

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

CASE NO: 181/2019

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED:

DATE: 29/1/2024

SIGNATURE

In the matter between:

G LETSOALO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Claim no: 560/12297; 467/319/7

JUDGMENT

(The matter was heard/argued in open court on 22 January 2024, and after hearing both counsel and attorney for the plaintiff and defendant, judgment was reserved. The reserved judgment was uploaded onto Caselines and the date of the judgment is deemed to be the date of uploading thereof onto Caselines)

BEFORE: HOLLAND-MUTER J

[1] The matter was previously heard and two different orders were granted by this court respectively on 6 May 2021 ("Mabuse-Order") and 30 August 2021 ("Cochcrane-Order").

[2] The defendant lodged a rescission application of both orders during March 2022 (out of time) and the parties reached an agreement embedded in a Deed of Settlement "X" providing that only certain portions of the said orders be rescinded and that certain components of the orders remain intact.

[3] The defendant took issue with (i) the striking out of its defence re quantum and (ii) the awards granted re general damages and the loss of income. This agreement was signed on 19 November 2022.

[4] Without dwelling far into the merits of the rescission application, the defendant questioned the contents of some of the plaintiff's expert witnesses' reports being inflated and amounting to misleading the court. Given the opportunity to address these aspects, one would have expected the defendant to have its own experts appointed to address the issue, but despite the opportunity, nothing was done. No medico-legal reports were filed on behalf of the defendant and when the matter served before this court, the situation was unchanged. The matter remained unattended to since November 2022 by the defendant until the last few days.

[5] The plaintiff was injured in a motor vehicle collision which occurred on 9 May 2015. She and her two year old son were passengers in the vehicle driven by her partner. She and her son were taken to the Montana Hospital in Pretoria. The plaintiff sustained a focal brain injury and soft tissue injuries to her face and jaw; right shoulder and neck. Although not hospitalised, she remained at the hospital because her minor son was seriously injured. The son was hospitalised for six (6) weeks and transferred to a rehabilitation centre thereafter.

[6] The plaintiff now presents with mood disorder of depression and post- traumatic stress syndrome as a result of the accident. This will be dealt with below. The plaintiff has a history of 12 years as a Taxing Master and Costs Consultant with a Paralegal Diploma).

[7] The plaintiff was evaluated by Dr Mazabow (Clinical Neuropsychologist) and Dr J C Pearl (Specialist Neurologist). Dr Mazabow opined that the plaintiff's cognitive,

behavioural and social/interpersonal disturbances are attributed primarily to her chronic depressive mood disorder, combined together with chronic post-traumatic mood disorder and reported chronic pain symptoms. Pearl opined that the plaintiff presented with mild reduction in power and sensation in the right upper and lower limb which should be regarded as permanent.

[8] The plaintiff was employed as a Taxing Master (Administrative Clerk) at the Johannesburg Magistrate's Court earning a basic notch of R 125 598-00 per annum during 2015. The notch increased on 1 April 2015 to R 134 379-00 per annum and this was the scale she was on at the time of the accident.

[9] Her pre-accident educational and post-school training can be summarised as follows:

9.1 Gr 12 (NQF 4) without endorsement in 1996 having repeating her 1992 Matric results;

9.2 A six (6) month course in Advanced Computer Literacy in 2003;

9.3 A National Diploma in Law: Paralegal Studies (NQF 5), a two year course completed in 2010;

9.4 In-house training at the Department of Justice College with the following courses attended:

* A five (5) day Seminar for Clerks of the Civil Court: Default Judgments and Execution in June 2007;

* Clerks of the Small Claims Court in 2009;

* A 5 day Course for Clerks of the Civil Court and Equality Court: Costs and Taxation in September 2009 where after she was appointed as a Taxing Master of the Johannesburg Magistrate's Court; and

* A four (4) day Course for Clerks of the E quality Court in August 2011 where after she was appointed as such for the District of Johannesburg.

[10] The plaintiff reported a long list of accident-related difficulties to Mazabow, this restricting her day to day functioning and rendering her a vulnerable employee in the open market both in her self-employed position and if she sought alternative employment. This remained undisputed.

