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**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: 5610/2018

In the matter between:

**GP VAN PLETZEN**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**HEARD ON:**

12 & 13 OCTOBER 2021  
WRITTEN HEADS OF ARGUMENT DELIVERED ON 20,  
22 & 25 OCTOBER 2021

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**JUDGMENT BY:**

DANISO, J

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**DELIVERED ON:**

This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 10 February 2022.

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[1] The plaintiff's claim against the defendant is for damages arising from injuries he sustained when he was struck by a motor vehicle. He issued summons on 7 November 2018 claiming an amount of R2 051 570.00 made up as follows:

- 1.1. Future hospital and medical expenses: Section 17 (4) (a) undertaking
- 1.2. Past and future loss of income: R1 401 570.00
- 1.3. General damages: R650 000.00

[2] The defendant defended the claim but later conceded the merits 90% of the plaintiff's proven damages. The defendant undertook to furnish the plaintiff with an Undertaking in terms of section 17(4) (a) of the Road Accident Fund Act ("The Act")<sup>1</sup> limited to 90% in respect of the plaintiff's future hospital and medical expenses. The general damages were settled in amount of R360 000.00.

[3] The only issue that I have to determine is the quantum for damages relating to past and future loss of earnings.

[4] It is common cause that on 15 April 2017 the plaintiff sustained a fracture of his right mid-shaft femur after he was struck by a vehicle with registration numbers and letters **CF 123 745** there and then driven by Ms Charlene Geduld. At the time of the accident the plaintiff was a pedestrian. As a result of the said injuries he was transported to Pelonomi hospital by ambulance. On the next day he was transferred to Universitas hospital where he underwent surgery and discharged after ten days. He returned to the hospital several times post discharge for another surgery and treatment for septicaemia. The infection is still uncontained.

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<sup>1</sup> Act No, 56 of 1996.

- [5] In the quest to prove his case the plaintiff testified and also adduced the evidence of Doctor Louis Francois Oelofse an orthopaedic surgeon and Dr Evert Jacobs an Industrial Psychologist. What follows hereunder is the summary of the plaintiff's evidence.
- [6] It was the plaintiff's case that at the time of the accident he was earning an income operating a chauffeur business with two vehicles that he owned. He started the business in 2011. He drove one of the vehicles whilst his erstwhile employee Quinton drove the other vehicle. They ferried passengers from and to various destinations. The plaintiff generated an income of R21 000.00 which includes an amount of R8 000.00 which he received from Quinton as his half share of the proceeds of the R16 000.00 generated by Quinton. The amounts varied depending on the trips made.
- [7] It was the plaintiff's testimony that after the accident Quinton continued to drive alone with the result that the plaintiff's income was reduced to only the R8 000.00 he received from Quinton. Three years later Quinton his employ. The plaintiff then employed another driver, Mack who worked for him for the next three years. The income generated by Mack was about R16 000.00 per month. The plaintiff has since returned to driving about two years ago against his Doctor's advice. He is finding it difficult with the pain that he is experiencing but he has no choice as he needs to earn a living. He is presently earning about R10 000.00 a month.
- [8] He explained that log and/or trip sheets were kept relating to the trips made and the income received was deposited into a bank account some of it was used for fuel and car repairs.

[9] The plaintiff further testified that he does not have a bank account where the business money was deposited into as he only opened a bank account after he started receiving his old age pension six years ago. His total income from the two vehicles was actually R30 000.00 from which he deducted the expenses relating to car service, fuel and other vehicle related costs to arrive at R21 000.00.

[10] Dr Oelofse confirmed that the plaintiff is no longer in the position to drive his taxi as before the accident. He should not be allowed to go back to driving but to stay at home and receive treatment for the infection of the wounds which will involve additional surgeries. If he has to work it should be sedentary and light work duty.

[11] Dr Jacobs who had been sitting in court during the plaintiff's testimony began his testimony by requesting leave to amend his report on the basis that the plaintiff had deviated from the information that he provided to him upon which he based his opinion. He referred the court to an inscription on page 12<sup>2</sup> of his report with states thus:

*"...THE FIGURES ARE A GUIDELINE AND AN ACTUARY SHOULD RECALCULATE IT ON THEIR FINANCIAL PRINCIPLES.*

*SHOULD NEW INFORMATION OR EVIDENCE BE BROUGHT FORWARD THE RIGHT IS RESERVED TO CHANGE OPINIONS."*

[12] He testified that the plaintiff operated an informal business and there is usually no proof of income. His report is based on the information that was reported to him by the plaintiff. According to that information the plaintiff's income was R60 000.00 per month and in court the plaintiff presented different figures therefore changes need to be made on his report to align with the plaintiff's testimony and having regard to the

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<sup>2</sup> Paginated page 87 of the court bundle.

plaintiff's testimony he estimates his earning capacity to about R16 000.00 per month because even if there was no proof of income presented the plaintiff still has the capacity to earn R16 000.00 the court may apply its discretion with regard to the contingencies to be applied.

[13] Thus was in short the evidence presented on behalf of the plaintiff. No evidence was led from the defendant's side.

[14] The onus is on the plaintiff to prove on a balance of probabilities that at the time of the accident he was earning an income but due to the injuries he sustained in the accident his earnings have been diminished including his earning capacity.

