REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)

CASE NO: 1041/2018
REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED

In the matter between:

MUKHONTHO AZWIDOWI RECKSON **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MONENE AJ

[1] Beyond the unnecessary legalese and uncalled for jargon-laced strife between the Defendant and so-called RAF legal practitioners, the simple unadulterated truth is that as its naming suggests, the Road Accident Fund is a government revenue funded social security or insurance fund founded with the purpose of ameliorating the plight of victims of road accidents in a third world milieu characterized by high levels of underinsurance or no insurance at all.

[2] The fund was purposed neither at being a cash cow for legal practitioners to a point of some being referred to as RAF specialist lawyers nor at being an ultra-

miserly everyday litigant whose sole aim is to save money while legally qualifying motor vehicle accident victims are left languishing for years and sometimes for life without compensation.

[3] It seems to me ur.1fortunate that what is essentially clerical administrative work in an insurance for road accident victims has been elevated to be the key part of what is regarded as "law" by many of us and occupies too much court time than is necessary for courts characterized by heavy under resourcing as regards judges. Indeed, the reason why the RAF roll constitutes probably seventy percent of all our civil court rolls in the country is beyond my comprehension because like other insurances, road accident victims must routinely be paid upon submission of claims, with litigation reserved for the odd contentious dispute every now and then. It certainly should not be the norm nor the default position that RAF matters are always all disputed and always bogged down in red tape by the fund, by legal representatives and by courts with routine settling being the exception. Maybe the RAF Act itself is cumbersome and unhelpful and needs a relook if generally suffocating bottlenecks are to be straightened out. Maybe the court rules need fixing. But certainly, something must change. We cannot all keep pretending that compensating a road accident victim is a very elaborate and involved rocket science project.

[4] In these proceedings, like in about nine other matters which served before this court during an acting stint, the plaintiff appears unopposed per default judgement application seeking compensation arising from injuries sustained in a motor vehicle accident. Having filed no reports to help determine the quantum due to the plaintiff, counsel for the defendant only appeared to confirm the fund's failure to file any reports as well as to merely just observe proceedings.

[5] In the backdrop of the merits in this matter having been finalized 100% in the plaintiff's favour and the general damages having been settled at R500 000.00 per court order dated 17 June 2021 before, what falls to be determined before this court was loss of earnings in the form of past earnings lost and future loss of income.

THE EVIDENCE LED AND BRIEF ANALYSIS THEREOF

[6] In the absence of any opposing expert reports, the plaintiff, indulged by the court, led evidence of his experts on the stated quantum issue under cover of affidavits in terms of Uniform Rule 38(2) which rule provides as follows:

> *"The witnesses at a trial of any action shall be orally examined, but a court at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet:.."*

[7] The evidence of the plaintiff's expert witnesses, to wit, the occupational therapist, and the industrial psychologist, pursuant to quantification of the plaintiff's loss of earnings can best be summarized as follows:

7.1 Rendani Sheila Mathengu, an occupational therapist's evidence was to the following effect:

7.1.1 The plaintiff was prior the accident employed as a maintenance operator and depended on his monthly salary for subsistence.

7.1.2 The accident prevented him from returning to his pre-accident job.

7.1.3 Consequent thereto he lost income.

7.1.4 A maintenance operator job requires good bilateral hand function and coordination, which he lost because of the accident.

7.1.5 The plaintiff is reliant on his physical abilities to secure employment and cannot do so competently owing to the injuries he sustained in the accident.

7.1.6 The accident is the primary cause of the plaintiff's loss of income.

7.2 The evidence gleaned from Lungile Langa, the Industrial Psychologist was the following:

7.2.1 The plaintiff is academically armed with a grade 9 level of education and a machine operator certificate.

7.2.2 Prior the accident the plaintiff was physically fit and having no limitations on physical exertion.

7.2.3 But for the accident the plaintiff would in all probability have continued working until 60 years at the least and 65 years at the most.

7.2.4 The accident compromised the plaintiff's capacity to perform physical work.

7.2.5 Even if he does some work, the plaintiff will be an unequal competitor in the workplace owing to pains, discomforts and restrictions caused by the accident.

7.2.6 The accident has diminished the plaintiffs employment opportunities and disadvantaged him on the effectiveness, efficiency, and productivity front.

[8] Informed by the above expert evidence, Ndangano Nevhulaudzi, an actuary and expert witness computed the past loss of earnings at R565 352,60 and the future loss of earnings at R1 417 182.86 the two of which totaled a loss of R1 982 535.46. He had factored a 5% contingency into the past loss and a 25% one into the future loss.