[11] Although the initial report by Dr Birrel (Orthopaedic Surgeon) may seem not to deal in detail with the injuries sustained by the plaintiff as a result of the accident, it is clear from the report that the plaintiff sustained a series of injuries, and read in conjunction with the medico-legal reports by Ors Mazabow, Pearl and others, the combined WPI narrates to a combined 33% WPI. This is over the 30% as norm and the RAF-4 opines the plaintiff under the narrative test under 5.3 suffering from a long-term mental or severe long-term behavioural disturbance or disorder. In view thereof that the defendant elected not to rely on any of its own experts, the reports by the plaintiff's experts and the expert opinions expressed remains unchallenged, despite the arguments raised by Mr Mukasi on behalf of the defendant.

[12] Dr Birrel stated that the plaintiff will require a neck fusion within the next five years. Dr Shevel (Psychiatrist) opines that the post-traumatic stress disorder compromises the plaintiff as an equal competitor in the open labour market resulting in a not-insignificant loss of earning capacity. The other experts, ranging from the Occupational Therapist (Ms Holshausen) to the Industrial Psychologist (Esme Noble) all opined that the plaintiff has a diminished future earning capacity. The arguments by Mr Mukasi did not detract from the expert views opined by these experts.

[13] I do not lose sight of the fact that the plaintiff's decision to resign from the Department of Justice was influenced by the serious injury her young son sustained in the accident, but she always had the vision to embark on her own private career as a Taxing Consultant. Various factors influenced her initial operation, and the major impact of the Covid-19 Pandemic should not be disregarded. See Noble & Holtzhausen's opinions.

[14] Pleadings were exchanged and the matter eventually ended before COCHRANE AJ and default judgment was granted against the defendant on the aspects of merits (after a 100% concession earlier by the defendant) and quantum, the contested amounts awarded for loss of income and general damages.

[15] The crux of the Deed of Settlement "X" is that the two orders granted on 6 May 2021 (Mabuse Order) and 30 August 2021 (Cochrane Order) need not be rescinded in their entirety, but only the two components with which the defendant has taken issue in the Rule 42 Application namely (i) the striking out of the defendant's defence re quantum and, (ii) the award for general damages and the award for loss of income.

[16] The agreement "X" provides for the amendment of par 1 of the order of 6 May 2021 in that only the defence in respect of the merits remains intact and with regard to the order of 30 August 2021 in that the plaintiff's claim re past and future loss of earnings as well as general damages were postponed sine die.

[17] The defendant rejected the claim for general damages and this will be referred to the HPCSA for adjudication.

[18] The defendant will further furnish the plaintiff with an interim payment in the amount of R 900 000-00 in terms of Rule 34A and that the remainder of the provisions of the two existing orders shall remain of full force and effect.

[19] The result is that the court has to adjudicate only the issue of loss of income and earnings and future hospital- and medical expenses. The aspect of general damages is referred to the HPCSA for determination.

[20] Contingencies are usually the normal consequences and circumstances of life, which beset every human being and which directly affect the amount that a plaintiff would have earned. These contingencies or factors include the likelihood of the plaintiff being dismissed or retrenched; an unsatisfactory service record impacting on whether the plaintiff will encounter a sympathetic employer to retain employment; circumstances that may increase or decrease his costs of living,

residual work capacity; pension benefits (if applicable) and various other factors such as partial or total disability that may impact on the plaintiff under the circumstances. The list is not exhaustive but will depend on the circumstances prevailing. See **Klopper, The Law of Third Party Compensation, p 184 Butterworths.**

[21] The percentage of the claim for the contingencies to be applied, taken into account the circumstances of each case, is entirely at the discretion of the court of first instance. The court will take all the circumstances into consideration and thereafter apply the necessary contingency it deems appropriate. See **Shield Insurance v Booysen 1979 (3) SA 953 (A) at 965 G** where it was held that a court of appeal will seldom interfere with the contingencies applied by a court of first instance unless it is clear that the court of first instance misdirected itself. I am satisfied that the contingencies to be applied by the court as proposed on behalf of the plaintiff is fair and just under all the circumstances. See the calculations in [19] & [20] below.

[22] I deem it not necessary to dwell into the calculations as was previously but to remark that the contingencies as applied in my view are reasonable and fair under the circumstances. It is common practice to apply differential contingencies to the earnings that is to say one percentage applied to earnings but for the accident and a different percentage to earnings having regard to the accident.

