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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION (MIDDELBURG LOCAL SEAT)**

Case No:198/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE :12/09/2024

SIGNATURE

In the matter between:

ZUNGU NTUTHUKO THOKOZANI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Coram: Langa J

Introduction and Facts

[1] This is a personal injury claim against the Road Accident Fund arising out of an accident which occurred on 15 March 2021 on the R23 Road near Balfour. The Plaintiff was a front passenger in a vehicle driven by one Mduduzi Bongani Zungu. It is common cause that the Plaintiff was injured and sustained *inter alia* concussive brain injury with lacerations to the scalp, cervical spine sprain, lumber sprain, dislocation of a joint in the little finger and contusion of the left shoulder.

[2] On 28 July 2021 the Defendant objected against the RAF1 Form in terms of section 24(2) of the Road Accident Funds Act, 56 of 1996. By the time of the hearing, the objection by the RAF in terms of section 24(2) was not yet lifted. Although the Plaintiff was seen by one Doctor B Maseko at Standerton hospital on 15 March 2021, the RAF1 Form was however completed by Doctor Makua based on the hospital notes consultation with the patient. Although Section 24(2) provides that a medical report shall be completed by the medical practitioner who treated the claimant for the injuries sustained in the accident, it was not disputed that Dr Makua completed the RAF 1 form on the basis of his consultation with the Plaintiff and after considering the notes from the hospital and Dr Maseko's notes.

[3] The question that remained to be asked is whether there has been substantial compliance with section 24(2). In *Pithey v Road Accident Fund* 2014 (4) SA 112 SCA, the Supreme Court of Appeal held that the requirement relating to the submission of a claim form in terms of the Act is peremptory and that the prescribed requirements concerning the completeness of the form are however directory. The court essentially held that substantial compliance with the section is sufficient. What constitutes substantial compliance will differ from case to case.

[4] It is common cause in the present case that the Plaintiff lodged his claim together with the hospital notes amongst other documents. Dr Makua who treated the Plaintiff two months after the accident also completed the prescribed RAF1 Claim Form. After considering the papers and the submissions by the parties' legal representatives, I am satisfied that there was substantial compliance with section 24(2) as RAF1 Form was properly completed by a qualified doctor who treated the Plaintiff based on the hospital records as well as his consultations with the Plaintiff. I am satisfied therefore that there was substantial compliance with section 24(2) and consequently the Defendant's objection in terms of section 24(2) is dismissed.

[5] I will now turn to the substantive application brought by the Plaintiff in terms of Rule 38(2) of the Uniform Rules for the admission of certain expert reports. The Defendant did not oppose the application in terms of rule 38(2) and it was accordingly

granted, and the reports of the following expert witnesses were admitted as evidence:

1. Dr Ramagole – Independent Medical Examiner.
2. Dr Scher – Orthopaedic Surgeon.
3. Dr Townsend.
4. Talita da Costa – Clinical Psychologist.
5. Sharilee Fletcher – Occupational Therapist.
6. Lee Leibowitz – Industrial Psychologist.
7. Wim Loots - Actuary.

[6] It is common cause that the Defendant did not file any expert reports or call any witnesses to challenge the Plaintiff's reports and evidence. In the entire trial the only thing resembling a defence was the submission by the Defendant that the Plaintiff was not entitled to any damages for loss of earnings as he was not working at the time of the accident. This argument by counsel for the Defendant seems to be the basis for the contention that the Plaintiff is not entitled to any damages for loss of income. This argument loses sight of the fact that the Plaintiff is claiming for future loss of income and not past loss.

[7] Based on the uncontroverted expert reports admitted as evidence, it is clear that the Plaintiff stands to suffer future loss of earnings as a result of the impact of the injuries caused by the accident. The Defendant has failed to proffer any evidence to counter that of the Plaintiff's experts, in particular the Industrial Psychologist Lee Leibowitz. Ms Leibowitz stated in her report that having taken cognisance of the reports by other experts, she is of the opinion that Mr Zungu has been rendered less competitive as a result of the injuries sustained in the accident.

[8] She stated further that although he remains employable, the Plaintiff would however be at a disadvantage in his occupational pursuits as he would have difficulty maintaining satisfactory levels of performance and may as a result be overlooked for opportunities. This could therefore result in earning fluctuations and long periods of unemployment than anticipated in the pre-morbid period. She suggested that a

higher post-accident contingency be applied as the full extent of the financial implications cannot be accurately quantified.

[9] The Plaintiff's past and future loss of income has been actuarially calculated and the bases of such calculations appear to accord generally with the facts and the probabilities in the matter. It is assumed, on the basis of *inter alia* the reports by the Plaintiff's Neurologist, his Orthopaedic Surgeon, his Occupational Therapist and his Industrial Psychologist, that, had the accident not occurred, the Plaintiff would have continued to earn income which he earned pre-accident. Now that the accident has happened, it is assumed that the Plaintiff would earn less than he would have had the accident not happened.

