

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2016/32552

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

DATE: 27/02/2023

In the matter between:

MAHLO, NONTSISI LYDIA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MOORCROFT AJ:

Summary

Mora interest – rate 9.75% in February 2023 – Where defendant is liable to make payment 180 days after order mora interest is ordered to run from the expiry of the 180 day period

Order

[1] In this matter I made the following order after hearing argument on 24 February 2023:

1 *The Defendant is liable to compensate the Plaintiff for 100% (One Hundred Percent) of the proven delictual damages suffered as a result of the motor vehicle collision which occurred on 12 September 2015.*

2. *The issue pertaining to Past Hospital & Medical Expenses is separated in terms of Rule 33(4) from all the other heads of damages and is postponed sine die.*

3. *The Defendant shall pay the capital amount of R776 940.00 (Seven Hundred and Seventy Six Thousand, Nine Hundred and Forty Rand) in full and final payment of the issues of Loss of Earnings and General Damages, which amount is calculated as follows:*

3.1	<i>Past Loss of Earnings:</i>	<i>R 79 400.00</i>
3.2	<i>Future Loss of Earnings:</i>	<i>R197 540.00</i>
3.3	<i>General Damages:</i>	<i>R500 000.00</i>
3.4	<i>Total:</i>	<i>R776 940.00</i>

4. *The capital amount is payable by means of direct fund transfer by no later than 180 (one hundred and eighty) days from the date hereof into the trust bank account of the Plaintiff's attorneys; Mills & Groenewald Trust Cheque Account, Absa Bank, Vereeniging, Account no: [...], Branch code: 630 137, reference: A VAN ZYL / DK / M24638.*

5. *Mora interest calculated on the capital amount referred to in paragraph 3 supra, will be payable at the rate of 9.75% after a period of 180 (one hundred and eighty) days from the date hereof.*

6. *The Defendant shall furnish the Plaintiff with an unlimited Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 for the costs of the future accommodation of the Plaintiff in a hospital and nursing home and treatment of and rendering of a service to the Plaintiff and the supplying of goods to the Plaintiff arising out of the injuries sustained by the Plaintiff in the motor vehicle collision of 12 September 2015 after such costs have been incurred and upon proof thereof.*

7. *The Defendant shall pay the Plaintiff's taxed or agreed party and party costs up to date on the High Court scale, which party and party costs shall include, but not be limited to:*

7.1 *The reasonable costs in respect of the preparation of the actuarial calculations, medico legal and addendum reports of the experts as per paragraph 7.4 below;*

7.2 *Costs of counsel to date hereof, including the preparation for and trial appearances on 23 February 2023 and 24 February 2023 as well as the preparation and drafting of the written Heads of Argument and annexures;*

7.3 *The travelling costs of the Plaintiff to and from all medico-legal appointments and consultations;*

7.4 *Qualifying and preparation fees for the drafting of the following medico legal reports:*

7.4.1 *Dr G A Versfeld (Orthopaedic Surgeon) – Report and RAF4 Serious Injury Assessment Form;*

7.4.2 *Sunninghill Radiology;*

7.4.3 *Mrs C Rice (Occupational Therapist);*

7.4.4 *Dr W Pretorius (Industrial Psychologist) - Report and Addendum Report;*

7.4.5 *Munro Actuary reports.*

8. *The preparation and qualifying fees of the Plaintiff's experts for attending to the expert affidavits pertaining to evidence as to the content of their medico legal reports which will include the costs pertaining to the affidavit and assessment of Dr. GA Versfeld in respect of the evaluation of the Past Hospital and Medical Expenses vouchers.*

9. *Subject to the following conditions:*

9.1 *The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and*

9.2 *The Plaintiff shall allow the Defendant 180 (one hundred and eighty) days to make payment of the taxed or agreed costs after the date of taxation/settlement.*

9.2.1 *No interest will be payable, except in the event of default of payment of such costs, in which case interest will be payable at the rate of 9.75% from date of taxation.*

[2] The parties, both represented by attorneys and counsel and after negotiations settled all the disputes save for one: Whether the interest referred to in paragraph 5 of the order should commence running after 14 days or after 180 days.

[3] The payment is due 180 days after the order and Ms Ameersingh who appeared for the defendant argued that the defendant will then be in mora after the expiry of 180 days, and that interest should run from that date. She referred me *Dunn vs RAF* [2018] ZAKZDHC 45.

[4] In this matter the Court was interpreting an order for payment that did not refer to interest at all, and the learned Judge pointed out in paragraph 21 that

"the respondent was not in mora from the date of judgment but only when it failed to perform on the date agreed upon."

See also *General Accident Versekeringsmaatskappy Suid-Afrika Bpk v Bailey* NO 1988 (4) SA 353 (A).

[5] I conclude therefore that the defendant will be in mora if payment is not made within 180 days, and that interest will be due after that date.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **27 FEBRUARY 2023**.

COUNSEL FOR THE PLAINTIFF: MR GROBBELAAR
INSTRUCTED BY: MILLS & GROENEWALD

COUNSEL FOR DEFENDANT: MS AMEERSINGH
INSTRUCTED BY: STATE ATTORNEY

DATE OF THE TRIAL: 24 FEBRUARY 2023
DATE OF ORDER: 24 FEBRUARY 2023
DATE OF JUDGMENT: 27 FEBRUARY 2023