



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 4671/2023

- (1) Reportable: **No**
(2) Of interest to other Judges: **No**
(3) Revised: **Yes/No**

04 June 2025

SIGNATURE

DATE

In the matter between:

BHEKIFA MAZWI NKOSI

PLAINTIFF

and

ROAD ACCIDENT FUND

LINK NO: 4739807

DEFENDANT

JUDGMENT

Mangena AJ

[1] The plaintiff, Mr Bhekifa Mazwi Nkosi, was involved in a near fatal motor vehicle accident on 26 January 2019. As a result of the accident, he sustained severe injuries that rendered him completely quadriplegic. He cannot use all his four limbs and is bound to a wheelchair. He requires assistance for all his daily living activities including use of a wheelchair, eating, bathing, turning on the bed when he is sleeping as well as brushing his teeth.

[2] At the time of the accident, he was 22 years old and employed as a General Worker for a waste collecting company contracted to Mbombela Local Municipality. His monthly salary determined from the bank statements was R3 500.00. It is unclear on the evidence whether his employment was temporary (i.e of a limited duration) or permanent.

[3] Following the accident, Mr Nkosi instituted legal proceedings against the defendant, the Road Accident Fund, for payment of an amount of R14 000 000.00 (fourteen million four hundred thousand rands). The breakdown for the total amount claimed is as follows:

- 3.1 Past hospital and medical expenses- R100 000.00.
- 3.2 Estimated future medical and hospital expenses -R500 000.00.
- 3.3 Estimated loss of earnings, earning capacity and employability- R10 000 000.00.
- 3.4 General damages for pain and suffering- R3 500 000.00

[4] It can be accepted that there was an error in calculation as the total amount per breakdown is R14 100 000.00 (fourteen million one hundred thousand rands).

[5] The Road Accident Fund defended the proceedings and disputed the quantum in relation to the loss of earnings. To prove his entitlement to compensation for loss of earnings, the plaintiff testified that the accident had ruined his life to the point where he has lost all confidence and feels belittled. Prior to the accident he could do everything by himself and the quality of his life was good. He could go to the stadium to watch soccer, play soccer with friends and generally do things by himself. He can no longer be able to do these things and has lost friends.

[6] Regarding employment, he testified that he was employed at Mbombela trucking section for a period of one year, from July 2018 to January 2019, when he got involved in the accident. His salary was R3 500.00 per month, but it also depended on extra-hours. He did not have an employment contract though he remembers signing some documents which were later taken back. He testified that he was working for a service provider contracted to the municipality though he cannot recall the name of the company. The only thing he remembers is the name of the person he thinks was the owner of the company, namely, Mr Frans Sifunda. He does not have a copy of any of the documents he signed with his employer as his family threw away some of his documents when he was in the hospital. He also changed his residence and some of the documents may have gotten lost during that period.

[7] On his education, he testified that he completed matric in 2017 and never repeated a grade. He does not recall how old he was when he started schooling. He performed well in matric though he achieved a diploma entry. His aspiration was to become a teacher and he had applied to either Mpumalanga University or Tshwane University of Technology for admission. He cannot recall the programme he wanted to study for. He could not pursue the application as the institution wanted him to send money that he did not have and shortly thereafter he was involved in an accident. He is unable to apply for further studies because he cannot hold a pen, take a bath and generally do anything. Even if he would have wanted to do online courses, it will not be possible as he cannot type either with his phone or computer. He still has the aspiration to study but lacks the requisite confidence as he is unable to sit for prolonged periods. He was however unable to produce the acceptance letter from any of the institution he had applied to, nor could he tell the court which programme he was intending to pursue in February 2019 before he was involved in the accident.

[8] Mrs Mmaserome Patience Dipale testified in support of Mr Nkosi. She is an educational psychologist with more than 10 years of experience and currently a PhD candidate. She had prepared a report filed in terms of the rules after she consulted with

Mr Nkosi. She testified that Mr Nkosi never repeated a grade and out of the interaction she had with him, she gained the impression that he was determined to succeed in life and was a very ambitious young man. Though he wanted to proceed with his studies, he could not do so due to his socio-economic status. Her conclusions were that, had the accident not occurred, he would have studied for further qualifications and obtained a diploma.