[23] I am satisfied that applying the following contingencies of 5% on both past loss on the uninjured and injured earnings is appropriate. A 20% contingency on the income but for the accident (future loss) and 30% in respect of the post- accident career path having regard to the nature, extent and sequelae of the plaintiff's injuries and the negative effect it will have on the plaintiff's career path would be appropriate.

[24] The calculation by Mr George Whittaker (actuary) provides for a 10% contingency differential spread and that it is a more conservative approach followed. Whitaker calculated that the reasonable award to compensate the plaintiff should be R 4 543 479-00, the amount reached after applying the statutory cap as set out in **Road Accident Fund v Sweatman 2015(6) SA 186 SCA.**

[25] I make the following order:

1. The Draft Order "XYZ" incorporation the agreement "X" dd 19 November 2022 is made an order of court.

HOLLAND-MUTER J
Judge of the Pretoria High Court
29 January 2024

Heard on 22 January 2024

Judgment delivered on 29 January 2024

Counsel obo Plainbtiff:

Adv B BOOT SC (boot@gkcgambers.co.za)

Obo Defendant:

Mr T MUKASI (Terrencem@raf.co.za)
(Pretoriaterrenecm@raf.co.za)

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

**HELD AT PRETORIA ON THIS THE 22nd DAY OF JANUARY 2024 BEFORE THE
HONOURABLE JUSTICE HOLLAND-MUTER (J) IN COURT 4C**

**ORDER GRANTED ELECTRONICALLY IN TERMS OF THE REVISED DIRECTIVE
2 OF 2022 RE COURT OPERATIONS IN THE PRETORIA AND JOHANNESBURG
HIGH COURTS OF THE GAUTENG DIVISION**

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 22 January 2024.

CASE NO: 181/2019

In the matter between:

LETSOALO, G

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT COURT ORDER

HAVING HEARD COUNSEL and considered the evidence submitted:

THE COURT GRANTS JUDGMENT in favour of the Plaintiff against the Defendant in the following terms: -

1. The Deed of Settlement attached hereto and marked "X" is made an order of court.
2. The evidence of the following experts, including the facts, assumptions and opinions contained and expressed in their reports and addendum reports, notice of which was furnished in terms of Rule 36(9)(b) of the Uniform Rules of Court, as well as the factual evidence of the Plaintiff and her witnesses, are admitted into evidence on affidavit in terms of Rule 38(2):

2.1 Sworn affidavit by the Plaintiff, dated 29 April 2021;

2.2 Dr DA Birrell (Orthopaedic Surgeon);

- 2.3 Dr M Mazabow (Clinical Neuropsychologist);
- 2.4 Dr J C Pearl (Neurologist);
- 2.5 Dr DA Shevel (Psychiatrist);
- 2.6 Dr K Carpenter-Kling (Ear, Nose and Throat Surgeon);
- 2.7 Dr P Gous (Ophthalmologist);
- 2.8 T Holshausen (Occupational Therapist)
- 2.9 M Faul (Occupational Therapist)
- 2.10 E Noble (Industrial Psycholo
- 2.11 GA Whittaker (Actuary).

3. The Defendant is liable to compensate the Plaintiff for 100% of her proven or agreed damages resulting from the injuries she sustained in a motor vehicle collision which occurred on 9 May 2015.

4. The Defendant shall, over and above the interim payment it has already effected, pay the total further sum of R 3 643 479-00 (--) to the Plaintiff's attorneys, Adams & Adams, in full and final settlement of the Plaintiff's claim re loss of earnings/earning capacity, which amount is calculated as follows:

Past and future loss of income / earning capacity	R 4 543 479. 00
Less Interim Payment	R 900 000.00
Total	R 3 643 479-00

5. The issue of general damages is postponed sine die pending the adjudication of the issue re the seriousness or not of the injuries sustained by the Plaintiff by the Health Professions Council of South Africa ("HPCSA").

6. The aforesaid total sum of R 3 643 479-00 (---) shall be payable by direct transfer into the trust account of Adams & Adams attorneys, the details of which are as follows:

Account holder:	Adams & Adams Trust Account
Bank:	Nedbank
Account number:	1[...]
Branch code:	1[...]
Branch:	Pretoria
Reference:	D[...]

