

Reportable:	YES / <b><u>NO</u></b>
Circulate to Judges:	YES / <b><u>NO</u></b>
Circulate to Magistrates:	YES / <b><u>NO</u></b>
Circulate to Regional Magistrates:	YES / <b><u>NO</u></b>



**IN THE NORTH WEST HIGH COURT, MAFIKENG**

CASE NO: RAF343/2014

In the matter between:

**JOSEPH THABO RAMPHOKWANE**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**DATE OF HEARING** : 13 FEBRUARY 2018

**DATE OF JUDGMENT** : 15 MARCH 2018

**COUNSEL FOR THE PLAINTIFF** : ADV. WILLIAMS SC

**COUNSEL FOR THE DEFENDANT** : ADV. MAKOTI

**JUDGMENT**

## **HENDRICKS J**

### **Introduction**

[1] Mr. T.J Raphokwane, the plaintiff, was employed as a Survey Assistant at Northam Platinum Mine. He was 32 years of age when he was involved in a motor vehicle accident on 23<sup>rd</sup> February 2014 and sustained serious bodily injuries. By then he was employed for a period of ten (10) years. After the initial period of recuperation he went back to work. He could however not resume his normal duties as a result of the injuries he sustained. He could not lift heavy objects which was what his job entails. He was offered light duties until he was declared medically unfit to work. It is common cause that the plaintiff is currently unemployed.

[2] Liability was conceded by the defendant at 100% of the plaintiff's proven damages. Past hospital and medical expenses in the amount of R331 517.48 was agreed upon by the parties. So too, was general damages (non-pecuniary loss) in the sum of R500 000.00 also agreed upon. Past and future loss of earnings / earning capacity were to be determined by this Court during trial.

[3] The parties agreed that the joint minutes compiled by the various experts be handed in. It was furthermore agreed that the joint minutes as supported by the expert's reports, constitute evidence before this

Court. Furthermore, is it common cause between the parties that the plaintiff will be unemployed in the future and that he suffer a total loss of earnings. What remained in dispute is the past loss of earnings (the amount the plaintiff would have earned from the date of the accident until today) and the future loss of earnings (the amount from today until his retirement age), had the accident not rendered him unemployable. To this end, both parties called their respective industrial psychologists and actuaries to testify.

- [4] Mrs. Ntsietsi, the industrial psychologist on behalf of the plaintiff, testified and confirmed the contents of her report as well as the joint minutes. She confirm that the plaintiff is unemployable with a total loss of earnings / earning capacity. According to her, but for the accident, the plaintiff would reach Paterson B3 upper quartile level of earnings. This she base on the fact that plaintiff had already been employed for a period of ten (10) years and he was relatively young at the age of 32 years, when the accident occurred. She stated in her report:

*"Considering his level of education, work experience and noting collateral information, Mr Raphokwane would have probably reached his earning ceiling within Paterson B3 upper quartile level, total package at the approximate age of 40-45 years. Thereafter his earnings were most likely going to grow as a result of annual inflationary increases till retirement age. "*

[5] Mrs. Kheswa, the industrial psychologist on behalf of the defendant, also testified. She confirmed the contents of her report and the joint minutes she compiled in conjunction with her counterpart, Mrs Ntsietsi. She stated in her report:

*"Considering various factors such as his age, level of education, working experience, tenure (nearly 10 years) with his employer, high unemployment rate, collateral information (in which it was indicated that there were no promotional prospects) and reported earnings, he is likely to have continues with his pre-accident employment. His salary at the time of his injury should therefore be used for calculating his claim." (Emphasis added)*

*also*

*"Alternatively, should he have decided to opt for another employment elsewhere (better paying job), his earnings ceiling at a level equivalent to the upper quartile earnings of semi-skilled non-corporate workers by the time he reached 45 years with the applicable inflationary increases, thereafter. According to Koch (2017), semi-skilled non-corporate workers earn between R20 600 - R59 000 - R151 000 per annum, B3 upper quartile, total package if established in the corporate sector. " (Emphasis added)*

[6] In the first scenario, Mrs. Kheswa is of the opinion that the plaintiff was most likely to continue with his pre-accident employment until he reach the retirement age. The salary that he earned should be used as the basis to calculate his future income and would constitute his

claim. In the second scenario, she stated that the plaintiff's earnings, if he had looked for alternative employment, most probably would reach the level equivalent to the upper quartile Paterson B3. This second scenario is similar to the scenario as testified to by Mrs. Ntsietsi with the qualification that he would be employed in the non-corporate sector as opposed to the corporate sector.

