



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2980/2016

In the matter between:

**M M**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**HEARD ON:** 09, 10 & 12 OCTOBER 2018

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**JUDGMENT BY:** MATHEBULA, J

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**DELIVERED ON:** 30 OCTOBER 2018

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- [1] This is a claim against the Road Accident Fund (defendant) arising from the injuries sustained in a motor collision that occurred on 29 November 2015. The merits were conceded in favour of the plaintiff

and an order was granted by my brother Mhlambi J on 13 June 2017. The heads which remain for adjudication are past and future medical expenses together with past and future loss of income. The claim for general damages has been rejected by the defendant and will be referred to an appropriate Tribunal.

- [2] The plaintiff testified and led evidence of the following witnesses namely Dr Louis Oelofse an orthopaedic surgeon, Marli Grobler an occupational therapist, Karen Kotze an industrial psychologist and Johan Sauer an actuary. The defendant did not lead any evidence. I am of the view that these witnesses were honest and objective in the circumstances. I do not find any reason to doubt them.
- [3] The evidence of Dr Oelofse is that the plaintiff underwent a ligament operation on 11 December 2015. The idea behind such an operation was to stabilize the collar bone and return it to its normal position. It was his opinion that the operation was not a success because the clavical was still moving thereafter. He added that even with successful treatment of the plaintiff's left shoulder, she will still have a deficit in the use of her left arm. He concluded that this injury had affected her future income earning capacity and with her level of education it was not fair to continue in the labour intensive environment. In actual fact, the plaintiff cannot perform physical labour and must not be allowed to do it.
- [4] The evidence of Marli Grobler the Occupational Therapist specialising in adult rehabilitation is that the plaintiff could not work at an elevated level. Neither could she lift her arm. She detected that there was functional limitations on her left arm with restrictions located at the rotation point. She concluded that even after optimal

treatment she must still not use it in order to avoid any re-injury. It was important in the circumstances that the lifespan of her joint must be extended as long as possible. At the moment she was incapable of handling full range medium, heavy and very heavy weights. She steadfastly held the opinion that she will not meet the demand of physical labour at a functional level.

- [5] Karen Kotze the Industrial Psychologist testified that her career prospects and associated likely earnings have been nullified by the sequelae of the injuries sustained in the accident. In this matter there has been a total loss of earnings.
  
- [6] In summary, the actuary testified that based on his calculations, the plaintiff's loss of earnings amounted to R 1 319 374.00.
  
- [7] The evidence of the plaintiff revolved around the accident and how it has adversely affected her in her endeavour to earn a living as a vendor and general worker. At the moment she was unable to perform any of the aforesaid duties. This evidence like that of other witnesses was uncontested.
  
- [8] As stated in paragraph 2 above I am of the view that the plaintiff has established a strong *prima facie* case which becomes proof on a balance of probabilities once it remains unanswered.<sup>1</sup> It is patently clear that the plaintiff is entitled to the damages for past and future loss of income. No evidence was led for past and future medical expenses. There is no basis to award such damages in the circumstances.

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<sup>1</sup> Nzimande v MEC for Health, Gauteng 2015 (6) SA 192 (GP) at 198A.

[9] As far as the costs are concerned, that costs follow the event.

[10] The following order is made:-

10.1 The Defendant is to pay the Plaintiff's attorneys the sum of **R1 319 374.00**, (one million three hundred and nineteen thousand three hundred and seventy four rand) in respect of loss of earnings;

10.2 The aforesaid amount will be paid into the Plaintiff's Attorney's trust account with the following details:

<b>ACCOUNT HOLDER:</b>	<b>VZLR INC</b>
<b>BRANCH:</b>	<b>ABSA BUSINESS BANK HILLCREST</b>
<b>BRANCH CODE:</b>	<b>632005</b>
<b>TYPE OF ACCOUNT:</b>	<b>TRUST ACCOUNT</b>
<b>ACCOUNT NUMBER:</b>	<b>[...]</b>

10.3 In the event of default on the above payment, interest shall accrue on such outstanding amount at 10% (at the mora rate of 3.5% above the repo rate on the date on this order, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended) per annum calculated from 14 November 2018 until date of payment;

10.4 The issue of loss of earnings & future medical- and hospital expenses are separated from all the other issues in terms of Rule 33(4), with the remainder of the issues of quantum (past medical- and hospital expenses & general damages) being postponed sine die.

- 10.5 The issue of general damages is referred to the HPCSA for determination.
- 10.6 The Defendant shall furnish the Plaintiff with an Undertaking, in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **29 November 2015**.
- 10.7 If the Defendant fails to furnish the undertaking to the Plaintiff within 30 (thirty) days of this order, the Defendant shall be held liable for the payment of the taxable party and party additional costs incurred to obtain the undertaking.
- 10.8 The Defendant to pay the Plaintiff's taxed or agreed party and party cost up until and including the trial dates of 9, 10 & 12 October 2018, in the above mentioned account, for the instructing- and correspondent attorneys, which cost shall include, but not be limited to the following:
- 10.8.1 All reserved cost to be unreserved, if any;
- 10.8.2 The fees (preparation and day fees) of Senior Junior Counsel for the trial dates of 9, 10 & 12 October 2018, including the reasonable preparation fees for the

drafting of the Heads of Arguments which was filed at court;

- 10.8.3 The cost of obtaining all expert medico legal- and any other reports of an expert nature which were furnished to the Defendant and/or it's experts;
- 10.8.4 The reasonable taxable qualifying, preparation, reservation and attendance fees of all experts, including the cost of consultation fees with the legal teams;
- 10.8.5 The reasonable traveling- and accommodation cost, if any, incurred in transporting the Plaintiff to all medico-legal appointments;
- 10.8.6 The reasonable cost for an interpreter's attendance at court and at the medico legal appointments for translation of information, if any;
- 10.8.7 The above-mentioned payment with regard to costs shall be subject to the following conditions:
- 10.8.8 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and
- 10.8.9 The Plaintiff shall allow the Defendant 14 (fourteen) calendar days to make payment of the taxed costs;

In the event of default on the above payment, interest shall accrue on such outstanding amount at the mora rate of 3.5% above the repo rate on the date of taxation / settlement of the bill of cost, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

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**MATHEBULA, J**

On behalf of applicant:

Adv. P Greyling

Instructed by:

Du Plooy Attorneys

Bloemfontein

On behalf of respondents:

Me. T Nkume

Instructed by:

Maduba Attorneys

Bloemfontein

/roosthuizen