7. The Defendant will be afforded a period of 180 calendar days from the date of the court order to effect payment of the capital amount herein, during which period the Plaintiff will not be entitled to execute a writ against the Defendant. The Plaintiff shall be entitled to recover interest at the rate of 11.75% per annum on the aforesaid amount calculated from fourteen days after date of the order to date of final payment.

8. The Defendant has furnished the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, to compensate the Plaintiff for 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of any services or supplying of any goods to the Plaintiff, resulting from the injuries sustained by v her as a result of the accident that occurred on 9 May 2015.

9. The Defendant shall, over and above any previous cost orders granted in favour of the Plaintiff, and subject to what follows hereafter re the scale of costs payable for 22 January 2024, also make payment of the Plaintiff's taxed or agreed party and party costs of the action on the High Court scale, which costs shall include, but not be limited to the following, the quantum of which is subject to the discretion of the Taxing Master:-

9.1. The fees of Senior Counsel, inclusive of but not limited to Counsel's full reasonable day fee for 22 January 2024, his preparation fees and consultation fees as well as the costs of preparing and updating the heads of argument;

9.2. The reasonable, taxable costs of obtaining all expert medico-legal, RAF4 Serious Injury Assessment, actuarial and addendum reports from the Plaintiff's experts which were either furnished to the Defendant and/or included in the trial bundles and/or uploaded onto CaseLines;

9.3. The reasonable taxable costs associated with preparing the Application in terms of Rule 38 and obtaining of the affidavits of the relevant experts and witnesses used in support thereof attached thereto, as well as the experts' charges pertaining to their time and attendances spent in inter alia the commissioning thereof;

9.4. The reasonable taxable preparation, qualification, reservation and travelling fees, if any, of all the experts of whose reports notice have been given and/or that have been included in the trial bundles and/or uploaded onto Caselines;

9.5. The costs of all consultations between the Plaintiff's attorneys, and/or counsel and/or the witnesses, and/or the experts and/or the Plaintiff, in preparation of the hearing;

9.6. The reasonable taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred by or on behalf of the Plaintiff in attending all medico-legal consultations with the parties' experts, all consultations with her legal representatives and the court proceedings, as well as the costs (fees and disbursements) of shuttle services and/or assessors where utilised, the quantum of which is subject to the discretion of the Taxing Master;

9.7. The above costs shall also be paid into the aforementioned trust account;

9.8. It is recorded that the Plaintiff's attorneys do not act herein in terms of a contingency fee agreement;

9.9 The costs of the hearing on 22 January 2024 shall be recoverable by the Plaintiff from the Defendant on the attorney and client scale.

10. The Plaintiff shall serve the notice of taxation on the Defendant either by hand and/or electronically by email on the claims handler and/or State Attorney;

10.2 The Plaintiff shall allow the Defendant 14 calendar days to make payment of the taxed or agreed costs from date of settlement or taxation thereof, whichever date is the earlier, during which period the Plaintiff will not be entitled to execute a writ against the Defendant;

10.3. The Plaintiff shall be entitled to recover interest at the rate of 11.75% per annum on the taxed or agreed costs from date of allocation or settlement, whichever date is the earlier, to date of final payment.

BY ORDER OF COURT

COUNSEL FOR PLAINTIFF: ADV B BOOT SC

ATTORNEY FOR DEFENDANT: T MUKASI

D[...]

Link: 4353451

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 181/2019

In the matter between:

LETSOALO, G

Plaintiff/Respondent

and

ROAD ACCIDENT FUND

Defendant/Applicant

CLAIM NUMBER: 560/12297 467/319/7

DEED OF SETTLEMENT

WHEREAS court orders were granted in favour of the Plaintiff against the Defendant by the Honourable Justice Mabuse (J) on 6 May 2021 and the Honourable Justice Cochrane (AJ) on 30 August 2021;

AND WHEREAS the Defendant subsequently lodged an application to court for the rescission of the said orders;

AND WHEREAS the Plaintiff and Defendant have now reached agreement with regards to the pending application, the further conduct of the matter as well as the aforementioned court orders and wish to record same in writing;

NOW THEREFORE the following is agreed and recorded:

