

**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA  
(MPUMALANGA DIVISION, MBOMBELA)**

CASE NO: 1183/2019

REPORTABLE:NO

OF INTEREST TO OTHER JUDGES:YES

REVISED: YES

12/05/2022

In the matter between:

**CYRIL PRINCE RIPINGA**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**J U D G M E N T**

**MASHILE J:**

**INTRODUCTION**

[1] This is a delictual claim brought in terms of the provisions of the Road Accident Fund Act No 56 of 1996, as amended. On 28 November 2016 at approximately 15:15, the Plaintiff was cruising along the N4 motor highway, near golden frontiers farm, when an unknown motor vehicle driven by an unidentified driver collided with his motor bike from behind. In consequence of the collision as aforesaid, the Plaintiff was diagnosed with injuries to his left shoulder, multiple rib fractures on the left-hand side, head (subdural haematoma) and myocardial and lung contusion. Following this collision, the

Plaintiff was admitted and detained at the Medi Clinic at Mbombela where he was treated until discharged.

[2] Believing that the manner in which the collision happened exposes the Defendant to delictual liability, the Plaintiff instituted the current claim. The Defendant is not defending the claim and no one represented it at the proceedings on the day of the hearing. When the matter served before this Court, I was advised that they had on an earlier date settled the merits on the understanding that the Defendant would compensate the Plaintiff for 90% of his proven damages. The agreement of the parties on liability leaves the causation and patrimonial loss for determination by this Court. Under the heading of patrimonial loss the head of damages pertains to general damages and loss of earnings.

### **EVIDENCE**

[3] To prove the above, the Plaintiff testified on his own behalf followed by various experts who had examined him and compiled medico-legal reports subsequently. He stated that he works for the Inkomazi Municipality as head of communications and community liaison officer. He went on to confirmed the injuries outline above and that he was detained for a while at Medi Clinic in Mbombela for purposes of receiving treatment. He has since the collision been experiencing headaches as a result of which he has been consulting with neurosurgeons.

[4] His work requires him to be available and accessible at all times but due to his medical condition following the collision, it is not always possible. His superiors do not understand this and have on a number of occasions reprimanded him complaining that his work performance was of poor quality and that it had reached unendurable levels. The amnesia, which he said was brought about by the head injury, is largely responsible for his poor performance. His position needs a person with efficient memory. There are days when he cannot drive because of dizziness and it would be on these days that he would be unable to report at work.

[5] The first expert witness who took the stand was Dr K S C Malefahlo, a cardio thoracic surgeon. He testified that Medi Clinic conducted an electro cardiogram on the Plaintiff, which he had to interpret. Through his interpretation of the report he established that the Plaintiff had a 'left' bundle branch block' or heart block). He also found that the Plaintiff's heart rate was lower than normal. Whereas the normal ranges between 60 to 80 beats per minute, his registered less than 60 beats per minute. He explained that the left bundle branch block can be caused by various problems, amongst them, congenital or trauma or lifestyle diseases.

[6] The after effect of having a blocked branch bundle is low heart rate, which cannot respond to increased body activity. The ultimate result could be that a person would feel dizzy and probably collapse because the one remaining bundle branch may not be adequate for the demand brought to bear on the heart. Dr Malefahlo testified further that the slow heart rate is caused by the heart contusion. To improve the heart rate, he continued, might require the insertion of a pacemaker, which will firstly, assist avoid a total blockage of the branch and secondly, will improve the Plaintiff's heart rate.

[7] As a person involved in community liaison and media communications, the Plaintiff will occasionally be required to drive to various areas under the control and administration of his employer. The risk is always there that whilst driving, he might be expected to respond to sudden emergency on the road. That will place enormous stress on his heart because his heart might not step up to the challenge brought about by the unfolding sudden emergency events on the road. Dr Malefahlo stated that a pacemaker is critical for the Plaintiff. That said, he testified that prior to inserting it the Plaintiff's heart rate must first be monitored for approximately 24 hours to ascertain that it is indispensable.

[8] Dr Malefahlo also interpreted the results of a lung function test – FEV 1, which had to be conducted in light of the lung contusion suffered by the Plaintiff. He said that in consequence of the contusion, his lungs are unable to diffuse sufficient oxygen

properly. The effect of this is that the Plaintiff gasps or experiences shallow breathing, which is a problem for a person employed in the position of the Plaintiff who has to drive to various areas under the control of his employer, Inkomazi Municipality often to quell unrests, which are on their own stressful.