[9] She was cross-examined on the report that she prepared, and she floundered on critical issues. Nowhere in her report was it stated that Mr Nkosi indicated to her that he wanted to further his studies. When asked on this discrepancy, she said it was an oversight. In her report she had stated that Mr Nkosi's Grade 11 report indicated that he performed below average and was promoted. She also testified that she did not obtain reports for other grades in her preparation of the psycho-legal assessment. Her report stated that pre-accident Mr Nkosi worked as a general worker for 3 years when evidence on record showed that he worked for less than a year. She could also not give coherent answers regarding the employment status and school performance of Mr Nkosi. On the totality of her evidence, she was not a credible witness and failed to provide facts to support her conclusions. Overall, there were material contradictions between her oral evidence and the report she had compiled in so far as the educational performance of Mr Nkosi was concerned. Her wrong or unsupported conclusions led to incorrect postulations by other experts who based their findings on the information contained in her report.

[10] The last witness to testify for the plaintiff was Ms Bathobile Prosperity Nkambule, an industrial psychologist. She consulted with Mr Nkosi who informed her that he wanted to be a teacher and was passionate about it. She made her postulations based on the report from other experts. She admitted that it was an error on her part that she did not do postulations on the assumption that Mr Nkosi would have remained a general worker. She did not obtain collateral information from the employer and her postulations were based on Mr Nkosi attaining an NQF level 5 or 7 qualification and ultimately qualifying as a teacher. She did not have in her possession the school reports of Mr Nkosi though she opined that had Mr Nkosi not been involved in the accident he would have worked as a

general worker for 3-4 years and saved money to register for a teaching course where he would have progressed up to a head of department in the teaching field, depending on the availability of the post.

[11] The defendant did not call any witnesses, and Ms Ndubani, who appeared for the defendant, has urged me to dismiss the plaintiff's claim for loss of earnings with costs. She argued that the plaintiff's experts have not provided reasoned findings based on facts and therefore their conclusions should be rejected. The experts failed to obtain school reports, employer's certificate as well as information relating to applications made to institutions of higher learning to support their conclusions that Mr Nkosi was ambitious and determined to pursue further studies.

[12] Ms Mahlalela, who appeared for the plaintiff, prayed for an order awarding damages in the amount of R6 545 403.00 to the plaintiff based on the industrial psychologist's report. In her submissions, she relied on the expert reports filed and admitted into evidence. She aligned herself with the findings which postulate that had the accident not happened, Mr Nkosi would have in all probabilities obtained an NQF level 5 qualification because he was an average performer who reached his milestones at the correct time. She urged me to consider the oral evidence of Ms Dipale who stated that the educational landscape has changed significantly to provide much needed support to children from families with poor economic backgrounds. What is becoming clearer nowadays is that the government has put in place supporting mechanisms in the form of National Student Financial Aid Scheme (NSFAS) and other financial structures to support students with potential. Mr Nkosi with his matric qualification could in all probabilities have taken advantage of the opportunities and pursued his studies if it was not for the accident.

[13] At the centre of the dispute in this case is the postulations based on the findings of the experts. Their reports were submitted to court in terms of Rule 36(9)(a) and (b) of

the Uniform Rules of Court. In *Coopers (South Africa) Pty Ltd v Deutsche Gesellschaft Fur Schadlingsbekampfung MBH*,¹ the court said:

“... an expert’s opinion represents his reasoned conclusion based on certain facts or *data*, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert’s bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.”

[14] In *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd and Another*,² the following guidance was given regarding the weight to be given on the expert opinion. The court said:

“[326] ‘Before any weight can be given to an expert’s opinion, the facts upon which the opinion is based must be found to exist’.

[327] ‘As long as there is some admissible evidence on which the expert’s testimony is based it cannot be ignored, but it follows that the more an expert relies on facts not in evidence, the weight given to his opinion will diminish’.

[328] An opinion based on facts not in evidence has no value for the court.”

[15] Based on the above approach, I proceed to consider whether, any reliance can be placed on the opinions of the two expert witnesses called upon by the plaintiff, namely, Ms Dipale and Ms Nkambule, the educational psychologist and the industrial psychologist respectively.

