

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2020/12980

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

DATE

SIGNATURE

In the matter between:

BARRENTON CHANDRE SHYNA

APPLICANT

AND

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

WEIDEMAN AJ

- [1] At the commencement of the hearing counsel moved an application in terms of Rule 38(2) and which was granted.
- [2] The issues for determination by this Court relate to liability and the quantum of plaintiff's claim in respect of loss of earnings and general damages.
- [3] The collision occurred on 17 December 2018 at approximately 12h45 on Main Reef Road, Johannesburg. The Plaintiff was a passenger in Volkswagen Polo sedan motor vehicle which was violently struck from the rear by Nissan bakkie with registration J[...]GP driven by M Bhula. In consequence of this collision, Plaintiff's vehicle collided forcefully into the vehicle in front of it. The plaintiff sustained multiple severe bodily injuries.
- [4] The plaintiff was born on 22 August 2000 and is presently 24 years of age. She was 18 years old at the time of the collision.
- [5] According to the plaintiff's amended particulars of claim the plaintiff sustained the following injuries:
- a. Psychological and psychiatric sequelae from the injuries sustained in the collision;
 - b. Soft tissue injury – cervical spine;
 - c. Soft tissue injury – left shoulder;
 - d. Multiple soft tissue injuries and abrasions;
 - e. Neck injury;

- f. Soft tissue injury - left leg;
- g. Injury to thoracolumbar spine;
- h. Minor concussive brain injury;
- i. Left upper and lower limbs soft tissue injuries.

[6] With regards to the head injury, Dr Marus, a neurosurgeon diagnoses a minor concussive brain injury from which patients usually make an uneventful recovery. Prior to the collision (in 2015), the plaintiff had been diagnosed with pre-morbid bipolar mood disorder and borderline personality disorder which was well controlled by treatment and medication. In the opinion of Dr Marus her pre-existing condition clearly inhibited plaintiff's ability to adapt to the physical aspects of the injuries sustained in the collision.

[7] Dr Maaroganye, a psychiatrist diagnosed the plaintiff with a mild concussive brain injury which developed into post-traumatic stress disorder which exacerbated the plaintiff's premorbid psychiatric condition. The plaintiff's long-term prognosis was guarded.

[8] Dr Naidoo, a psychiatrist diagnosed a depressive disorder due to the injuries sustained in the collision (including the traumatic brain injury) with anxiety symptoms and mood congruent psychotic symptoms. In the opinion of this expert, the plaintiff demonstrates severe abnormalities (Class 3) and alteration in her mental status, cognition and higher integrative functioning.

[9] In the opinion of Ms Prinsloo, a neuropsychologist, the plaintiff was a psychologically vulnerable individual prior to the collision, which likely rendered her more susceptible to the effects of the accident. This expert

concludes that the impact of the accident on her already vulnerable state has overwhelmed her capacity to adapt and has had a profound impact on her physical functioning. This resulted in persistent pain which is resistant to intervention and which lowers her cognitive effectiveness, drive, motivation and productivity.

- [10] With regards to the orthopaedic injuries, Dr Oelofse diagnoses a serious ligamentous injury to the neck with radiological evidence of C5/C6 anterior longitudinal ligament injury and secondary spondylosis. The cervical injury has resulted in pain and spasms with the probability of neck problems for the remainder of her life. This expert also diagnoses a lumbar spine injury with chronic pain and spasms.
- [11] Comprehensive psycho-legal evaluations of employability have been undertaken by Ms Du Toit, an industrial psychologist, for the purpose of evaluating the effects of the injuries and their sequelae on the plaintiff's employment and employability.
- [12] Ms Du Toit further concludes that, but for the injuries sustained in the collision, plaintiff would have earned at the basic A1/A2 Patterson level while studying towards a diploma. She would thereafter have found work at the B3/B4 level and have reached her career ceiling by age 45 years at the Patterson C3/C4 level with inflationary increases until retirement age 65 years.
- [13] In consequence of the injuries sustained in the collision, the plaintiff will now likely secure employment in 2026 with her matric qualification and would progress through to the Patterson B2 level, reaching her career ceiling by age 40. As a less likely scenario, the expert concludes that the plaintiff may still achieve an NQF 5 level qualification in which scenario she would reach her

career ceiling by age 45 at the Patterson B4 level. In both these scenarios the plaintiff will retire 5 years early by age 60. The expert confirms that plaintiff will suffer a decrease in productivity and is now a more vulnerable and an unequal competitor in the open labour market.

[14] Using the actuarial calculations uploaded on CaseLines B3-343 as the point of departure for the claim in respect of past loss of income, the figure proposed by the actuary after deduction of contingencies, still exceeds the amount being claimed for past loss of income in the plaintiff's amended particulars of claim. The claim for past loss of income is thus limited to the amount claimed in the particulars of claim, i.e. R746 635.

[15] In respect of the calculation of future loss of income the court wishes to interfere only by increasing the contingency deduction to be applied to the figure calculated in respect of future uninjured income to 40%. This is reasonable in light of the plaintiff's pre-existing medical conditions.

[16] The calculation done by the actuary in respect of the potential income, having regard to the accident, is accepted as per the report which reflects it as follows:

$$\text{a. } R11\ 360\ 060 - 40\% = R6\ 816\ 036 - R2\ 651\ 721 = R4\ 164\ 315.$$

[17] The claim for future loss of income is allowed in the sum of R4 165 315.

[18] The plaintiff's combined claim for past and future loss of income is then $R746\ 635 + R4\ 165\ 315 = R4\ 910\ 950.00$.

[19] ORDER

1. The Plaintiff is granted leave to present her evidence and that of her expert witnesses by way of affidavit in terms of Rule 38(2).
2. The court further admits into evidence in terms of Section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988 the following:
 - 2.1 The Plaintiff's hospital and clinical records;
 - 2.2 All affidavits pertaining to liability,
 - 2.3 Collateral evidence provided to the plaintiff's experts.
3. The defendant is liable for 100% of the Plaintiff's proven damages.
4. The Defendant shall pay to the Plaintiff the capital amount of R4 910 950.00 in respect of Loss of Earnings, together with interest a tempore morae calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996.
5. The issue of General Damages is separated and referred to the HPCSA.
6. Payment will be made directly to the trust account of the Plaintiff's attorneys within One Hundred and Eighty Days (180) days from the granting of this order: Account Number Bank & Branch De Broglio Attorneys [...] Nedbank – Northern Gauteng

7. The Defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse 100% of the Plaintiff for the costs of any future accommodation of the Plaintiff in a hospital or nursing home, or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by Plaintiff in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.

8. The Defendant is to pay the Plaintiff's agreed or taxed High Court costs as between party and party, such costs to include the qualifying fees of the experts, and the fees in respect of the preparation of the expert reports and the Plaintiff's reasonable travel and accommodation costs to attend the Plaintiff's experts, and the costs in respect of the employment of counsel to a maximum allowed under Scale C of Rule 69 and 70 of the Uniform Rules of Court, including cost pertaining to the Plaintiff's heads of argument and subject to the discretion of the taxing master.

WEIDEMAN AJ

**ACTING JUDGE OF THE
HIGH COURT OF SOUTH
AFRICA, JOHANNESBURG**

REPRESENTATIVES

For the Applicant: Adv Ian Zidel

Instructed by: de Broglio Attorneys

No representative for the Defendant

Hearing date: 04 March 2025

Delivered: 07 March 2025