



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case number: 22932/2017

(1)	REPORTABLE: NO/YES
(2)	OF INTEREST TO OTHER JUDGES: NO/YES
(3)	REVISED. NO/YES
<u>08</u> MARCH 2022	
DATE	SIGNATURE

In the matter between:

NEO MASIU

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKHOB A J

1. The plaintiff, an adult female born on the 24th June 2003 claims damages against the defendant for damages suffered when she was 10(ten) years and 8(eight) months old. She sustained injuries as a result of a motor vehicle accident which occurred on the 14th February 2014.
2. In terms of the court order dated 24th May 2018 the defendant is 100% (one hundred percent) liable to pay the plaintiff's proven damages.
3. The defendant was unrepresented 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 matter to proceed on a default judgment basis *via* virtual platform. Counsel addressed the court and referred the court to his heads of argument. Oral evidence was not led and the court was asked to decide the matter on the basis of the papers which were submitted. Counsel requested that the claim for general damages be postponed *sine die*.
4. The plaintiff filed the following medico-legal (expert) reports:
 - 4.1 Dr Van Castricum, Orthopaedic surgeon
 - 4.2 Prof. Lekgwara, Neurosurgeon
 - 4.3 Dr H.S Wentzel, General medical practitioner
 - 4.4 Dr L.W Meiring, Clinical and educational psychologist
 - 4.5 Dr C.Bell, Occupational Therapist
 - 4.6 Dr Coetzer, Industrial psychologist
 - 4.7 Arch actuarial consultants

There were no reports filed on behalf of the defendant.

5. The plaintiff sustained injuries on the head, back and limbs. She was hospitalised for approximately 6(six) days. According to Professor Lekwara (neurosurgeon) the plaintiff sustained a mild trauma brain injury, he further commented that she is suffering from post-concussion headaches and memory problems.
6. The only claim brought before court is for loss of future income which is claimed for the amount of R 2751 329.00 (two million seven hundred fifty-one thousand three hundred twenty-nine).
7. On behalf of the plaintiff, counsel referred to the nature of the injuries sustained as indicated by the plaintiff's expert reports. He submitted that the plaintiff's work ability has been negatively impacted and rendered it difficult for her to compete with her peers in the open labour market. Counsel asked for the appropriate contingency to compensate the plaintiff for the reduced work options as well as being at risk to experience possible longer periods of unemployment between positions.
8. Doctor Coetzer (Industrial psychologist) indicates in her report that the plaintiff's "*future career prospects have been truncated to a mild degree*".
9. The *locus classicus* as to the value of actuarial expert opinion in assessing damages in *Southern Insurance Association Ltd v Bailey*¹ where Nicholas JA said the following:

¹ 1984 (1) SA 98 (A)

“Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, 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’. One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or differently put the ‘vicissitudes of life’. These include such matters as the possibility that the plaintiff may in the result have less than a ‘normal’ expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case”.

10. Zulman JA, with reference to various authorities including *Southern Assurance* said as follows in *Road Accident Fund v Guedes*²:

“The calculation of the quantum of a 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 a calculation, an actuarial computation is a useful basis for establishing the quantum of damages”.

11. Of particular pre-eminence in the expert coterie is the industrial psychologist. The task of the industrial psychologist is to work closely with the other experts in order to set up probable scenarios as to how the injuries as identified and reported on by the other experts are likely to affect the plaintiff in the workplace. By far the largest claims are those for loss of earning capacity. It is in this realm of suppositions, projections and

² 2006 (5) SA 583 at 586H-587B

contingencies that there should be an assessment by the court of how the individual plaintiff should be compensated for his or her loss, accepting the opinions of the experts who are qualified in the particular field such as orthopaedic surgeons and neurologists. These experts are of importance in the enquiry as by far the most common injuries in motor accidents are broken bones and brain injuries.

12. The industrial psychologist states in the addendum report that the plaintiff is employable until retirement at age 65 (sixty-five). The addendum report postulate that the plaintiff would probably compete for a variety of positions in a semi-skilled capacity on the open labour market this was based on the prediction that her highest qualification will be NQF 4.
13. The plaintiff has however passed her matric very well and according to her counsel she received her results on the 21st January 2022 and she has met the minimum requirements for admission of a bachelor degree, diploma or higher certificate.
14. The report of the industrial psychologist is pivotal to the actuarial calculation for the reason that the actuarial calculation must be performed on an accepted scenario as to income, employment prospects, education, training, experience and other factors which for an assessment of the likely career path pre and post the injuries.
15. The general approach of the actuary is to posit the plaintiff, as she is proven to have been in her uninjured state and then to apply assumptions (generally obtained from the industrial psychologist) as to her state with the proven injuries and their sequela. The deficits which arise between those scenarios (if any) are then translated with reference to the various

baseline means and norms used. These exercises are designed with the aim of suggesting the various types of employment which would hypothetically be available to the plaintiff both pre and post morbidity.

16. It thus stands to reason that, if the base scenarios adopted by the actuary are fallacious, the actuarial calculations are of no value to a court or to the road accident fund.

17. The reports by the experts predicted that the plaintiff will have a qualification which will qualify her for a semi-skilled employment which after her matric results is no longer the case.

18. In my view, the amount claimed by the plaintiff is too excessive as the plaintiff condition has improved tremendously.

19. I, therefore make the following order:

19.1 The claim for general damages is postponed *sine die*.

19.2 The defendant is ordered to pay the plaintiff an amount of R1000 000.00(one million rands only) together with interest *tempore morae* at the prevailing rate of interest on the amount of R 1000 000(one million rands) from 14 (fourteen) days of judgment to date of payment.



D MAKHOB

JUDGE OF THE GAUTENG DIVISION PRETORIA

APPEARANCES:

For the plaintiff: Advocate Du Pisane

Instructed by: Rooth & Wessels Inc.

For the defendant: Non-appearance

Instructed by:

Date heard: 21 January 2022

Date of Judgment: 08 March 2022