

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 27736/2022

DATE: 04-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 4/2/2025

SIGNATURE [REDACTED]

10 In the matter between

WILLIAM MALULEKA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

20 Matter number 40 on this week's roll is the matter of William Maluleka versus the Road Accident Fund, case number 27736 of 2022. In respect of this matter the plaintiff, who was born on the 13th of July 1982, was involved in an accident on the 24th of September 2020 as a pedestrian.

In respect of the circumstances of the accident, counsel took the Court through the available documentation and suggested that, based on the uncontested evidence of the plaintiff an appropriate resolution for the aspect of negligence would be an apportionment of 90%/10% in favour of the plaintiff.

Before this aspect could be finalised, an application in terms of Rule 38(2) was required and which consisted of
10 both of an application in terms of terms of Rule 38(2), in paragraph 1 of the application, and an application in terms of Section 3(1)(c) of the Law of Evidence Amendment Act for a series of documents relating to, *inter alia*, the aspect of liability.

Having considered the available documentation, I concur with counsel's views and the aspect of liability will accordingly be dealt with on the basis that the defendant is liable for 90% of such damages as the plaintiff may be able
20 to substantiate.

The injuries which the plaintiff alleges in paragraph 6 of his particulars of claim to have suffered as a result of the accident, consisted of a right tibia and fibula fracture with abrasions and scarring. The bulk of the long-term disability

foreseen for the plaintiff, and which may also affect his functioning in an employment environment, relates to an ankle fracture, a pilon ankle fracture.

The medical documentation identify two distinct fractures, one relating to the ankle and the other to the tibia. In engaging counsel about this issue counsel did his best to persuade the Court that the recorded tibia and fibula fractures are so low down the tibia that it could also be
10 described as a pilon fracture of the ankle. I was not persuaded.

When looking at the plaintiff's employment history, it seems to be exceptionally modest. According to the report of the industrial psychologist, the plaintiff appears to have been employed a total of one year and seven months during the period 2003 to 2017. He was then employed from 2017 to 2020, and which was when the collision occurred. If one takes the period 2003 to 2020 then, over a 17-year period,
20 he was employed for four years and seven months, which is less than 25 percent of his possible employment lifetime at that stage. This is a factor that must weigh heavily when considering appropriate contingencies to apply to the calculation contained in the actuarial report. The plaintiff's income is alleged to have been R6 500 per month. This is

self-reported. Although there are affidavits in support of this amount, they are not supported by factual evidence such as bank statements or letters from employers, and there is no clarity as to whether this amount is in fact accurate.

Be that as it may, the only calculation available is that which has been done by Munro Actuaries, the result of which is reflected on CaseLines under C-74. Using the
10 above figures as a point of departure, the pre-contingency figure for past loss of income would be R319 800 and the figure for future loss of income, R161 6200.

I am of the view, given the area in which the plaintiff sought employment and which is a saturated market, it would be more difficult for him to maintain his competence as the years advance. The long-term effect of a chronic illness and a sober examination of his employment history leads me to believe that the appropriate contingency deduction in
20 respect of the accrued loss is 20 percent, and in respect of the future loss. 40 percent.

The result of the above is that the plaintiff's claim in respect of past or accrued loss of income is reduced to R319 040 and in respect of the future or prospective loss,

to R969 720. The combined award in respect of past and future loss of income is then R1 288 760. This amount must be reduced by 10 percent to provide for the apportionment on liability and the final award is then R1 159 884.

To summarise, my order is as follows:

- 1 The plaintiff's application in terms of rule 38(2) is granted.
- 2 The defendant shall be liable for 90% of such
10 damages as the plaintiff may be able to substantiate.
- 3 The defendant shall provide the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act for 90% of the future hospital, medical or ancillary expenses that the plaintiff may require.
- 4 The defendant shall pay the plaintiff the nett amount of R1 159 884 in respect of loss of income.
- 20 5 The plaintiff's claim in respect of general damages is separated from the remainder of the issues and postponed *sine die*.
- 6 The plaintiff is entitled to his party and party costs as taxed or agreed. Counsel fees to be on scale B.


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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: ..4/2/2025