

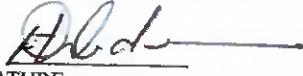
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024/084333

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: NO
DATE: 10/6/2024	SIGNATURE 

In the matter between-

LETLHOGONOLO SEAN MATSILE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

[1] The accident happened on the 5th of November 2020. The matter came before court as a default judgment application. The matter proceeded on both liability and quantum.

[2] The defendant had not made an election on general damages and counsel moved an application from the bar in terms of Rule 33(4) for this head of damage to be postponed *sine die* and which application was granted.

[3] Counsel further moved an application in terms of Rule 38(2) for the evidence to be tendered on affidavit and which application was also granted.

[4] Summons was served on the defendant on the 5th of August 2024. The defendant entered an appearance to defend on the 7th of August 2024 and the Notice of Bar was served on the defendant on the 18th of October 2024.

[5] No mention was made in the particulars of claim of the fact that the plaintiff was a soldier employed as such in terms of the Defence Act. I accordingly uploaded a case note requesting counsel to address the court on the limitation in Section 18(3) of the RAF Act on his claim. In addition to her original Heads of Argument counsel also prepared supplementary Heads dealing specifically with this issue.

[5]. Section 18(3) of the RAF Act, Act 56 of 1996, as amended, states as follows:

“(3) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of a member of the South African National Defence Force, other than a person referred to in subsection (2), and the third party is entitled to compensation under the Defence Act, 1957, or another Act of Parliament governing the said Force in respect of such injury or death—

(a) the liability of the Fund or such agent, in respect of the bodily, injury to or death of any such member of the said Force, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund or such agent and any lesser amount to which that third party is entitled by way of compensation under the said Defence Act or the said other Act; and

(b) the Fund or such agent shall not be liable under the said Defence Act or the said other Act for the amount of the compensation to which any such third party is entitled thereunder.”

[6]. Section 57 of the Defence Act, Act 42 of 2002 states as follows:

“Compensation in case of injury or disability:

57. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force.

(2) Any member or former member of the Defence Force who has suffered any damage or loss as a result of an act or omission arising from any training or service under this Act (my underlining) whether or not legal proceedings have been or are to be instituted, may in writing apply to the Compensation Board established by subsection (3) for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or loss and the compensation."

[7]. The Defence Act 1957 referred to in the RAF Act has since been substituted by the Defence Act of 2002.

[8] Counsel referred the court to two matters: *Masemola v Road Accident Fund* (17336/2017) [2023] ZAGPPHC 765 (2 July 2023) and *Duiker v Road Accident Fund* (2887/2018) [2022] ZANHC 78 (28 October 2022). Both these matters dealt with payment of compensation to members of the Defence Force but neither discussed the legislation and basis on which payment was made. They are therefore of limited assistance.

[9] The plaintiff's employment contract states:

"Injuries and disabilities:

Members are entitled to compensation i.t.o the prevailing measures for injuries and disability sustained in execution of official duties."

[10] It further provides that:

"Members who become disabled during the contract period will be accommodated in terms of the governing DOD policy on disabled persons."

[11]. The purpose of Section 18(3) is not to exclude members of the Defence Force as a whole, but to avoid double compensation. Having considered the matter I am satisfied that the plaintiff's claim is not excluded in terms of Section 18(3) but limited to such damages as he may be able to substantiate and which is not covered or paid by the Department of Defence.

[12] The plaintiff alleges that the accident occurred on the 5th of November 2020 at which stage he was travelling straight on the N14 Highway when the insured turned right across his way of travel causing the collision.

[13] According to the sketch plan contained in the Accident Report Form (ARF) the point of impact was off the road on the plaintiff's left side, indicating that the plaintiff swerved left with the truck turning right across his path of travel. He swerved thus into the same direction in which the truck was turning. The black and white photographs on CaseLines are not clear enough to confirm the accident occurred completely off the left hand side of the road. What is clear is that the impact was at an acute angle and at a high speed.

[14] It would have been useful to have more information available to assist in interpreting the circumstances as set out in the plaintiff's affidavit, the ARF sketch plan and the photographs.

[15] It seems that the truck, a big liquid bulk carrier slowed down, commenced its turn to the right and did so whilst either underestimating the speed with which the plaintiff was approaching or without observing the plaintiff approaching.

[16] The plaintiff was not keeping a proper lookout, his attention was not on the road and at the point at which he became aware that the truck was turning his instinctive and only reaction was to swerve. The damage to his vehicle suggests a high speed impact. There is no evidence on either the sketch plan or the photographs that he attempted to brake. According to the short term insurance vehicle assessment report his vehicle was a complete write off, which supports the deductions referred to earlier.

