



**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 no: 1668/2016

In the matter between:

**CHARLES TJAART VAN DER WALT**

**Plaintiff**

and

**ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT BY:** C NEKOSIE AJ

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**HEARD ON:** 25 and 26 JANUARY 2022

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**DELIVERED ON:** 28 JANUARY 2022

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[1] The plaintiff instituted a claim against the defendant in terms of the provisions of section 17 of the Road Accident Fund Act, 56 of 1996 for future medical

expenses, future loss of earnings and earning capacity and general damages totalling an amount of R 2 269 470.00 as a result of bodily injuries sustained in a motor vehicle collision.

- [2] The collision occurred on 12 December 2012 at approximately 09:20 and at the T-junction between Voortrekker and Malan Street, Senekal, Free State Province. The plaintiff had right of way when the insured driver entered the T-junction causing the plaintiff to drive into her motor vehicle and falling off his motorcycle.
- [3] The merits of the matter are settled as per the court order by Motimele AJ on 17 February 2017 and the defendant is liable for 100% of the plaintiff's proven damages as a result of injuries sustained by the plaintiff in the motor vehicle collision. This court is called upon to adjudicate and determine the quantum of the plaintiff's future medical expenses, general damages and future loss of earnings.
- [4] The plaintiff was admitted to Dihlabeng Hospital in Bethlehem having sustained the following personal injuries:
- 4.1 A degloving injury to right carf
  - 4.2 Abrasions an small cuts on the exposed areas of his body
  - 4.3 Momentary loss of consciousness
  - 4.4 A long laceration of the left knee (during evidence the plaintiff referred to both knees).
- [5] This matter was set down for trial on numerous occasions since 2016. The defendant's attorneys of record withdrew from the matter on 10 September 2020. Subsequent to the pre-trial, numerous correspondence were exchanged between the parties. The notice of set down was served via email on the defendant on 9 November 2021. The state attorney's office confirmed that they are aware of the trial date but informed that the defendant failed to instruct counsel therefore there would be no representation.

- [6] Adv Zietzman SC appearing on behalf of the plaintiff requested the Court to proceed with the trial. I was satisfied that the RAF was duly notified of the trial date. Taking guidance from **Dichabe v Road Accident Fund**<sup>1</sup> where the court condemned the persistent failure of the RAF to ensure that they were represented at trial, I acceded to the request and ordered the trial to proceed on the basis that RAF was in default.
- [7] The plaintiff testified and the expert evidence was presented to court by way of affidavit as I deemed it expedient and cost effective in the circumstances.
- [8] The plaintiff, aged 45 years, confirmed his involvement in the accident on the date and time referred to herein. Consequent to the accident he spend a week in Dihlabeng Hospital and could not work for two months. He was an unqualified mechanic. He lost his clientele during his period of inability and had to sell some of his equipment to make ends meet. The workshop was burgled and his tools were stolen which further crippled his business.
- [9] He confirms the injuries as outlined herein above but added that both his knees were lacerated. The right calf was the most severe of the injuries. He underwent cosmetic surgery and will require further medical attention in respect of his right calf. He is no longer able to do heavy lifting and therefore he cannot continue to be a mechanic. He explains that he experience pain in his right knee and calf when driving for extended periods. This is in contrast with the fact that he drives a tractor for between eight and twelve hours per day in his present employment in Texas, USA where he works on a farm.
- [10] It appears, peculiarly so, that the accident has change the plaintiff's fortunes for the better. He had an up and coming car repair shop in a small town, Senekal, with a relatively limited market and a net income of R 7000.00 to R 8000.00. After the accident he proceeded to earn approximately R 24 000.00 per fortnight as a tractor driver in Texas.

