IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 7101/2019

DATE: 07-05-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE 7/5/2025
SIGNATURE

In the matter between

MARTAIL ABIE ARENDS Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

WEIDEMAN, AJ: The accident from which this claim arose occurred on 31 May 2016 and at which stage the plaintiff, who was a minor at the time, was a pedestrian.

Inter partes the aspect of negligence had been resolved and the defendant had accepted liability for 100% of such damages as the plaintiff may be able to substantiate.

According to the plaintiff's particulars of claim, and in

particular paragraph 7 thereof, the plaintiff sustained the following injuries as a result of the accident:

1. An injury to the right leg;
2. Lacerations, right leg;
3. Head injuries; and
4. Other serious injuries.

Paragraph 9 of the particulars of claim, as amended, set out the plaintiff's claim as follows:

1. Future medical expenses: Undertaking;
2. General damages: R850 000;
3. Past and future loss of income: R3 749 734.

At the commencement of the hearing counsel moved an application in terms of Rule 38(2) and which was limited to the items contained in the application relevant for the assessment of quantum. The application was granted.

A further application was moved from the bar in terms of Rule 33(4) for the aspect of general damages to be postponed *sine die*. That application was also granted.

The plaintiff is entitled to an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act for such future hospital, medical and ancillary expenses as he may require,

as a result of the accident that occurred on 31 May 2016.

The medico-legal reports obtained on behalf of the plaintiff contain a number of issues which make the assessment of the claim more problematic than what it should be. For instance, according to the documentation filed in respect of the aspect of negligence, the plaintiff was on crutches at the time when the accident occurred.

This fact was conveyed to one or two of the experts, but in respect of all the other experts, any prior medical history was denied. The court is accordingly deprived of accurate details as to the circumstances which led to the plaintiff being on crutches at the time of the current accident and the possible impact thereof on the claim before it.

Counsel indicated from the Bar that the plaintiff had sprained his ankle on the morning of the accident. This is in conflict with the information conveyed to some of the medical experts which recorded references to an accident approximately two months earlier.

A further difficulty in the matter relates to the plaintiff's reporting to the various experts as to what his career aspirations had been. In this regard he gave varying

alternatives to different experts.

The plaintiff's claim, as formulated in the actuarial report on CaseLines at 006-84, is that he would have completed Grade 12 at the end of 2022. During 2023 he would have completed a higher certificate: NQF level 5 at a TVIT College.

He would have remained unemployed for a period of approximately 21 months, whereafter he would have entered the labour market in October 2025 at the lower quartile of wages for semi-skilled workers in the non-corporate sector. Income is then postulated to increase uniformly over a period of six years to the average of the medium and upper quartile of semi-skilled workers in the non-corporate sector.

The current value of the annual income projected for at that stage is R152 372. From there the plaintiff's income leaps, from R152 372 per annum, to R477 870 per annum at age 45, being the average package on the Paterson scales between the levels B5 and C1.

Counsel was asked whether there was any reason why the calculation moved from the non-corporate sector into the Paterson scales, - the formal corporate sector, but counsel

was unable to give an explanation or to point to any facts to motivate the move. The court was not referred to and neither could it find any facts on which this adjustment could be based, save for the unsubstantiated opinion of the industrial psychologist.

As far as the plaintiff's post accident income is concerned, given the severity of the head injury, as it is set out in the various medico-legal reports, his income would remain modest and there is no quarrel with this calculation by the actuary.

The only figures available to the court would are the figures in the actuarial report. These figures must be adjusted to accommodate the uncertainties as had been set out above and to make provision for the length of the period of the calculation.

The actuary calculated the value of the plaintiff's income, uninjured, as R6 173 787. This amount is to be reduced by a factor of 1% per annum over the duration of the calculation. This has the effect of reducing the amount by 44%. The result is an amount for future loss of income, uninjured, of R3 457 321.

The calculation of the plaintiff's income, having regard to the accident, is significantly lower, i.e. R1 691 777 than the R6 173 787 projected but for the accident. This reduced amount compensates adequately for all the long term sequelae of the injuries sustained by the plaintiff.

There is therefore no need to increase the contingency and the same contingency, i.e. 44% is also applied to the having regard to - figure. The net result is that the value of the income, injured, is reduced to R947 395.

If this amount of R947 395 is deducted from the uninjured income of R3 457 321, the plaintiff's claim for future loss of income and/or impairment of earning capacity is R2 509 926.

My order is therefore as follows:

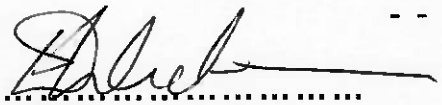
1. The application in terms of Rule 38(2) is granted.
2. The application in terms of Rule 33(4) separating out general damages and postponing same *sine die* is granted.
3. My order records that the aspect of negligence had been resolved between the parties on the basis that the defendant accepts liability for 100% of such damages as the plaintiff may be able to

substantiate.

4. The plaintiff is entitled to an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act for such future hospital, medical and ancillary expenses as he may require, as a result of the accident that occurred on 31 May 2016.

5. The defendant is liable to pay the plaintiff the amount of R2 509 926 in respect of loss of income.

6. The plaintiff having been substantially successful is entitled to his party and party costs as taxed or agreed, counsel's fees to be on Scale B.



WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 7 May 2025