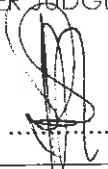


REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A5025/12

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
18/09/2014	
	

In the matter between:

ADVOCATE ALIEZA COMBRINK N.O.

obo DANIEL MOHAU MUKWEVHO

Appellant

and

ROAD ACCIDENT FUND

Respondent

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## J U D G M E N T

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### MPHAHLELE, J:

[1] The appellant is the *curator bonis* of Mr Daniel Mohau Mukwevho who was severely injured in a motor-vehicle accident on 12 June 2002. The respondent was on 19 February 2010 held liable to compensate the Mr. Mukwevho for any damages sustained by him.

[2] Prior to the trial, the parties agreed on the sum of R388 703-92 for past medical and hospital expenses as well as R850 000-00 for general damages. The respondent had already effected an interim payment in the amount of R473 188-92. The issues left to be determined by the trial court were the past and future loss of earnings. In respect thereof the trial Judge, Cassim AJ, awarded the appellant the sum of R2 443 717-00 for loss of earnings. It is this award which forms the subject matter of this appeal. The respondent did not oppose the appeal.

[3] At the time of the accident, Mr. Mukwevho was a senior claims consultant with Standard Bank Insurance, having joined Standard Bank

in 1999. His employer was sympathetic after the accident and placed him in a less demanding position without any adjustments to his remuneration. However, Mr. Mukwevho resigned from his position on 01 December 2009 to pursue self-employment in the construction industry.

[4] Mr. Mukwevho's injuries and their *sequelae* are summed up as follows by the trial Judge in his judgment: "*the undisputed evidence of the plaintiff's psychiatrist, Dr. Shevel, was that:*

1. *Mr. Mukwevho suffers from organic brain syndrome – post-traumatic- with associated fractures of frontal lobe dysfunction, which condition he suffers as a result of injuries which he sustained in the collision forming the subject matter of this action ('the frontal lobe dysfunction');*
2. *By reason of the frontal lobe dysfunction:*
  - 2.1 *Mr. Mukwevho lacks:*
    - 2.1.1 *Good judgment;*
    - 2.1.2 *Insight into his own defect;*
  - 2.2 *His conduct is irrational, impulsive and inappropriate;*
3. *It is highly likely that the 2009 resignation occurred as a result of the frontal lobe dysfunction*
4. *But for the frontal lobe dysfunction, Mr. Mukwevho would not have executed the 2009 resignation;*
5. *A psychiatrist (as opposed to an industrial psychologist) is the expert best qualified to express the opinions set out in paragraphs 3 and 4 supra. "*

[5] The appellant's evidence, supported by medical experts, is to the effect that Mr. Mukwevho would not have resigned from his stable employment environment at Standard Bank had it not been for the accident. He was unlikely to be employed gainfully as a result of the effect of the brain injury sustained in the accident.

[6] The trial court accordingly found that the traumatic frontal lobe dysfunction adversely impacted Mr. Mukwevho's ability to retain his job. The trial court further found that Mr. Mukwevho has no prospects of securing gainful employment in the future.

[7] Despite its findings mentioned in paragraph 6 above, the trial court made the following remarks:

1. *There is no interrogative reasoning for the conclusion that Mr. Mukwevho is wholly incapable of working;*
2. *The court would have thought that a psychiatrist would wish to see the patient in gainful employment and thereby restore the patient's dignity and self-worth;*
3. *There is a lack of scrutiny in the evidence of the nature of behaviour and treatment that can restore or recognise elements that can promote, if not compel, the plaintiff to seek and retain a job or vocation so that the plaintiff can better himself and be part of a more viable and self-respecting community.*

4. *Dr. Shevel did not direct the court to any pointers to indicate that this is not a case of the plaintiff being opportunistic in seeking to gain as much from public coffers by exaggerating his ailment aided by surrounding circumstances to that he can unduly benefit*

[8] Contrary to the undisputed evidence of Dr. Shevel, the court further remarked that Mr. Mukwevho's resignation from Standard Bank was not spontaneous subsequent to the accident or concomitant with the effects of the head injury. Further the trial court took judicial notice with reference to labour matters and concluded that it was unlikely that an employer would retain an employee who is not rendering any productive work.

[9] The remarks mentioned in paragraphs 7 and 8 above were considered by the trial court when exercising its discretion on the contingency deductions to be applied in this matter. These remarks are however not supported by the evidence on record.

[10] In the end the trial court found it just and equitable to apply a 20% contingency deduction on the net loss of earnings over and above the initial contingency deduction recommended by the actuary which had already been effected which resulted in a double contingency deduction.

Clearly the trial court erred in the exercise of its discretion in the adjustment of the contingency deduction in the manner in which it did. Hence the respondent did not oppose the appeal. This court can therefore interfere with the discretion of the trial Judge.

[11] I therefore propose that, in assessing the future loss of earnings, the original contingency deduction of 10% should be applied and the additional 20% deduction applied by the trial court should totally be disregarded. The quantum for this claim would therefore amount to R3 054 646-00. The total assessment would therefore be summed up as follows:

Past medical and hospital expenses	R 388 703-92
Future loss of earnings	R3 054 646-00
General damages	<u>R 850 000-00</u>
Total	R4 293 349-92
Less amount already paid	<u>R 473 188-92</u>
Grand total	<u>R3 820 161-00</u>

[12] In the result,

1. The appeal is hereby upheld.
2. The order of the trial court is set aside and replaced with the following:

(a) Judgment is granted in favour of the plaintiff for the benefit of  
Mr. Mukwevho in the amount of R 3 820 161-00.



**S S MPHAHLELE**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

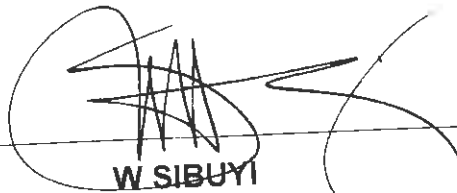
I concur.



**M P TSOKA**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

I concur.



**W SIBUYI**

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Counsel for the Appellant: Mr D J Combrink

Instructed by: Bennet Attorneys

Date of hearing: 06 June 2014

Date of judgment: 19 September 2014