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<sup>1</sup> 2020 JDR 1266 (GP)

- [11] The affidavit **Dr Louis Francios Oelofse**, the orthopaedic surgeon, was presented to court. He compiled his reports on 13 May 2015 and 29 January 2019. In the later of his reports, he states that the plaintiff will require arthroscopy and debridement of both knee joints with possible bilateral medial meniscus repair and the accompanying rehabilitative procedures. He holds the view that the plaintiff should not do physical labour.
- [12] **Prof Frederick Johannes Jooste**, plastic surgeon, concludes that the plaintiff reached maximum medical impairment and remains with serious permanent disfigurement.
- [13] **Anthea Jansen**, occupational therapist, opines that the plaintiff would be better accommodated in a sedentary to light category of work as this will reduce the strain on his leg. The plaintiff ability to engage in his pre-accident work as a mechanic has been reduced.
- [14] **Dr Everd Jacobs**, industrial psychologist, categorised the plaintiff's earning capacity as a semi-skilled in the non-corporate sector. He should be able to reach the top level not later than age 50 years.
- [15] **Lark-Hee Choi**, Munro Actuaries, considered that a whole person impairment of 15% is present. He illustrates a future post-morbid contingency deduction of 30% on a 15% contingency differential and concludes with a total loss of income of R1 983 660.
- [16] The plaintiff's claim for damages resultant from the accident is aimed to recover the difference between the positions as it is after the act of damage, and as it would have been if the act were not committed. The plaintiff has to discharge this onus on a preponderance of probability<sup>2</sup>. This matter proceeded

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<sup>2</sup> **Rudam v Road Accident Fund 2003 (2) SA 234 (SCA)**

on a default basis and the evidence presented by the plaintiff went unchallenged.

[17] In determining the general damages to be awarded to the plaintiff I take cognisance of the fact that he has reached maximum medical impairment and his condition is likely to improve with the suggested medical procedures.

[18] Adv Zietzman SC proposed R200 000 as an appropriate amount for general damages and referred to number of authorities where similar injuries was sustained to support his submission<sup>3</sup>. In my view the cases referred to are distinguishable from the present. The plaintiff's injuries did not have any severe psychological effect on him. The plastic surgery has largely diminished the scarring on his carf. He still has full use of his leg despite it paining when engaged in prolonged activity. In this case R150 000 for general damages is appropriate.

[19] When considering the suggested contingency I have regard to **Road Accident Fund v Kerridge**<sup>4</sup>, where the Court of Appeal said:

*'It is trite that general contingencies cover a wide range of considerations that vary from case to case. 5 Five and 15% for past and future loss, respectively, have become accepted as 'normal contingencies'.'*

[20] In the case of **Road Accident Fund v Guedes**<sup>5</sup>, the court said that there are no fixed rules as regards general contingencies. There are however some guidelines to identify a proper contingency to be used: i.e 25% for a child, 20% for a youth and 10% in middle age with ½ % added per year until retirement. (see **Goodall v President Insurance Co Ltd 1978 (1) SA 389 (W)**)

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<sup>3</sup> **Marias v Rondalia Versekeringskorporasie van SA BPK 1969 (2E7) QOD 130 (O); Tobi v Road Accident Fund 2013 JDR 2097 (ECG)**

<sup>4</sup> **2019 (2) SA 233 (SCA)** at 240 para30

<sup>5</sup> **2006 (5) SA 583 (SCA)**

[21] Considering the physical and emotional deficits of the plaintiff as has been established herein above and the high probability that the plaintiff will return to the USA to continue to earn the higher income and the fact that his condition is likely to improve with further medical treatment I find that a 20% contingency on injured earning is more appropriate in the circumstances. The loss earning would thus be R1 884 370.

### **Order**

Thus the order I make is the following:

1. The amount for damages to be awarded to the Plaintiff is R150 000 for general damages plus R1 884 370 totalling **R2 034370.00**
2. The draft order marked X is made an order of court.

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**C NEKOSIE, AJ**

For the plaintiff:                   Adv. J Zietsman SC  
  Instructed by:  
  Honey Attorneys  
  BLOEMFONTEIN

For the defendant:                NO APPEARANCE