¹ *Coopers (South Africa) Pty Ltd v Deutsche Gesellschaft Fur Schadlingsbekampfung MBH* 1976 (3) SA 352 (A).

² *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd and Another* [2015] 2 All SA 403 (SCA) para 99, the Supreme Court of Appeal quoted this passage from *Widdrington (Estate of) c. Wightman*, 2011 QCCS 1788 (CanLII).

[16] It is clear on the evidence that Ms Nkambule based her post morbid postulations on the findings of the report prepared by Ms Dipale. Both of them worked on the assumptions that Mr Nkosi would have obtained an NQF level 5 qualification based on his scholastic performance. They could not provide the basis upon which they arrived at that conclusion given the fact that they did not obtain copies of the school reports for Mr Nkosi. None of them made an effort to obtain them from either the school or family, let alone conduct interviews with his former teachers who could have provided some insights as to his academic potential.

[17] The evidence on record contained in Ms Dipale's report is to the effect that Mr Nkosi was an average performer in Grade 11 and his term 4 report recorded "Below average but promoted". During cross-examination, Ms Dipale was incoherent in her answers and unable to explain the inconsistencies between the information in her written report and her oral testimony. She generally appeared unprepared and did not strike me as a person who was diligent in the preparation of her report. Her findings were at odds with the established facts obtained from Mr Nkosi with regard to his work, salary and schooling.

[18] Ms Nkambule, as earlier indicated, worked on the reports of other experts. She was able to obtain the correct information from Mr Nkosi regarding his salary but has not been able to establish independently what his employment status was at the time of the accident. She did not establish if he was a contract worker or a permanent employee nor did she obtain an employment certificate. She was content with the information contained in the reports of the other experts including Ms Dipale. Consequently, she also did not obtain school reports to satisfy herself as to the academic performance of Mr Nkosi.

[19] Regarding the postulations made, in particular as to why she did not include the assertion that Mr Nkosi would have remained a general worker until retirement, her answer was that it was a mistake. She was however not able to explain this mistake and how it was committed. It follows therefore that to the extent that she worked on the information contained in M Dipale's report, her conclusions are wrong, poorly reasoned

and not supported by objective facts. On the authority of *PriceWaterhouseCoopers* cited above, her opinion which is based on facts not in evidence has no value for the court.

[20] What came out clear from the evidence of both Ms Dipale and Ms Nkambule is that they considered themselves agents of Mr Nkosi and their duty was owed to him and not the court. The approach they took both in court and during the preparation of their reports was wrong. Law reports tell us and legal practitioners calling expert witnesses to testify on behalf of their clients would do well to remember what Diemont JA said in *Stock v Stock*:³ “An expert ... must be made to understand that he is there to assist the court. If he is to be helpful he must be neutral. ... The evidence of such a witness is of little value where he, or she, is partisan and consistently asserts the cause of the party who calls him”. Majiedt JA quoted this with approval in *Jacobs and Another v Transnet Ltd t/a Metrorail and Another*,⁴ where he amplified this duty with these profound words: “Objectivity is the central prerequisite for his or her opinions”.

[21] The evidence of the two expert witnesses lacks both reasoning and objectivity, as it is not derived from facts established by the evidence tendered. Their evidence cannot be accepted.

[22] As pointed out earlier, the defendant did not testify and the onus was on the plaintiff to prove his entitlement to the damages suffered. In my view, the plaintiff has not been able to adduce sufficient evidence to justify an order awarding him damages for loss of future earnings. This is so because the industrial psychologist failed to make postulations on pre-morbid earnings which to me appears to have been the most sensible thing to do given the paucity of information upon which it could be concluded that Mr Nkosi could have obtained an NQF level 5 or 7 qualification.

[23] In the circumstances, I am not inclined to dismiss the claim but rather order an absolution from the instance.

³ *Stock v Stock* 1981 (3) SA 1280 (A) at 1281G-H.

⁴ *Jacobs and Another v Transnet Ltd t/a Metrorail and Another* 2015 (1) SA 139 (SCA) para 15.

[24] There shall be no order as to costs.

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M I MANGENA

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA