

SOUTH AFRICA / JUDGMENT

Tiyiselani v Road Accident Fund (5293/2018) [2023] ZALMPPHC 106 (10 November 2023)

[2023] ZALMPPHC 106**COURT**

Limpopo High Court, Polokwane

BEFORE

M Bresler

CASE / FILE NUMBER

5293/2018

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****(LIMPOPO****DIVISION, POLOKWANE)****CASE****NO: 5293/2018****REPORTABLE:**

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

Date:

10-11-2023

In

the matter between: CHAUKE
TIYISELANI
Plaintiff
-and-
ROAD
ACCIDENT FUND
Defendant

JUDGMENT

BRESLER AJ

- [1] The Plaintiff applies for Default judgment against the Defendant in respect of past and future loss of income. The Plaintiff furthermore requires a Section 17(4)(a) undertaking in respect of future medical expenses. The Plaintiffs claim in respect of general damages is to be postponed sine die.
- [2] This matter was properly enrolled for Trial and effective notice was provided to the Defendant. The Notice of Set Down was duly served on the 25th of July 2023 and there was not appearance on behalf of the Defendant on the hearing date.
- [3] The issue of merits was already decided 100% in favour of the Plaintiff in terms of a court order dated the 3rd of December 2018 granted under the above case number. The issue of quantum is consequently still in dispute. The Plaintiff does not require a determination of the general damages at this stage.
- [4] As for the merits, the Plaintiff was a passenger in a motor vehicle that was involved in an accident on the pt of March 2018.
- [5] The Plaintiff is a 31-year-old female single mother with two children. At the time of the accident, she was employed as a teacher at Bright Star Christian School, earning a salary of R5,500.00 per month. She continued with her current employer after the accident and currently teaches Grade 01 learners.
- [6] She has a Grade 12 level of education, N3 - N 6 Certificates in Civil Engineering and a Higher Certificate in Education.
- [7] The Plaintiff sustained injuries to her head, neck (whiplash) and both legs.
- [8] The following experts' evidence was considered:

8.1 Dr. LO Ramushu - Specialist Orthopaedic Surgeon

Dr. Ramushu diagnosed whiplash injury to her neck. He also stated that she has reached maximum medical improvement - as such she will benefit from analgesia and physiotherapy. She displays faded scars on her legs. She also complained about chronic intermittent neck pain since the accident. Her life expectancy is not affected by her current injuries.

8.2 Me. Adelaide Phasha - Occupational Therapist

Me. Phasha confirmed the injuries sustained by the Plaintiff. She stated that the Plaintiff resumed her duties at her employer after a period of 2 (two) weeks. She was able to perform her pre-accident duties subject to assistance from colleagues and taking resting breaks.

The Plaintiff confirmed that she is able to perform her duties without limitations except for recurring tiredness from time to time. Me. Phasha found that the Plaintiff remains suited for her pre- and post-accident work as a Teacher. However, it was noted that the x-ray of the cervical spine shows a loss of cervical lordosis which will require long term monitoring as it might have an impact on her overall functional capacity. Me. Phasha furthermore noted that the Plaintiff's recurring headaches raises a concern as it would preclude her from working outdoors in hot weather. Me. Phasha concluded that the Plaintiff's injuries caused a decline in her physical, cognitive and psychological capabilities and as such she is considered an unequal competitor and a vulnerable employee as she will not be able to compete fairly with individuals of the same age and educational level. Me. Phasha supplemented her report on or about the 27th of June 2023. She persists in her view that the injuries resultant from the accident has a negative effect on the Plaintiff's ability to perform her normal duties.

8.3 Me. Talifhani Ntsieni - Industrial Psychologist

Me. Ntsieni confirmed that the Plaintiff was employed as a teacher at the time of accident earning RS,500.00 per month - this income was not corroborated by any documentary evidence. She found that, but for the accident, the Plaintiff would have enjoyed a working life which would have most probably ended in age-related retirement at the age of 65. In referring to the findings in the reports from Dr Ramushu and Me. Phasha, Me. Ntsieni accepted that the Plaintiff's post-accident career will be marked by restrictions, pain and discomfort. Having regard to the competitive nature of the environment, she is likely to struggle to secure employment in that sector. She is thus likely to continue in her current employment but unlikely to reach her pre-accident potential. It is apposite to note that the Plaintiff confirmed that she was paid during her two-week absence from work. No past loss of earning was therefore sustained. As the Plaintiff is no longer performing at her pre-accident potential, she is likely to suffer a future loss of earnings commensurate with the level of impeachment resulting from her injuries. Me. Ntsieni therefore proposes that a higher than normal post-accident contingency should be applied. Subsequent hereto and on or about the 10th of August 2023, Me. Ntsieni supplemented her initial report. With reference to the further information provided to her, she remained of the opinion that the Plaintiff will likely suffer future loss of earnings as she can no longer perform at her pre-accident potential.