[9] I have had regard to the injuries sustained by the plaintiff, to wit, right side

arm soft tissue injury, brachia! plexus injury post ganglionic and complex regional pain syndrome as per the medical report of the orthopedic surgeon.

[10] Having had regard to those physical injuries and with nothing offered by the defendant to gainsay the evidence of the plaintiffs occupational therapist, I have no reason to disagree with that occupational therapist's expert opinion that the road accident has had a significant negative impact on the plaintiffs occupational performance and further that flowing from the accident the plaintiff has a permanent disability which has severely impacted on his day to day quality of life and occupational performance.

[11] Similarly I cannot fault the plaintiff's industrial psychologist's expert evidence to the effect that because of the accident the plaintiff is prevented from competing with his peers for opportunities in the workspace and that the injuries he sustained in the accident will make it difficult for him to secure and sustain employment within the open labour market. There is nothing which piques my curiosity, or which attracts any question from me about the Industrial psychologist's well-reasoned expert conclusions. Had I had any questions I would, in my discretion, have called for the expert to come testify in person. I did not need to.

[12] With regard to the actuarial calculations made on the plaintiff's behalf I note, as alluded to supra already, that the actuary has already inculcated normal contingencies of 5 and 25%. I am inclined to accept those computations as they are in my view not exorbitant nor are they too meagre.

[13] I am alive to the fact that, as is tradition and common practice, and perhaps to make this judgement look more erudite, I am expected to perform some kind of quality assurance over the quantum proposed by the actuary by comparing it to similar matters with similar or almost similar types of injuries and sequalae. I am also mindful that previous awards have always been said to be mere guidelines on subsequent awards and need not per se be followed slavishly for no two injuries, nor sequalae nor personal circumstances are ever the same. Indeed, in **Marakalala Hendrick v The Road Accident Fund (1382/2014) [2019] ZALMPPHC**

26(4 June 2019) at para18 per Kganyago J of this division it was stated as follows:

> *"It is trite that past awards are merely* a *guide and are not to be slavishly followed, but they remain* a *guide, nonetheless. It is also important that awards, where the sequalae of an accident are substantially similar, should be consonant with one another, across the land."*

[14] In both the plaintiff's heads of argument and in oral submissions before me, I was not favoured with any authority for comparative purposes or for quality assurance or as guidelines. There really is nothing wrong with that in my view. I must determine quantum based on evidence led before me applying my mind to its probative value. In that regard, guidelines are not so central to my mind because if my sense of what is just queried the computations of the actuary in any manner, I would have called for the actuary to clarify me. I did not and, in my view, didn't need to. I have determined those computations to be just on the facts of this case and value and accept the expert evidence before me who testified about aspects over which I am lay. I also do not understand consonancy as referred to supra to mean the same or similar amounts because even if the injuries be the same, the personal circumstances of each plaintiff which feed into the computation of the awards will never be the same. I understand consonancy to mean that the award must be reasonable as in not being overly excessive or manifestly meagre. At any rate, I often wonder what guided the first of any long list of quantum guidelines for if we are to be guided on amounts not so much by expert evidence before us but by those amounts that were awarded previously going back as far as the years of Apartheid, what is it that guided the very first decision prior to which there was no guide.

[15] In all the above premises I cannot fault the case made out before me by the plaintiff. The plaintiff's default judgement application on quantum must therefore succeed.

[16] Resultantly the following order is made:

16.1. The defendant is ordered to pay to the plaintiff an amount of R1 982 535.46 as loss of earnings.

16.2 The defendant is ordered to pay to the plaintiff agreed or taxed costs of the action on a High Court party and party scale, which costs shall include travelling costs, costs attendant to procuring medico-legal reports and the costs of counsel.

16.3 The defendant is ordered to pay the amount referred to in order 16.1 above within 180 days from date of this order into the plaintiff's attorneys of record's trust account the details of which are as follows:

Account Holder: Madima M Attorneys Inc.
Bank: First National Bank
Account Number: 6[…]
Branch Code: 210835
Account Type: Commercial Attorneys Trust
Ref: MMC/RAF01/2019

16.4 It is ordered that interest on the amount referred to in order 16.1 supra and payable by the defendant to the plaintiff shall run at 7% per annum computed from a day after the expiry of the 180 days referred to in order 16.3 above to the date of final payment.

MS MONENE
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO LOCAL DIVISION, THOHOYANDOU

APPEARANCES

Heard on	*16 October 2023*
Judgment delivered on	*23 January 2024.*
For the First Applicant	*L F Maselesele*

Instructed by	*Madima M Attorneys Inc* *Tel: 015 962 0430* *Telefax: 015 962 0593*
For the First Respondent	*Ms Matjeke*
Instructed by	*State Attorney, Thohoyandou* *Tel: 074 199 4071*