[9] Dr Malefahlo confirmed that the Plaintiff cannot play any sporting activity that would place demands on his lungs and/or heart. This is also worsened by the chronic thoracic pain syndrome caused by the blunt trauma to the chest. He testified that he expected this to persist up to 10 years but that it differs from one patient to the next. With regard to longevity, he believed that the Plaintiff's life expectancy has been reduced or if not, his quality of life will continue to be poor. Significantly, he stated that if the left bundle branch block resulted from trauma, it will be irreversible whereas one can try to improve the block if it is caused by lifestyle diseases such as, hypertension.

[10] Despite the court seeking clarity on whether or not the Plaintiff would be in a position to work until retirement age given his poor prognosis, Dr Malefahlo was not only somewhat loath to categorically specify the year on which the Plaintiff could be expected to retire but he would not even venture to say that he is a candidate for early retirement. That said, he was emphatic that the sequelae will persist to be a lifetime impediment.

[11] Dr R S Ngobeni is an orthopaedic surgeon. She examined the Plaintiff and compiled a medico-legal report thereafter. She stated that she observed that he had sustained injuries to the left shoulder, head and ribs on the left hand side. She diagnosed him with post traumatic osteoarthritis of the shoulder and acromion clavicular joints, chronic post traumatic thoracic pains resulting from the rib fractures and residual chronic headaches due to the head injury. She testified that the degeneration in the joints is progressional and is irreversible.

[12] The Plaintiff complained of left shoulder pain that makes it difficult for him to lift objects. He told her further that he experienced chronic headaches with associated

amnesia, pains on the left side of his chest, wrist that is exacerbated by inclement weather and numbness of the right leg and hand. She testified that all these complaints are consistent with the injuries that the Plaintiff has sustained. She recommends a non-surgical intervention for the shoulder joint treatment, with monthly analgesics (pain medication), left shoulder infiltration consisting in giving medication directly to the shoulder with the objective of minimising the pain, rehabilitation by a physiotherapist to ease the pain and shoulder compression to enable the shoulder joint to move effortlessly.

[13] Mr K S S Selloane is an occupational therapist who has also examined the Plaintiff and subsequently prepared a report. He conducted physical assessment and cognitive tests of the Plaintiff. His physical examination of the Plaintiff revealed that the Plaintiff experiences difficulties with prolonged standing as well as assuming other physical positions such as, squatting, climbing staircases and walking for long distances. Insofar as his cognitive tests are concerned, the Plaintiff had challenges with concentration on one activity for extended periods and was easily distracted by external stimulæ. He has poor memory and could not demonstrate abstract problem solving.

[14] Prior to the collision, the Plaintiff's employment consisted in attending interviews with the media, community and municipality meetings, service Protest meetings within the area of Inkomazi Municipality. He also drove for long distances to attend meetings at other municipality representing his employer, organised various campaigns, speak to various mayors on behalf of his own, wrote and delivered press releases, liaised with communities, build good external relations with funders and partners in the communities and answered media queries.

[15] Mr Selloane testified that he noted that the Plaintiff has returned to work and that he continues to do what he did before the collision. He said that he expects the Plaintiff to manage doing his work albeit with continued cognitive problems. Mr Selloane also testified that the Plaintiff cannot be an equal competitor in open labour market. The Plaintiff, said Mr Selloane, is now working at less 30%. Although Mr Selloane does not

specify the Plaintiff's likely age of retirement, when asked by the court if he was a candidate for early retirement, He said that he expected him to work until age 55 at which point he will be suited for retirement.

[16] Dr A B Mazwi is the neurosurgeon for the Plaintiff. He also assessed the Plaintiff and compiled a report of his findings. He notes from the hospital medical records that the Plaintiff sustained the following injuries: head, scalp lacerations, right hemiparesis, subdural haemorrhage, multiple rib fractures, left shoulder and neck. Dr Mazwi testified that the right sidedness numbness is caused by the subdural haemorrhage.

[17] Dr Mazwi testified that the Plaintiff has two visible surgical scars on the head, right hemiparesis power that registered 4 out of 5 and right leg numbness. The hemiparesis is measured on a scale of 0 to 5 with 5 being normal. He concluded that 4 out of 5 is therefore very close to normal. Neurologically, Dr Mazwi found that the Plaintiff has difficulty with concentration and significant memory disturbances. He also presented with poor attention, mathematical ability, abstract thinking, general knowledge and ability to recall. Dr Mazwi also testified that the Plaintiff told him that he did not present with all these difficulties prior to the collision. In consequence of absence of any previous trauma before the collision, he attributed all the difficulties with which the Plaintiff now presents to the subdural haemorrhage.

[18] Dr Mazwi stated that the Plaintiff has a subdural haematoma meaning a collection of blood overlying the brain. Depending on its seriousness, a surgical procedure may be required to evacuate the blood. As proof that the head injury was severe, Dr Mazwi pointed out to the fact that the Plaintiff needed an operation to clear the blood overlying his brain. The whole person impairment test that he conducted revealed that the plaintiff was 33% disabled, which entitles him to compensation for general damages.

