



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

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: RAF 349/2021

In the matter between:

MORAKENG OTLADISA

Plaintiff

AND

ROAD ACCIDENT FUND

Defendant

Heard: 07 MAY 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **06 JUNE 2024**

ORDER

I make the following order:

1. The Defendant is ordered to pay the following amounts

Loss of earnings R 1 072 170.00.

To the Plaintiff in settlement of the Plaintiff's claim.

2. The Defendant shall be liable for interest thereon at 11.75% from the date of judgement to date of payment.
3. The Defendant is ordered to pay costs of suit up until **20 May 2024** including the costs of obtaining the expert witnesses.
4. The general damages are referred to the Health Professions Council of South Africa for determination.

JUDGMENT

DJAJE DJP

- [1] In this action for damages the plaintiff sued the defendant for injuries sustained from a motor vehicle accident in which he was a passenger on **27 February 2021**. The collision was between two vehicles. Merits were conceded 100% in favour of the plaintiff. General damages were rejected by the defendant and the only issue left for determination is loss of earning.
- [2] The plaintiff filed reports of experts and no experts on behalf of the defendant. There was an application in terms of Rule 38(2) of the Uniform Rules of Court to have the evidence of the plaintiff's experts heard on submission of affidavits. The application was granted. The following expert reports were relied on by the plaintiff:

- Orthopaedic Surgeon
- Occupational Therapist
- Industrial Psychologist
- Actuary

Plaintiff's Expert Reports

Orthopaedic Surgeon: Dr R.S. Ngobeni

[3] According to the Orthopaedic Surgeon the plaintiff sustained left hand injury, left wrist injury, left thumb and soft tissue injury on the left hand. As a result of the injuries, he suffered acute pain for two weeks and still suffers from pain on the wrist. At the time of the accident, he was unemployed and is still unemployed. The plaintiff is an experienced underground miner but due to the pain on the left hand he will not be able to return to mining duties. The pain will restrict his ability to find work in the general open labour market as compared to his peers.

Occupational Therapist: A Phasha

[4] The plaintiff was assessed on **22 November 2022**. The plaintiff only has grade 9 level of education and has been unemployed since **2009** up to the date of assessment. The plaintiff still complained of pain on the left forearm, wrist and thumb from the injuries sustained during the accident. The occupational therapist opined that the plaintiff is suited for light work category with the exclusion of tasks requiring constant bilateral hand use. He was able to secure

employment pre accident but is now disadvantaged considering his age, low level of education and limited previous work exposure.

Industrial Psychologist: S Moses

- [5] The Industrial Psychologist opined that due to the history of the plaintiff not being employed for a few years, he would unlikely remain unemployed until he finds piece jobs or work intermittently as and when he is able to find employment. Pre-morbid the plaintiff would have been able to improve his earnings and progress to the median quartile of semi-skilled by the age of 45 years. He would have been employed until he gets to the age of receiving pension from the government. Post accident his work capacity and options have been compromised due to the injuries from the accident.
- [6] In the actuarial report loss of earning was calculated at R1 235 000.00 with no contingencies applied. It was submitted by the plaintiff that contingencies should be applicable as the plaintiff spent ten years without securing any employment. It was argued that it does not necessarily follow that the plaintiff would have failed to secure employment in the future. Therefore, the amount of R1 076 600.00 for loss of earning was fair.
- [7] The defendant argued that considering that the plaintiff was unemployed for a period of ten years, it would be fair and reasonable to award the plaintiff the capacity loss on 15% spread/differential

with the total loss of R185 250.00. The defendant argued further that the plaintiff failed to prove that he was ever employed pre accident.

[8] In relation to the assessment of damages for loss of earning the following was said in **Southern Insurance Association v Ballie NO 1984 (1) SA 98 (A)**: *“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award...”*

[9] In the unreported case of **Matshaba v Road Accident Fund 2006 JOL 16926 (T)** Prinsloo J held that: *“where career and income details are available, the actuarial calculation approach is more appropriate and a court must primarily be guided by the actuarial approach, which deals with loss of income or earnings before applying the robust approach, which normally caters for loss of earning capacity. This would help the court to ensure that the compensation assessed and awarded to the plaintiff is as close as possible to the actual facts relied upon.”*

- [10] The object of the RAF is to give prejudiced plaintiffs the fullest possible compensation by placing them, insofar as possible, in the same position in which they were before the damage-causing event. **See Pretorius v Road Accident Fund 2013 JDR 1096 (GNP).**
- [11] In **Sandler v Wholesale Coal Suppliers Ltd 1941 (A) 194** it was stated that: *“It is no doubt exceedingly difficult to value the damage in terms of money, but that does not relieve the Court of the duty of doing so upon the evidence placed before it. This is a principle which has been acted on in several cases in South African Courts.”*
- [12] The plaintiff in this matter sustained serious injuries and the only experts that filed reports are those appointed by the plaintiff. It is clear from the reports that because of the accident, the plaintiff experiences challenges due to pain and his performance, should he find employment will be affected. At the time of the accident, he was unemployed
- [13] It was submitted that because of the accident the plaintiff will not be able to compete fairly in the open labour market and that the career opportunities for him are slim. The plaintiff has been unemployed for ten years and is now disadvantaged due to the injuries sustained. The actuarial calculations indicated that as an unskilled worker pre accident the past loss is R88 600 with the future loss at R1 235 000.00. The plaintiff has limitations and should be compensated fairly and applying fair, just, and reasonable contingencies. The plaintiff in its calculations applied contingencies

of 5% on past loss and 20% of future loss which in my view are fair and reasonable with the total loss of earning being R 1 072 170.00.

Order

[14] Consequently, the following order is made:

1. The Defendant is ordered to pay the following amounts
Loss of earnings R 1 072 170.00.
To the Plaintiff in settlement of the Plaintiff's claim.
2. The Defendant shall be liable for interest thereon at 11.75% from the date of judgement to date of payment.
3. The Defendant is ordered to pay costs of suit up until **20 May 2024** including the costs of obtaining the expert witnesses.
4. The general damages are referred to the Health Professions Council of South Africa for determination.



J T DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

APPEARANCES

DATE OF HEARING : 20 MAY 2024
RESERVED DATE : 24 MAY 2024
DATE OF JUDGMENT : 06 JUNE 2024

COUNSEL FOR THE PLAINTIFF : ADV D M KEKANA
COUNSEL FOR THE DEFENDANT : MR M R SETATI