed hereto marked "X" is made an Order of Court.

JJ STRIJDOM

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON:

DELIVERED ON:

APPEARANCES:

Counsel for Plaintiff: Adv. A. Viljoen

Attorneys for Plaintiff: De Broglio Attorneys

Counsel for Defendant: Adv AM Masombuka

Attorneys for Defendant: Diale Mogashoa Attorneys

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Prepared on 26 October 2026 · Esheria