




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

**CASE NO. 86545/2015**

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED: YES/NO
<u>10/02/2023</u>	
DATE	 SIGNATURE

**MATHEBULA**

**PLAINTIFF**

**AND**

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---

**MAKHOB A J**

1. The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor vehicle accident that occurred on the 26 March 2014.
2. The merits of the matter have been settled between the parties 100% in favour of the plaintiff. The only issue before court by the plaintiff is past and future loss of income. The claim amounts to R1 149 60.00.
3. On the date of trial, the defendant was not represented and the attempt to settle the matter did not yield any results. Counsel for the plaintiff asked the court for default judgement in favour of the plaintiff. He addressed the court. The court asked him to address it on proof of employment by the plaintiff. Counsel conceded that there is no proof and for that reason 20% may be deducted from her claim. No oral evidence was led.
4. The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.
5. It is indeed so that even though defendant is not represented in the proceedings the court cannot simply grant the order as requested, the court must see to it that the requested order is in accordance with justice.
6. The evaluation of the amount to be awarded for loss does not involve proof on a balance of probabilities. It is a matter of estimation. Where a court is dealing with damages which are dependent upon uncertain future events, Which is generally the case in claims for loss of earnings capacity, the plaintiff does not have to provide proof on a balance of probabilities (by contrast with questions

of causation) and is entitled to rely on the court's assessment of how he should be compensated for his loss.

7. The parties routinely seek to assist the court in assessment of the amount payable and resort to the expertise of an actuary. This is not an obligatory approach to the quantification of damages and a court should be careful not to treat these reports as if they are scientific data.
8. According to the *P.C Diedericks* (industrial psychologist) at 004-63 paragraph 6 the plaintiff was employed as a farm worker at the time of the accident and she was earning R2800 per month plus overtime. At 004-64(case-lines) *P.C Diedericks* further says "The writer notes that no proof of such earnings was provided to the writer and, therefore, deference is made to factual information in this regard she was also unable to provide the writer with any contact details for her employer, as too much time has passed, and she no longer has these".
9. It is trite that the onus rests on the plaintiff to prove his case on the balance of probabilities see *Pillay v Krishna, 1946 SA 946*. Thus the duty is on the plaintiff to produce evidence that because of the injury, she has suffered loss of income.
10. I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability.
11. I am therefore of the view that the plaintiff failed to show the following to enable me to accede to his request for loss of earnings.
  - 11.1 She failed to file any salary advice or proof that she was employed.



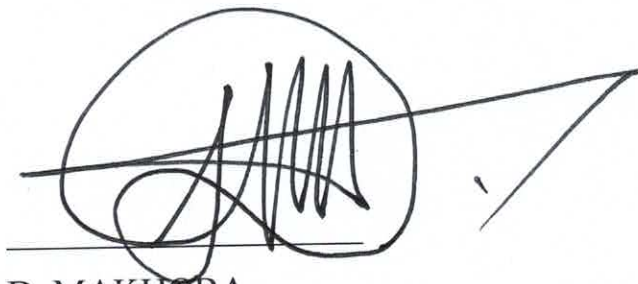
11.2 There is no address or contact details of the employer.

12. In my view the plaintiff has failed in her duty to satisfy the court that she has lost any earnings or stands to lose any earnings as a consequence of the motor vehicle accident in question.

13. I therefore make the following order

13.1 The plaintiff's claim for loss of earnings is dismissed

13.2 No order as to costs.

A handwritten signature in black ink, consisting of a large, stylized 'M' with a horizontal line through it, followed by a long, sweeping diagonal stroke.

D. MAKHOBHA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

#### **APPEARANCES**

**For the Plaintiff:**

**Advocate G Lubbe**

**Instruction:**

**Van Dyk Steenkamp Attorneys**

**For the Defendant:**

**NONE**

**Instructed by:**

**Date heard:**

**17/01/2023**

**Date delivered:**

10/02/2023