[17] I see no reason to deviate from the body of case law which allocates a 75/25% apportionment in favour of the vehicle travelling straight. The plaintiff will thus be entitled to 75% of such damages as he may be able to substantiate.

[18] As a result of the aforesaid collision, the plaintiff sustained the following injuries:-

- Concussive head (brain) injury resulting in loss of consciousness;
- Contusion to the neck;
- Carpo-metacarpal fracture to the left hand;
- Contusion to the chest and abdomen;

- Fracture to the lumbar spine left L2 transverse process;
- Right femur fracture;
- Left acetabulum fracture with malunion and post-traumatic degenerative changes of the left hip joint;
- Open wounds on the lower limbs;
- Contusion to the right lower leg.

[19] The plaintiff's claim in respect of these injuries is made up as follows:

- Past Medical Expenses R 500 000
- Future Medical Expenses Section 17(4)(a) Undertaking
- Past loss of Earnings R 800 000
- Future Loss of Earnings R 5 000 000
- General Damages R 1 200 000

[20] *Ex facie* the available documentation the plaintiff has not substantiated his claim for past hospital and medical expenses nor has it been separated out and postponed. The plaintiff's claim under this head of damage is accordingly dismissed.

[21] Given the medico-legal reports filed of record there is ample evidence that the plaintiff will require future treatment and the defendant will be ordered to provide him with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act for 75% of such future hospital, medical and ancillary expenses as he may require, after it had been incurred and on submission of the invoices.

[22] That leaves the claim for loss of income. The plaintiff was a Private at the time that the accident occurred and had since then not suffered any loss of income nor has he, based on the available evidence, suffered any delay in progression in his career and has in the interim been promoted to the rank of Corporal.

[23] The industrial psychologist, Mr D de Vlamingh, spoke to his commanding officer at the time of the accident and with the officer tasked with career development in the South African Army. Albeit that he had been moved into a different section of logistics this has to date not had a negative influence on his career. The advice given was further that promotion is not automatic but is based on a variety of factors including need and qualifications.

[24] Based on the plaintiff's injuries and despite the concern expressed by the experts about his future employment, the claim was based on the premise that he would remain in the South African Defence Force until normal retirement age, post-accident. The argument is then that he would have, but for the accident, progressed in his career to the rank of Warrant Officer 1 (WO 1) whereas as a result of the accident his highest rank will now be Staff Sergeant.

[25] Every Company or Squadron will have a WO 2 but normally there will only be one WO1, for example, the regimental Sergeant Major. To project his career to WO1 is to progress him to a level that is possible but not probable.

[26] The expert reports, especially that of the industrial psychologist hint at and consider early retirement but regrettably all the reports, including that of the industrial psychologist, is silent in respect of what disability benefits will be available in the event that early retirement becomes necessary, especially as his contract of employment makes provision for "*permanent incapacity leave*" without discussing what this might mean.

[27] it is my view that the actuarial calculation of the plaintiff's postulated "*but for the accident*" income overstates his potential income, especially from the age of 51 to 60 whereas the "*having regard to the accident*" calculation makes ample provision for possible limitations. As such the post-accident contingency deduction should be lower than the pre-accident contingency deduction.

[28] The projected, but for the accident income, is R9 677 407 which after the deduction of a 15% contingency, renders a net figure of R8 225 796.

[29] The projected, having regard to the accident income, is R8 396 469 which after the deduction of a 12% contingency, renders a figure of R7 388 893.

[30] The plaintiff will be awarded the amount of R836 903, less 25% on liability for a net amount of R627 677.00.

My order is as follows:

1. The plaintiff's application in terms of Rule 33(4) is granted and the claim for general damages is postponed *sine die*;
2. The plaintiff's application in terms of Rule 38(2) is granted;

3. The plaintiff's claim for past hospital and medical expenses is dismissed;
4. The defendant shall provide the plaintiff with an Undertaking in terms of Section 17(4)(a) of the RAF Act, limited to 75% of such future hospital, medical and ancillary expenses as the Plaintiff may be able to substantiate and after same has been incurred.
5. The defendant shall pay the plaintiff the net amount of R627 677 in respect of loss of income/impairment of earning capacity.
6. The plaintiff is entitled to his High Court party and party costs as taxed or agreed including the costs of the expert reports filed of record. Counsel's fees to be on Scale B.



D Weideman AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 10 June 2025.

Heard: 29 April 2025, 6 & 9 May 2025

Delivered: 10 June 2025

APPEARANCES:

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Applicant's Attorneys:	Joubert Botha Inc marius@joubertbothainc.co.za
Respondent	No appearance