[7] During cross-examination of Mrs. Kheswa by Adv. Williams SC, she conceded that the plaintiff would most likely opt for another better paying job because he was relatively young; the fact that he was already in this employment for ten (10) years; that he had reached the ceiling with regard to promotion and was no longer promotable. All this indicate that there was at least a 50-50 chance that the plaintiff would move on and looked for better paying employment, especially because he is also a qualified security officer with a code 10 driver's licence. On the probabilities, according to Mrs. Kheswa, this was likely to happen.

[8] The defendant's actuary, Mr. Immerman, testified that he did not compile the actuary report. It was done by Mr. Jacobson. Mr. Jacobson did not calculate the first scenario by Mrs. Kheswa namely that the plaintiff would remain in the same unpromotable employment for the next thirty (30) years. This, according to him, is not impossible but highly improbable. The likelihood that the plaintiff might have opted for a better paying employment elsewhere is more probable.

[9] This Court will be guided by the actuary report compiled by Munro Forensic Actuaries as testified to by Mr. Boshoff. In particular the calculations in terms of the Paterson B3 upper quartile earnings of semi-skilled non-corporate work as suggested by Mrs. Kheswa and not that of the corporate sector. This in my view will be just and fair. In terms of these calculations the future loss of earnings / earning capacity amounts to R2 350 900.00. It is also common cause that the plaintiff already received a lumpsum payment of R120 000.00.

Therefore, insofar as the past loss is concerned:

Past loss	R 293 800.00
Less 5% contingency	R 14 690.00
	R 279 110.00
Less lumpsum	<u>R 120 000.00</u>
Total	<u>R159 110.00</u>

With regard to the future loss:

Future loss	R2 350 900.00
Less 15% contingency	<u>R 352 635.00</u>
Total	<u>R1 998 265.00</u>

## **Costs**

[10] In so far as costs are concerned, I am of the view that the defendant should pay the costs of this action. Such costs should include the costs consequent upon the employment of senior counsel because of the importance of this matter to both parties.

**Order**

[11] Consequently, the following order is made:

(1) The defendant is ordered to pay to the plaintiff for:

Past hospital and medical expenses	R 331 517.48
General damages	R 500 000.00
Past loss of earnings	R 159 110.00
Future loss of earnings	<u>R1 998 265.00</u>
Total	<u>R2 998 892.48</u>

(2) The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 in respect of future accommodation of plaintiff in a hospital or nursing home for treatment or rendering of a service or supplying of goods to him, to compensate the plaintiff in respect of the said costs after the costs have been incurred and on tendering of proof thereof, arising from the collision which occurred on 23 February 2014.

(3) The defendant is ordered to pay the plaintiff's costs of suit, such costs to include

- 3.1 the costs of senior counsel;
  - 3.2 the reasonable taxable fees for consultation and preparation for trial, qualifying and full reservation fees and on proof thereof as well as the costs of the reports of:
    - 3.2.1 Dr I G Manganyi;
    - 3.2.2 Dr P T Kumbiral;
    - 3.2.3 Linda Maye;
    - 3.2.4 Poppy Khunou;
    - 3.2.5 Talifhani Ntsieni;
  - 3.3 the costs of all other reports served on defendant's attorneys not mentioned above;
  - 3.4 the costs of obtaining all actuarial reports from the actuaries Munro Forensic Actuaries;
  - 3.5 the plaintiff's reasonable hotel accommodation, transportation costs for attending consultation with the medico-legal experts as well as reasonable transportation for attending to Court;
  - 3.6 the costs of the trial enrolled for 22 November 2017, 13 and 14 February 2018.
- (4) That the amount in paragraph 1 and the costs are to be paid into the trust account of Messrs Matuleka Tlhasi Incorporated as follows:

Bank : FNB



Account holder : Maluleka Tlhasi Inc.

Account number: [...]

Branch code: 251445

Ref: Mr Maluleka/MVA1017/14/RAPHOKWANE

- (5) The plaintiff's attorney is entitled to charge contingency fees in terms of the Contingency Fees Act on the basis of the contingency fee agreement dated 5 March 2014.

**R D HENDRICKS**  
**JUDGE OF THE HIGH COURT,**  
**NORTH WEST DIVISION, MAHIKENG**