8.4 Dr Bakang Mosadi – Neurosurgeon

Dr. Mosadi stated that in his opinion the Plaintiff suffered an injury to her lower back and a Grade 3 concussion as a subset of a mild head injury, evidenced by a history of loss of consciousness, chronic headaches and memory problems. He furthermore found that the Plaintiff has some neurological problems that needs to be assessed by a clinical psychologist. Provision should be made for the treatment of post- concussion headaches. The Plaintiff's longevity has not been affected.

8.5 Mr. Mandia Mhlanga - Consulting Clinical Psychologist

According to Mr. Mhlanga, the Plaintiff displays cognitive deficits, symptoms of severe depression and a high severity of PTSD Symptoms were noted. In addition, he noted the Plaintiffs history of suicidal ideation. According to information procured during the assessment period, the Plaintiff presents with social withdrawal, chronic irritability, and difficulty in managing her social relationships. The Plaintiff also indicated her difficulty in meeting occupational requirements and duties. Mr. Mhlanga stated that the Plaintiff meets the criteria for a formal diagnosis of PTSD and moderate to severe Major Depressive Disorder (MDD). He proposed that the Plaintiff start a process of psychotherapy with a clinical or counselling psychologist - future medical expenses is therefore anticipated.

- [9] The Defendant did not present any opposing expert reports. The expert evidence presented by the Plaintiff is therefore uncontested before court.
- [10] Having regard to the supplementary actuarial report, the estimated loss of earning amounts to R6,619,205.00 at the lowest scenario and R7,940,375.00 at the highest scenario. Past loss of earnings is defined as the difference between the values of the past uninjured and past injured earning.
- [11] Having regard to the expert findings, the Plaintiff did not suffer any past loss of earnings. She was on paid leave for a period of 2 (two) weeks after the accident whereafter she resumed her employment against payment of the same salary. She is therefore not entitled to claim past loss of income.
- [12] The final actuarial calculations are based on both past loss of income and future loss of income. As to future loss of income, a contingency of 15% was applied as to uninjured earnings and 25% as to injured earnings resulting in a total future loss of earnings amounting to R5,861,725.00 (five million eight hundred and sixty one seven hundred and twenty five thousand rand) calculated at the lowest scenario.
- [13] The discretion to determine a reasonable amount for compensation as well as a reasonable percentage for contingencies, is for the court to determine. This discretion must be exercised judicially having regard to facts before court.
- [14] It is evident that the Plaintiff is not wholly unemployable. She merely has a diminished capacity to earn an income having to what she would have been able to earn should the accident not occurred.

- [15] Having considered the expert reports and applicable legal principles, I am of the view that a contingency of 40% should be applied. The amount of R 3,971,523.00 (Three million nine hundred and seventy-one thousand five hundred and twenty-three Rands) stands to be awarded to the Plaintiff to compensate for her future loss of earning capacity. I have already indicated that the Plaintiff is not entitled to past loss of income.
- [16] The Plaintiff furthermore requested a prayer in her concept order in terms whereof the Defendant is obliged to furnish the Plaintiff with an undertaking as contemplated in Section 17(4) of the Road Accident Fund Act, Act 56 of 1996. Section 17(4)(a) specifically empowers this court to direct the Defendant to furnish such undertaking in the event that a claim for compensation includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her.
- [17] It is evident from the expert reports that the Plaintiff will require future medical treatment. As such, I see no reason not to direct the Defendant to provide the Plaintiff with the undertaking accordingly.
- [18] At the request of the Plaintiff's counsel, the determination of general damages was not entertained and will be postponed sine die.

Order

- [19] In the result the following order is made:

19.1 The Defendant shall pay an amount of R 3,971,523.00 (Three million nine hundred and seventy-one thousand five hundred and twenty- three Rands) to the Plaintiff in respect of loss of earning capacity.

19.2 The aforesaid amount shall be paid to the trust account of the Plaintiff's Attorneys, MASHAMBA ATTORNEYS within 180 (one hundred and eighty) days in settlement of the Plaintiff's claim by direct transfer into their Trust Account, the details whereof are the following:

BANK: ABSA BANK BRANCH CODE: 632005 ACCOUNT HOLDER: MASHAMBA ATTORNEYS
ACCOUNT NUMBER: 4[...] BRANCH: PRETORIA

19.3 The Defendant is directed to furnish the Plaintiff, within 30 (thirty) days from service of this order, with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, for the costs of the accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service to him, or supplying of goods to him arising from the injuries sustained by him in the motor vehicle collision, which costs shall be paid after being incurred and upon proof being presented thereof to the Defendant.

19.4 The Defendant is ordered to pay the Plaintiff's taxed costs on the high court scale as between party and party.

19.5 Should payment of the capital and interest not be affected in terms of this order the Plaintiff will be entitled to recover interest to be calculated in accordance with the Prescribed Rate of Interest Act, Act 55 of 1975 read with Section 17(3)(a) of the Road Accident Fund Act, Act.

19.6 The determination of general damages is postponed sine die.

M BRESLER

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES Heard on 23 October 2023

Judgment

delivered on 27 October 2023 For the Plaintiff Adv J Zulu Instructed by Mashamba Attorneys mashambaattorney@gmail.com I vonanimabasa6@gmail.com For the Defendant Absent

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Prepared on 9 October 2026 · Esheria