[10] As already indicated, I am of the view that these postulations accord with the facts and the realities in the matter. Furthermore, my view is that the contingency applied by the actuary is in accord with the postulations. One should also not lose sight of the extremely high unemployment rate in the country.

[11] The calculations would therefore be as follows as regards the pre-morbid future income: $R348\,966 + R1\,768\,479 - 194\,296(\text{contingency}) = R1\,923\,149$. And the post-morbid projected, is $154\,209 + R1\,768\,479 = R1\,922\,688 - R538\,254$ contingency = $R1\,384\,434$. That, in turn, results in the following calculations in respect of the Plaintiff's future loss of income: $R1\,923\,149$ (pre-morbid income) – $R1\,384\,434$ (post-morbid income) = $R538\,715$. That means that the Plaintiff's total loss of income $R185\,019 + R353\,696 = R538\,715$ and this is the total amount, which I intend awarding to the Plaintiff as his loss of income.

Order

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

1. The Defendant's objection in terms of section 24(2) is dismissed.
2. The Plaintiff is granted leave to present his evidence and that of his expert witnesses by way of affidavit in terms of rule 38(2).

3. The court admits into evidence in terms of section 3(1)(c) of The Law of Evidence Amendment Act 45 of 1988 the following:
- 3.1. Applicant's affidavit.
 - 3.2. Officer's accident report.
 - 3.3. Standerton Hospital and Clinical Records.
 - 3.4. Lilian Ngoyi Hospital and Clinical Records.
 - 3.5. Madadeni Hospital and Clinical Records.
 - 3.6. Applicant's educational and training certificates.
 - 3.7. Applicant's salary slips.
 - 3.8. Applicant's IRP5s.
 - 3.9. Applicant's bank statements.
 - 3.10. Photographs of the Applicant's injuries.
 - 3.11. The collateral evidence provided to the applicant's expert witnesses.
4. The Defendant is held to be 100% liable for the Plaintiff's proven damages.
- 4.1. The Defendant shall pay to the Plaintiff a capital amount Five hundred and Thirty-Eight Thousand, Seven Hundred and Fifteen Rand (R538 715) for loss of earnings.
5. Payment will be made directly to the trust account of the Plaintiff's attorneys of record, details as follows:

Holder:	Mokoduo Erasmus Davidson Attorneys Trust Account
Bank and Branch:	First National Bank (FNB), Rosebank
Account number:	6[...]
Code:	2[...]
Ref:	Z78

6. Payment of the capital amount referred to in paragraph 2 above shall be made on or before 180 (one hundred and eighty days) days from the date of this court order.

7. Interest *a tempore-morae* shall be calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, fourteen (14) days.
8. The Defendant is ordered to furnish the Plaintiff with the 100 % 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 or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff arising out of the injuries sustained by the Plaintiff in the motor vehicle collision which occurred on the 15 March 2021 after such costs have been incurred and upon proof thereof.
9. The statutory undertaking referred to in paragraph 9 above shall be delivered by the Defendant to the aforesaid Mokoduo Erasmus Davidson Attorneys on or before thirty (30) days from the date of this court order.
10. The issue of General Damages is separated and postponed *sine die*.
11. The Defendant will pay the agreed or taxed party and party high court costs of the action up to and including the date on which this draft is made an order of the court, such costs to include:
 - 11.1. The cost of counsel (on scale B) for 19 and 20 August 2024.
 - 11.2. The costs attendant upon the obtaining of the capital amount referred to in paragraph 2 above.
 - 11.3. The reasonable cost of the Plaintiff's experts, such reports to include, but not limited to:
 - 11.3.1. Dr Ramagole – General Practitioner.
 - 11.3.2. Dr Scher – Orthopaedic Surgeon.
 - 11.3.3. Dr T Townsend – Neurologist.

- 11.3.4. Talita da Costa – Clinical Psychologist.
- 11.3.5. S Fletcher – Occupational Therapist.
- 11.3.6. L Leibowitz – Industrial Psychologist.
- 11.3.7. W Loots – Actuary.

11.4. Payment of the agreed or taxed party and party high court costs will made directly to the trust account of the Plaintiff's attorneys of record, within 180 (one hundred and eighty days) days from the date of the agreement / date of taxation.

12. There is a valid contingency agreement, and it does accord with the Contingency Fee Agreement Act.

MBG LANGA
JUDGE OF THE HIGH COURT

Appearances:

For the Applicants:	Advocate Adv C Hendricks
For the Respondent:	Advocate M Ndubane
Date heard:	20 August 2024
Date delivered:	12 September 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 12 September 2024 at 12h00.