

/LVS
**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, HIGH COURT)**

DATE: 26 MARCH 2009
CASE NO: 41302/2006
NOT REPORTABLE

In the matter between:

DANIËL JAMES MONARENG

PLAINTIFF

vs.

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BOTHA J:

This is a so-called third party matter in which the defendant conceded liability.

The issue of the quantum was argued before me without reference to any evidence. The parties agreed that I could have regard to the summaries of the plaintiff's experts.

The plaintiff was involved in a motor vehicle collision on 26 December 2004. He sustained fractures of both knees, a rib fracture and lacerations on

his forehead. He was hospitalized and open inductions were performed on both knees. The further treatment that is foreseen consists mainly in arthroscopies of both knees. It is envisaged that the plaintiff will have to undergo these procedures within four to five years.

The plaintiff is 45 years old. It is accepted that he will work until he is 65 years old.

At the time of the collision the plaintiff was a civil servant. In December 2005 he resigned and started his own business as an events organiser. It is not disputed that the plaintiff's future income will be as calculated by his actuary namely R2 855 950.00.

According to the expert reports the plaintiff will require an assistant until he has undergone the knee replacements. According to one expert he will still need an assistant after the replacements. The defendant has tendered to pay the costs of an assistant by way of an undertaking in terms of section 17(4)(a) of Act 56 of 1996.

It is common cause that the plaintiff will not be able to work during times when he will have to undergo future remedial procedures and even when he will be recovering from them. Mr Vermeulen, who appeared for the plaintiff, calculated the number of days so foreshadowed at 261, which will, on a pro rata basis, give a loss of income of R110 913.69. In my view a contingency factor should be applied on this amount on the basis that the

plaintiff may well be able to be productive and earn money even whilst in hospital or recuperating at home. I agree with Mr Mogagabe, who appeared for the defendant, that a factor of 15% should be applied. That would leave a loss on this score of R94 276.63.

What remains of the claim for loss of earning capacity is an award for the diminution of the plaintiff's residual earning capacity as a result of his injuries. Mr Vermeulen suggested that it be determined as a percentage of his total future earnings. He argued that the plaintiff's future income would have been subject to a normal contingency deduction of 10%, which would amount to R285 595.00. With his injuries, he argued that the contingency factor should be 15%, giving an amount of R428 392.50. He suggested that the difference between the amounts of R428 392.50 and R285 595.00, which is R142 797.50 should represent the plaintiff's residual loss of earning capacity. Mr Mogagabe did not seriously question this methodology. I am therefore prepared to find that the plaintiff suffered a loss in an amount of R142 797.50.

It was also common cause that an amount of R1 390.00 had to be awarded in respect of unpaid past medical expenses. It was common cause that future medical expenses should be covered by an undertaking in terms of section 17(4)(a) of Act 56 of 1996.

In respect of general damages Mr Vermeulen contended for an award of R200 000.00. Mr Mogagabe contended for R180 000.00.

In a similar case an award of R180 000.00 was made in 2006. See **Jijingubo v RAF [2006] JOL 18626 (Ck)**. In my view I should award R180 000.00 under the head of general damages.

Mr Vermeulen asked that the travelling expenses of the plaintiff's Polokwane attorney be allowed. He was at court and I can see no reason why it should not be allowed, lest a problem arise on taxation. I shall also allow the qualifying fees of the witness van Zyl, Greef, Prinsloo and the actuary of the firm WellsFaber - Human & Morris.

In the result the following order is made:

- 1. Defendant is ordered to pay the plaintiff an amount of R418 464.13.**
- 2. The defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund, No 56 of 1996, to compensate Plaintiff for future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to Plaintiff resulting from injuries sustained by him/her as a result of an accident that occurred on 26 December 2004, as well as for the remuneration of an assistant in the amount of R14 500.00 per annum.**
- 3. Defendant is to pay plaintiff's party and party costs that shall include:**

- 3.1 the qualifying fees of the witnesses van Zyl, Greeff, Prinsloo and the actuary from the firm WellsFaber – Human & Morris.
- 3.2 The reasonable travelling expenses of attorney P Smit to attend the trial on 24 and 25 March 2009.

C BOTHA

JUDGE OF THE HIGH COURT