



**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 no: 2152/2017

In the matter between:

**A A MOSIANE**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

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**CORAM:** PAGE AJ

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**HEARD ON:** 17<sup>th</sup> and 18<sup>th</sup> of August 2021.

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**DELIVERED ON:** 18 October 2021.

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[1] The Plaintiff instituted a claim for damages against the Defendant for injuries sustained as a result of a motor vehicle accident which occurred on 3 May 2016 at Winburg Road, Ventersburg within the jurisdiction of this court.

[2] The parties agree that the Plaintiff's injuries and sequelae are the following:

Injuries sustained as a result of the accident:

- Left distal radius/wrist fracture.
- Pelvis and right hip injury.
- Bilateral knee injuries.
- Cervical spine injury.
- Right knee injury.
- Head/ Facial injury

- Future surgery is envisaged in the form of a total right knee replacement, revision total right knee replacement, and arthroscopy and debridement of the right and/or left knee joint with a possible meniscus repair.

Sequelae as a result of the injuries sustained:

- Marked scarring / disfigurement.
- Severe pain in the right thigh with swollen painful knee.
- Headaches
- Emotional problems and depression.
- Psychologically vulnerability with relapses.
- Difficulty to stand having a negative impact on occupational and personal life.
- Pain and discomfort with significant impairment of movement which makes it difficult to work.

[3] At the inception of the trial the parties recorded the following agreement between them:

- 2.1 The issue of liability has been settled. The defendant admitted to being liable for 100% of the damages proven by the Plaintiff.
- 2.2 The Defendant will issue an undertaking in terms of Section 17(4)(a) of the Road Accident Act 56 of 1996 ( RAF Act) in respect of all future medical expenses.
- 2.3 The Plaintiff's general damages has been referred to HPSCA and remains an issue in dispute for later determination.

[4] What remains to be decided by this court is:

- 3.1 Past Medical Expenses;
- 3.2 Past-and Future Loss of earnings and earning capacity.

[5] The Defendant admits the contents of the medico-legal reports from the various experts presented by the Plaintiff.

#### Past Medical Expenses:

- [6] The Plaintiff has submitted medical vouchers in respect of medical expenses incurred. The Defendant has not furnished any evidence to counter the said medical vouchers.

It is found that the presentation of the medical vouchers constitute prima facie proof of:

- 6.1 The fact that the expenses were incurred by the Plaintiff as a result of the accident in question; and
  - 6.2 That the expenses constitute a reasonable and necessary expense incurred by the Plaintiff as a result of the accident.
- [7] In the absence of any evidence to the contrary the said medical vouchers are accepted as conclusive proof of the Plaintiff's past medical expenses.

#### Past-and Future Loss of Income

- [8] The following facts are not in dispute between the parties:

#### Pre-accident career qualifications:

The Plaintiff's highest level of education is Grade 7 without any further formal education. Her work history includes that of a domestic worker and general worker. At the time of the accident the Plaintiff was employed as a cleaner at the University of the Free State. Her pre-accident report has been described within the medium work parameters.

#### Pre-accident earnings and career path:

- [9] At the time of the accident the Plaintiff was earning a salary of R 3 700.00 per month. Currently, the Plaintiff remains employed as a cleaner at the University of the Free State performing medium work tasks. She will continue to work in the same capacity and is currently earning R 5 400.00 per month.

The Plaintiff does not meet the demands of full range light medium and heavy parameters. She is best suited for work within sedentary to occasional light duty parameters and is not suited to work as a cleaner. Her normal retirement age is 65 years.

#### Plaintiff's income Post-Accident:

- [10] The following facts are admitted between the parties in respect of the Plaintiff's post-accident career path:

The Plaintiff returned to work 3 months following the accident. Her work capacity had been compromised due to her physical limitations which prevented her from doing physical labour again and had to be accommodated in a sedentary or light duty position. If not accommodated, the Plaintiff will only be able to work for another 5 to 10 years. Pain and discomfort is expected to hamper her accuracy and productivity and further to this is expected to negatively impact on her salary increase and bonuses. Her work capacity is described to being "significantly compromised." She is best suited for sedentary or light duties but may struggle to obtain and sustain such work having regard to her low level of education and work experience which is limited to exclusive physical labour. She would require workplace accommodation which may not be reasonable to the majority of workers. She is considered to be a more vulnerable employee on the open labour market and is not suited to her pre-accident and current employment.

#### Early Retirement

- [11] Dr Oelofse opines that the Plaintiff would have been able to work until the normal retirement age of 65 years if not for the injuries sustained in the accident. He confirms that she will not be able to do physical labour any longer. If accommodated in a light or sedentary position she will be able to work to the age of 60 years old. If not accommodated, the Plaintiff will only be able to work for another 5 to 10 years.

- [12] The Contingency Factor

In *Road Accident Fund v Kerridge* 2019(2)SA 233 (SCA) at para 42 reads:

*"Contingencies are arbitrary and also highly subjective. It can be described no better than the oft-quoted passage in Goodall v President Insurance Co Ltd 1978 (1) SA 389 (W) where court said: "In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practised by ancient prophets and soothsayers, and by authors of a certain type of almanac, is not numbered among the qualifications for judicial office." And in para 43: "it is for this reason that a trial court has a wide discretion when it comes to determining contingencies."*

- [13] In order to determine the appropriate contingency deductions, and to estimate the monetary value of the Plaintiff's Past- and Future Loss of Income, the

actuarial calculations of, and the contingencies applied by Johan Sauer Actuaries is used as a useful basis, bearing in mind the age of the Plaintiff at the time of the accident, her current age and the fact that, as a result of the accident and injury sustained the Plaintiff is currently regarded as unemployable.

[14] In the premises, I make the following order:

**ORDER:**

1. The Defendant is ordered to pay the Plaintiff the sum of R 121 687.77 in respect of past medical expenses.
2. The Defendant is ordered to pay the Plaintiff the sum of R 861 033.67 in respect of past-and- future loss of income.
3. In the event that the Defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the Defendant will be liable for the payment of interest on such amount at the prescribed rate of Interest, compounded and calculated 14 (fourteen) days from date of this order.
4. The Defendant is to furnish an undertaking to the Plaintiff in terms of Section 17(4)(a) of the Road accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service of the supplying of goods to her arising out of injuries sustained by her in the motor vehicle collision of 28 March 2015.
5. The Defendant is liable for payment of Plaintiff's taxed or agreed party and party costs on the High Court scale.

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