[15] The plaintiff has proffered an incoherent, implausible and inconsistent version with regard to his purported business venture and the loss he allegedly sustained as a result of not being able to earn an income. It is not clear when exactly was the business established, how many vehicles were involved, who owned the vehicles and how much was generated from the business and in which period.

[16] In his direct evidence he testified that he established the business in 2011 with his two vehicles one driven by him whilst the other was driven by his employee Quinton. He generated a total monthly income of R21 000.00 including the R8 000.00 he received from Quinton.

[17] When his version was tested under cross-examination he changed his version and stated that he actually started the business in 2008. He had four vehicles, one was later damaged in a collision he then remained with three vehicles.

The monthly income received varied from R21 000.00 to R24 000.00. The explanation was that the amount of R21 000.00 was arrived at after deducting fuel and other related costs. He could not provide the details of the costs and the exact amounts spent in this regard.

- [18] Still on the proof of income and expenses. Despite having told the court that he kept log or trip sheets to record the trips and also deposited the earnings into a bank account. Under cross-examination he somersaulted on his evidence and stated that he only had a bank account when he started receiving his old age pension therefore there is no record of the deposits. He said he is not able to produce the trip or log sheets because he had moved from his previous home.
- [19] The plaintiff told the court that after the accident (year 2017) Quinton continued to drive alone which resulted in the reduction of his income due to the fact that he received an income from only one car. Then he bizarrely asserted that after Quinton left three years later (year 2020) he employed another driver Mack who worked for him for three years before he took over using his sister's vehicle. It is highly improbable that Mack would have worked for him for three years or even two and half years as that would mean he left his service in the year 2023.
- [20] It does not end there. The plaintiff's evidence also contradicts his expert evidence. Dr Jacob's opinion<sup>3</sup> with regard to the amount claimed by the plaintiff is premised on the grounds that the plaintiff had a taxi business which he operated with four vehicles. One of those vehicles was damaged in a collision leaving three of which he drove one and his two employees drove the other two. The total amount generated as an income per month was between R30 000.00 and R40 000.00. After Quinton left he hired someone else and

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<sup>3</sup> Page 78 of the paginated bundle.

made a total amount of R18 000.00 which was shared equally between himself and the driver.

- [21] In an attempt to rescue the plaintiff's case, when he took the stand Dr Jacobs inexplicably sought to amend his opinion to align with the evidence the plaintiff has presented in court contending that he was entitled to do so.
- [22] I find Dr Jacobs' contention quiet disingenuous. The annotation he refers on page 12 of his report provides for a situation where at the time the report was drafted the relevant information was unavailable then he would be entitled to amend his opinion when the information becomes available. It has nothing to do with a situation where the significant facts are varied in *toto* as this would clearly result in a total different manner of quantification of the claim as it has been conceded by Dr Jacobs.
- [23] Expert evidence presented to the court should be and also be seen to be the independent and unbiased product of the expert and not the result of a modified form to suit the plaintiff's case. On his (Dr Jacob's) own version his opinion is based on the information provided by the plaintiff which turns out to be untenable. An expert opinion based on misinformation is valueless to the court.
- [24] The fact that the defendant has not objected to Dr Jacob's evidence does not require the court to accept it. Expert witnesses are there for the benefit of the court and not any party therefore the court is at liberty to either accept or reject the evidence. *R v Theunissen* **1948 (4)** SA 43 (C) at 46.
- [25] The discrepancies that exist in the plaintiff's entire evidence cast doubt on the plaintiff's contention that in addition to the pension he was earning at the time of the accident he had another stream of income generated through a chauffeur business and that as a result of the injuries he has been unable to

work with the result that he has suffered damages relating to past and future loss of earnings.

[26] It is the light of these circumstances I'm not persuaded that the plaintiff has proven on a preponderance of probabilities that he is entitled to damages claimed.

[27] In the result I make the following order:

1. The plaintiff's claim for damages relating to past and future loss of earnings is dismissed with costs.
2. The defendant is ordered to pay to the plaintiff the amount of R360 000,00 (THREE HUNDRED AND SIXTY THOUSAND RAND) as general damages. Payment to be made into the plaintiff's attorneys' trust account:

HONEY ATTORNEYS-TRUST ACCOUNT

NEDBANK-MAITLAND STREET BRANCH, BLOEMFONTEIN

BRANCH CODE: 11023400

ACCOUNT No: 1[...]

REFERENCE: HL BUCHNER/YV/J03793

3. The defendant is to furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Act, 90% 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 or the supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision of 15 April 2017 in terms of which undertaking the defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred and on proof thereof.



4. The defendant is ordered to pay the plaintiff's cost of suit, including any qualifying expenses of such experts in respect of whom the plaintiff has furnished expert reports, including the travelling and accommodation costs, if any, which the plaintiff incurred in order to consult with the experts with the exception of the costs relating to the expert's attendance of the proceedings relating to the claim for past and future loss of earnings (see para 1 above).

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**NS DANISO, J**

**APPEARANCES:**

Counsel on behalf of the plaintiff:

Instructed by:

Adv. HE De La Rey

Honey Attorneys

**BLOEMFONTEIN**

Counsel on behalf of the defendant:

Instructed by:

Ms. C Bornman

State Attorney

**BLOEMFONTEIN**