[19] Chances of any person experiencing an epileptic seizure is around 1% but in someone who has had a massive head injury, the risk increases to between 8% and

10%. However, where no seizure occurs the risk level drops to approximately 5% and after 10 years, it decreases to approximately 3%, which is very close to the general population. He pointed out that currently the Plaintiff would be around 5% in view of the fact that he has to date not experienced any seizures since the collision. In other words, the more years without any seizure incidents, the less the chances of it happening. Dr Mazwi too could not state when the Plaintiff was likely to retire.

[20] Ms A M Kheswa is the Plaintiff's industrial psychologist who also examined the Plaintiff and prepared a report wherein she describes her findings and recommendations. She testified that she collected collateral information from a human resource manager of the Plaintiff's employer. The human resources manager reported to her that pre collision, the Plaintiff had no work performance issues. He reported to work punctually. Insofar as promotion was concerned, she was told by the manager that the Plaintiff had reached his career ceiling at the time of the occurrence of the collision. Early retirement is 50 years while mandatory retirement age is 65.

[21] The human resources manager further advised her that the Plaintiff is still employed as the spokesperson and head of communications for his employer. He is now more absent from work attending doctors' appointments. His intermittent time off from work has affected his work performance. The Plaintiff is forever complaining of headaches leaving him susceptible to agitation. This interferes with his interpersonal relations with his colleagues and supervisors.

[22] Based on the information that she has extracted from the other experts, her opinion is that but for the collision, the Plaintiff would not have had these difficulties with which he is now presenting and that he would have worked until age 65. His decline in his physical and cognitive abilities makes him a liability more than an asset to his employer. She states further that she does not regard him as an equal competitor in the open labour market. The cognitive deficits will present a severe challenge to the demands of the type of work performed by the Plaintiff. Should he, for any reason,

resign or be expelled, he will find it hard to obtain another employment. Ms Kheswa was also unable to suggest that the Plaintiff would retire earlier than anticipated.

[23] Mr S G Du Plessis is an actuary who calculated the Plaintiff's loss of earnings based on the report of the industrial psychologist. The Plaintiff did not suffer any past loss of earnings because he was paid while off recuperating from his injuries. This is as per the report of the industrial psychologist. The essence of his calculations is that the earnings of the Plaintiff both pre and post collision are exactly similar. This is because the Plaintiff returned to his pre-collision occupation, performing the same duties and earning the same amount.

[24] The actuary's calculations did not factor in the possible early retirement mentioned by Mr Selloane under cross examination. His report is no exception to the generally accepted rule that actuaries give significant weight to contents of reports of industrial psychologists. Accordingly, there being no reference to the Plaintiff' likelihood of early retirement in the experts' report save during evidence by one of them, he utilised contingencies of the Plaintiff retiring early as a result of his physical and cognitive challenges that distress him.

[25] Applying contingencies to the amounts calculated by him, he came to the net loss of R1 392 080.00. In response to the court's concern that the Plaintiff might in fact retire earlier due to his injuries, he agreed to furnish the parties with a report that assumes that the Plaintiff would retire at age 55 so that the court can compare and decide which of the two was more justifiable given the facts in this matter. He has done so and the amount of loss as per his second scenario is R2 998 800.00.

## **ISSUES**

[26] The issues for determination by this Court are quite straight forward. Firstly, the court must consider whether or not the injuries sustained have given rise to the sequelae as described by the Plaintiff. Secondly, once that is out of the way, to



determine the amount of loss of earning capacity, if any. Thirdly, to have regard to different case law and to set the amount of the award to the Plaintiff.

## **LEGAL FRAMEWORK AND APPLICATION**

[27] It is often assumed that where parties have settled merits, automatically the question of causation would become resolved. This is not necessarily correct because while it could be obvious that a collision caused harm suffered by a Plaintiff, absence of causal link between the injuries and the sequelae will entail absolving the insured from liability. This issue did not arise in this matter but it is worth bearing in mind that agreement of the parties on merits does not inescapably cover this connection to which I refer. See *para 7 of JM Grove v The Road Accident Fund* <sup>1</sup>Other than as aforesaid, I regard the subject of causation as closed for purposes of this judgment.

## **GENERAL DAMAGES**

[28] All the experts having confirmed that the sequelae outlined in their respective reports are due to the injuries sustained by the Plaintiff, the next issue for consideration is quantum. Starting first with general damages. This is often determined by comparing cases under scrutiny and those previously decided. That said, it is generally accepted that previously decided cases are never similar and that their purpose stops at comparing them to the current. I note that Counsel for the Plaintiff has furnished this Court with three cases which he submitted are analogous albeit not totally but nonetheless helpful.

