

SOUTH AFRICA / JUDGMENT

Canham v Road Accident Fund (2021/20063) [2025] ZAGPJHC 229 (7 March 2025) [2025] ZAGPJHC 229

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weideman

CASE / FILE NUMBER

2021/20063

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2021/20063

(1)

REPORTABLE: YES / NO.

(2)

OF INTEREST TO OTHER JUDGES: YES / NO.

(3)

REVISED.

In

the matter between:

CANHAM:

TIARRA-LEE

APPLICANT

AND

ROAD ACCIDENT

FUND

DEFENDANT

JUDGEMENT**WEIDEMAN AJ**

- [1] This is an action in terms of the Road Accident Fund Act for the recovery of delictual damages arising out of personal injuries sustained by the plaintiff following a motor vehicle collision which occurred on 11 January 2019. It came before the Road Accident Fund Default Judgment Trial Court for the second time.
- [2] The Road Accident Fund conceded liability in favour of the Plaintiff on 4 February 2021.
- [3] On 10 August 2023, the matter proceeded in the Default Judgment Trial Court, when the Honourable Acting Justice Van De Venter granted the following order:
- a) Liability: Defendant is 100% liable.
 - b) Future hospital and medical expenses: Section 17(4)(a) Undertaking.
 - c) Past hospital and medical expenses: R 74 579.47
 - d) Interim payment not allocated to any head of damage: R 300 000.00
 - e) All other heads of damages: postponed sine die.
- [4] On or about 20 December 2023 the HPCSA ruled that the plaintiff's injuries were not serious. There is no indication from the documentation uploaded to CaseLines and neither was it argued from the Bar that this ruling had been challenged. It is therefore accepted that the plaintiff has abided by the HPCSA's ruling on the seriousness of her injuries.
- [5] The only issue before this court was therefore the plaintiff's claims for past and future loss of income/impairment of earning capacity and in respect of which the plaintiff claimed an amount of R5 550 000.
- [6] The plaintiff's injuries as is set out in the particulars of claim consisted of the following:
- a) Head injury with loss of consciousness and post traumatic amnesia;
 - b) Cerebral oedema;
 - c) Hematoma to the right side of the forehead;
 - d) Damage to her teeth;
 - e) Soft tissue injuries to the neck and lumbar spine;
 - f) Soft tissue injuries to the left shoulder;
 - g) Left hand injury with lacerations and contusions.

- [7] The plaintiff dealt with and referred to six medico-legal reports, all of which had been uploaded to CaseLines. The first is that of the orthopaedic surgeon, Dr G A Versfeld. Dr Versfeld's report is dated 4 August 2021. It is generally accepted, and many medico-legal experts also confirm this in their reports, that the value of a medico legal report is significantly diminished within 18 months to 2 years from the date on which it had been prepared. On this basis Dr Versfeld's report is of historic value only. This approach is supported by Dr Huth, the neurologist, who examined the plaintiff approximately two years after Dr Versfeld and from whose report it appears that most of the complaints tabulated in the report of Dr Versfeld had cleared up.
- [8] The historical information recorded by Dr Versfeld shows that the plaintiff was discharged from hospital after one day with a diagnosis of "multiple soft tissue injuries" and that the X-Ray and CT scans taken immediately after the accident showed no abnormalities.
- [9] The second report is that of Professor Vorster, a psychiatrist. Her report is dated 30 April 2021 and is therefore subject to the same criticism as which is levelled against the report of Dr Versfeld. Her report reveals that the plaintiff's boyfriend died in the accident and that she did not return to Boston College in 2019 due to an issue with fees. These facts as well as the plaintiff's troubled past and unconventional and disrupted upbringing have to be taken into account when considering the plaintiff's pre - morbid education and potential future career path.
- [10] Professor Vorster also recorded a number of suicide attempts, both prior to the accident in casu and thereafter and indicated that the plaintiff would benefit – and respond well to psychiatric treatment.
- [11] Counsel was asked whether there was any significance to the fact that the plaintiff advised Professor Vorster that she was in the process of picking up a hot coal which fell from a "hubbly bubbly" when the accident occurred whereas she advised the late Ms Nkuna, clinical psychologist, whom she saw four months after she saw Professor Vorster, that she was bending down to pick up her phone which had fallen into the footwell of the vehicle. Counsel indicated that there might be more than one reason for the different versions and that the Court should not automatically draw an adverse inference as to the truthfulness of her reporting to the various experts.
- [12] Turning to the report of the late Ms Nkuna who saw the plaintiff on 27 August 2021. Ms Nkuna noted that the plaintiff's family circumstances were quite distressing and troubled. She also recorded that the plaintiff's pre - existing fixation on suicidal thoughts as well as her anxiety and depression were exacerbated by the accident in question.