1. Rule 42 provides for any order or portion thereof to be varied if the original order was granted erroneously. Therefore, the orders granted on 6 May 2021 and 30 August 2021 need not be rescinded in their entirety; only the components of the orders with which the RAF has taken issue in its formal application, namely the striking out of the RAF's defence re quantum as well as the awards granted re general damages and loss of income, must be altered. Consequently, it is the striking out of the RAF's defence re quantum and the provisions of par.2 of the order dated 30 August 2021 that need to be varied in accordance with the provisions of Rule 42 and substituted with that which follows hereunder. This can be done by means of an agreed draft order incorporating the new wording hereunder which will be made an order of court as part of the current rescission proceedings pending before court.

2. The parties as such agree on the following and that at the hearing of the matter court shall be requested to grant an order incorporating the following provisions as agreed upon:

"After having heard Counsel on behalf of the parties it is ordered as follows:

1. *Paragraph 1 of the order of the Honourable Justice Mabuse (J) dated 6 May 2021, is hereby varied by replacing paragraph 1 thereof with the following:*

"1 The Respondent's defence in respect of merits only is struck out in accordance with the provisions contained in paragraph 34 of Chapter 6 of the Practice Directive 1 of 2021 ("the Directive");

2. *Par. 2 of the Court order dated 30 August 2021 is hereby varied and replaced with the following:*

"2.

2.1 *The Plaintiff's claims re past and future loss of earnings/earning capacity as well as general damages are postponed sine die;*

2.2 *The Defendant records its rejection of the Plaintiff's claim re general damages. which shall be referred to the HPCSA for adjudication within 90 days from the date of signing of the Deed of Settlement entered into, in accordance with the stipulations of the Road Accident Fund Regulations, 2008 (as amended);*

2.3 *The Defendant shall furnish the Plaintiff with an interim payment in the sum of R900,000.00 ("the capital amount"), which interim payment shall be effected in terms of rule 34A of the Uniform Rules of Court and in accordance with the provisions of the Deed of Settlement reached, which are incorporated herein by reference;*

3. *The remainder of the provisions of the orders dated 6 May 2021 and 30 August 2021 shall remain of full force and effect.*

4. *The Defendant shall pay the Plaintiff's taxed or agreed costs in respect of the recission application, including the fees of counsel on the party and party High Court scale.*

5. *The following provisions shall apply with regards to the determination of the aforementioned taxed or agreed costs:*

5.1. *The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record and/or the Defendant directly, either by hand or electronically by email;*

5.2. *The Plaintiff shall allow the Defendant 180 (ONE HUNDRED AND EIGHTY) calendar days to make payment of the taxed or agreed costs from date of settlement or taxation thereof;*

5.3. *Should payment not be effected timeously, the Plaintiff shall be entitled to recover Interest at the rate of 7,75% per annum on the taxed or agreed costs from date of allocatur or settlement, whichever date is the earlier, to date of final payment."*

3. The Defendant shall furnish the Plaintiff-with-an interim payment in the sum of R900,000.00 ("the capital amount"), by no later than 31 January 2023, which interim payment shall be effected In terms of rule 34A of the Uniform Rules of Court;

4. The Plaintiff shall be entitled to recover interest at the rate of 7.75% per annum on the capital amount calculated from and including 1 February 2023 to date of final payment, should the interim payment not be effected timeously, in full or at all on or before 31 January 2023.

5. The Plaintiff shall be entitled to recover interest at the rate of 7.75% per annum on the capital amount calculated from and including 1 February 2023 to date of final payment, should the interim payment not be effected timeously, in full or at all on or before 31 January 2023.

6. The Plaintiff is entitled to immediately apply for a new hearing date for the adjudication of the following remaining issues in dispute in the action:

6.1 Past and future loss of earning and or earning capacity;

6.2 General damages, if Plaintiff is entitled to compensation in respect of same.

7. The remainder of the provisions of the orders dated 6 May 2021 and 30 August 2021 shall remain of full force and effect and same shall not be suspended pending the obtaining of the order referred to above.

SIGNED AT PRETORIA ON THIS 10TH DAY OF NOVEMBER 2022.

PLAINTIFF

GLORIA LETSOALO

080 DEFENDANT

MR T MUKASI

LINK NUMBER: 4353451