[29] I have perused all three cases and have come to the conclusion that one that comes close to the current is *NH v Road Accident Fund* <sup>2</sup>the other two being far more severe. The Plaintiff sustained the following injuries: severe head injury; occipital lacerations; bilateral femur fractures; lung and cardiac contusion; left

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<sup>1</sup> (74/10) [2011] ZASC 55 (31 March 2011).

<sup>2</sup> 2019 (7A4) QOD 109 (FB)

intertrochanteric femur fracture; abdominal injuries with mesenteric tear and avulsion of splenic blood supply; right hemiplegia; multiple abrasions and lacerations.

[30] He spent about two months in the ICU and a month and three weeks in a general ward. During that period he had numerous surgeries, laparotomies for spleen removal and bowel resection. He also had orthopaedic surgery to repair the fractures of the femurs. For the most of his hospitalisation he was in a critical condition. His condition was exacerbated by respiratory and heart complications. He underwent blood transfusions. He was placed on mechanical ventilation by way of endotracheal tube and later tracheostomy on several occasions.

[31] He experienced and still suffers from pain in the stomach area, back, right upper arm, shoulder, as well as, occasional headaches. The pains will persist in invariable degrees and for a long time in the future. The brain injury is so severe that it has rendered the plaintiff both physically and mentally disabled. As a consequence of the brain injury, he can no longer manage his personal, financial and legal affairs and he is also at risk of developing epilepsy. Prior to the accident, he enjoyed hunting with his dogs and doing some gardening.

[32] The orthopaedic injuries have curtailed the enjoyment of his amenities in that, he has constant weakness of the limbs. He walks with difficulty and very slowly. He also can no longer stand on one leg and has a right-sided limping gait. He has been left with permanent scars on the occipital area, the diaphragm down to the pubic area, the belly button and operation scars from the hips down to the knees on both legs and the right upper arm. He also has bed sore scars on the head and right buttock. The court awarded him an amount of R1 199 000.00 for general damages (2020 value).

[33] Considering the injuries sustained by the Plaintiff and their sequelae, it is manifest that in comparison to *NH v Road Accident Fund*, the injuries and sequelae in the current matter pale into insignificance. It must be borne in mind that although the Plaintiff lives with pains emanating from some of his injuries, a heart condition,

hemiparesis and amnesia, he remains employed. The industrial psychologist mentioned that his manager complained that the Plaintiff is no longer the person the Municipality had employed a few years ago.

[34] That said, no threat of medical boarding has been suggested by any expert nor has it ever become a subject of consideration by his employer. On the contrary, to date he remains in employment suggesting that his shortcomings are not as grave posing a danger to the discharge of his duties as he would have this court believe. In short, he can proceed until normal age of retirement but because he is vulnerable it will be proper to make a provision for that contingency. Against this background, I have come to the conclusion that an appropriate amount for general damages is R950 000.00.

#### **POSSIBLE LOSS OF EARNING CAPACITY**

[35] Initially, I had given undue weight to the statement of Mr Selloane, the occupational therapist, that he might retire at age 55. On that basis, I directed the actuary to provide a second report for a scenario of the Plaintiff retiring at age 55 instead of the normal 65. I am not persuaded that there is a cause for concern especially considering that the Plaintiff's examination by the experts happened prior to administration of further medical treatment. For example, the insertion of a pacemaker is anticipated to improve his heart condition.

[36] The hemiparesis is measured at 4/5 meaning that it is not as grave as it could have been and that he can still move with relative ease. The fact that the Plaintiff continues to work even before the intervention of proposed medical treatment, which it is anticipated, will relieve him of some pains, fortifies my approach that he can endure for a few more years until normal retirement age. If he does not, the contingencies are sufficient to cover that eventuality.

[37] The first report of the actuary therefore appears more accurate and realistic to this Court. For that reason, I would not tamper with the calculations and the

contingencies that he has applied. Loss of earning capacity is therefore allowed at the amount of R1 392 080.00.

**ORDER**

[37] I make the following order:

1. The Defendant is liable to the Plaintiff in the amount of R2 342 080.00 made up as follows:

1.1	General damages	R950 000.00; and
1.2	Loss of earning capacity	R1 392 080.00
1.3	TOTAL	R2 342 080.00

2. The Defendant is to pay the costs of the Plaintiff.

**B A MASHILE  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA**

*This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 12 May 2022 at 10:00.*

**APPEARANCES:**

**Counsel for the Plaintiff:  
Instructed by:**

**Adv D Thumbathi  
Mphahlele Attorneys  
C/O Nkosi Attorneys**

**Counsel for the Defendant:**

**No Appearance**

**Instructed by:**

**Date of Judgment:**

**12 May 2022**