- [13] Dr Huth, the neurologist, saw the plaintiff on 28 November 2023. His report is the most recent of the reports filed of record and would not have been available when the occupational therapist and the industrial psychologist saw the plaintiff in 2022. What is important from his report is that his clinical examination, recorded on CaseLines at 0009-187 to 0009-190 revealed no abnormalities. The plaintiff's examination was completely normal, from a neurological perspective. He did find spinal spasms and related issues but the objective findings were vastly different from what was found by Dr Versfeld two years earlier and which confirms that there had been a marked improvement over time. Dr Huth's conclusions of headaches and spinal pain were predominantly based on the plaintiff's self-reporting.
- [14] Counsel was asked if the records of the neurosurgeon, Prof Adrian Kelly were available as Dr Huth indicated in his report that the plaintiff received treatment from Prof Kelly at Alberton Hospital. The answer was in the negative. It is a pity as these records could possibly have assisted in differentiating between the pre- and post-accident sequelae.
- [15] The industrial psychologist, Dr W Pretorius, assessed the plaintiff on 23 September 2021 and telephonically consulted with her on 18 February 2022. The date of his report is 23 February 2022. Dr Pretorius's report premised on the assumption that registration by the plaintiff at Boston College for an 18 month paralegal course is the same as her actually attending the course at this institution, whereas the collateral evidence provided did not support anything beyond mere registration. When confronted herewith, counsel was unable to provide any documentation to confirm that the plaintiff actually attended Boston College.
- [16] Pre - accident, the figures provided by Dr Pretorius and which were used as the basis of the actuarial calculations are premised on the income of a paralegal and on the assumption that the plaintiff would have completed the course and would have secured a position in the legal field, where she would have remained in continuous employment up to normal retirement age.
- [17] Post - accident her income earning ability had been significantly curtailed, as per the reports filed of record and this reduced income was also dealt with by the actuary, based on the report of Dr Pretorius.
- [18] Counsel was asked whether it is the plaintiff's case that the significant psychological problems which she was dealing with before the accident, should be taken into account when considering contingencies. Counsel agreed that it should but argued that insofar as the accident had exacerbated the pre - existing problems, this should then also affect the contingencies applicable to the having regard to scenario.
- [19] I am of the opinion that the plaintiff's psychological and emotional problems, but for the accident, were significant and would have haunted her for the remainder of her life. In this regard cognisance must also be taken of the numerous instances of self-harm and attempts to commit suicide. This would have had a considerable impact on her ability to consistently

earn an income even in the absence of the accident and must therefore be accounted for in the contingency to be deducted, resulting in a much higher than normal contingency deduction for a calculation of this duration.

[20] I equally accept that the accident, in particular the death of her boyfriend and the chronic pain syndrome, have added to her burden and will diminish even further her earning capacity, which is factually already significantly lower, having regard to her pre - accident projected income. This very low anticipated future income makes ample provision for all the sequelae flowing from the accident and the having regard to the accident calculation should only be reduced by the generally accepted contingencies for a calculation over this length of time.

[21] The calculations would then be as follows:

i. Accrued income but for the accident:

ii. R 880 041.00 – 25% = R660 031

iii. Accrued income having regard to the accident:

iv. R280 546 – 5% = R266 519

v. Total past loss of income:

vi. R393 512

vii. Future income but for the accident

viii. R7 504 982 – 40% = R4 502 989

ix. Future income having regard to the accident:

x. R1 435 870 – 25% = R1 076 903

xi. Total future loss of income:

R3 426 086

xii. Total loss of income past and future: R3 819 598

xiii. Less interim payment:

R300 000

xiv. Final Amount:

R3 519 598

[22] As far as costs are concerned, the matter is unusual and the original injuries were not commensurate with the long term sequelae that manifested. To distinguish between the pre-existing psychological problems as well as the co-morbidity factors and the effect of the accident on an already vulnerable individual required experience. I am satisfied that it was

prudent of the plaintiff to appoint senior counsel and therefore counsel's fees shall be on scale C. However, I do not think that the matter warranted the employment of two counsel and only the fees of senior counsel is included in this order.

[23] My order is therefore as follows:

1. The plaintiff's application in terms of Rule 38(2) is granted;
2. The defendant shall pay the plaintiff the sum of R3 519 598 in respect of accrued and prospective loss of income;
3. The defendant shall pay the plaintiff's taxed or agreed party and party costs. This order includes disbursements only to the extent that it had not been included in prior orders. Senior counsel's fees are allowed on scale C.

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG, JOHANNESBURG

REPRESENTATIVES

FOR THE APPLICANT: ADV J. Wessels Sc with H. Schouten

INSTRUCTED BY: Munro Flowers & Vermaak Attorneys

NO REPRESENTATIVE FOR THE DEFENDANT

Hearing date: 04 March 2025

Delivered: 07 March 2025

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