

SOUTH AFRICA / JUDGMENT

Cowan v Road Accident Fund (17541/2016) [2020] ZAGPPHC 686 (4 September 2020) [2020] ZAGPPHC 686

COURT

North Gauteng High Court, Pretoria

BEFORE

Maumela

CASE / FILE NUMBER

17541/2016

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT, PRETORIA)

(1)

REPORTABLE: YES / NO.

(2)

OF INTEREST TO OTHER JUDGES: YES / NO.

(3)

REVISED.

DATE

2020/09/04

Case No: 17541/2016

In

the matter between:

A

Cowan

Plaintiff

and

Road

Accident Fund

Defendant

Summary:

A motor vehicle accident. Plaintiff instituted a claim against the Defendant. Defendant is liable to compensate the Plaintiff in respect of Plaintiff's proven or agreed damages arising from the accident. The claim is defended. There is a dispute about General Damages and loss of earnings. Defendant tenders a section 17(4)(a) undertaking in respect of future medical expenses. The matter was argued on the reports and the joint minutes. The court found out that the Plaintiff's claim was beyond reasonable doubt and orders the relief sought.

JUDGMENT

Maumela J.

1. In this case, the Plaintiff is Alma Cowen; an adult female who is 57 years of age. She was 52 years old at the time she got involved in a motor vehicle accident which took place on the 23rd of April 2014. She sustained bodily injuries in the accident and on that basis, she instituted a claim against the Defendant. The claim is defended.
2. The Defendant is the Road Accident Fund; a statutory body with legal capacity. The defendant was established in terms of Section 2 (1) of the Road Accident Act 1996: (Act No 56 of 1996), 'the Act'. Its registered address is at No 38, Ida Street, Menlopark, Pretoria in Gauteng Province; South Africa. In terms of the provisions of the Act, the Defendant is liable to compensate the Plaintiff in respect of Plaintiff's proven or agreed damages arising from the accident.

THE

ISSUES.

3. The parties are in dispute about General Damages and loss of earnings. The Defendant tenders a section 17(4)(a) undertaking in respect of future medical expenses. By agreement, the aspect of past and future hospital expenses is postponed sine die. Merits are settled at 100% in favour of the Plaintiff. It was agreed that the matter be argued on the reports and the joint minutes. The parties are also not in agreement about which scenario is to be applicable on the Actuarial calculation and contingencies to be applied in respect of loss of earnings and earning capacity. INJURIES SUSTAINED BY THE PLAINTIFF.
4. According to the joint minutes of the Orthopaedic surgeons, both Doctors agree that Ms. Cowan sustained Injuries to the cervical spine and left scapula. TREATMENT RECEIVED.

5. The Plaintiff received the following treatment:5.1. She was initially treated conservatively. At the beginning, she had no pain. However, two weeks after the accident, she developed severe pain on the left side of the neck. She attended physiotherapy and was referred to the Orthopaedic surgeon.5.2. A cervical fusion was performed on her on the 02nd of September 2014. This was five months after the day of the accident. The fusion was performed between C4 and C6, which was successful.[1]5.3. According to the joint minutes of the Orthopaedic surgeons at page 1, both Doctors agree that a cervical fusion was performed between C4 and C6 on the 2nd of September 2014.SEQUELAE.
6. Concerning sequelae, Plaintiff suffered the following:6.1. Pain over her cervical spine; stiffness of the neck and pain on her left shoulder. She suffers Inclement weather and driving tends to exacerbate the symptoms in her neck.[2]6.2. Both of the Orthopaedic Surgeons, agree that Ms. Cowan remains symptomatic in her cervical spine and left shoulder.6.3. According to Shaithal Moodley; the Clinical Psychologist, Mrs. Cowan does not meet the criteria for a diagnosis of a post-traumatic stress Disorder (PTSD). She did however report a situation-specific travel-anxiety[3] and6.4. The Clinical Psychologist agrees that Ms. Cowan can be diagnosed with a major depressive disorder.[4]
7. LOSS OF EARNINGS.PRE-MORBID.7.1. In their joint minutes, the Industrial Psychologists agree on the following:[5] 7.1.1. Ms. Cowan completed grade 12 at the end of 1979. 7.1.2. In 2013, she started working for FHK Stropery as an Administrative Lady. She was working in this position

when the accident under review occurred. As per

letter from her employer, Mr. Francois Kotzee, dated

15.01.2019, she was earning a salary of R 6000.00 per month. 7.1.3. But for the accident; noting that she was already 52

years old of age when the accident under review took

place, the Industrial Psychologists agree that she has

reached her career ceiling. They are at ad idem that

but for the accident, she would have continued working as an Administrative Lady; if not at her employer at the time of the accident, then at any other similar concern. Her income of R 6000.00 per month can be regarded as her pre-accident income potential, receiving annual inflationary increases until

retirement age. 7.1.4. They agree that but for the accident, she would have continued working until the normal retirement age of

65.POST MORBID.

8. According to the joint minutes of the same Industrial Psychologists, the two agree on the following:[6]8.1. The accident happened on the 23th of April 2014. Appellant was absent from work for a period of 3 weeks following the accident, during which time she was fully remunerated. She returned to work and resumed normal duties.8.2. In April 2016, the company relocated and as a result, Ms. Cowan lost her job. She remains unemployed to date.8.3. The joint minutes of the Orthopaedic surgeons reflects on page 1 that Dr. Enslin for the Plaintiff believes that the Plaintiff is not a candidate who will successfully keep her job in the open labour market and that her options are restricted. She further opined that it would be difficult for the Plaintiff to secure work in the rural areas where she resides. She views that Plaintiff will probably not work again. Plaintiff suffered loss of earning capacity over the last 5 years of her accident related reasons.8.4. Dr. Read, the Orthopaedic surgeon for the Defendant, stated that the claimant is likely to have some ongoing cervical and lumbar symptoms and some loss of productivity in whatever she does, if she starts working again. Lastly, he opined that she will have a potential loss of income now and in the future.8.5. According to their joint minutes, the Occupational Therapists, agree that Mrs. Cowan demonstrated a dynamic strength ability falling in the sedentary range in all planes.8.6. Ms. Cilliers, the Plaintiff's Occupational Therapist opines that the Plaintiff will only cope with this level of duties over a period of half-a-day due to her limited endurance. However, while Ms. Reeds, the Occupational Therapist for the Defendant agrees that Mrs. Cowan's comfort and productivity levels will most likely be reduced, based on her performance on standardized assessments during her evaluation, Me. Reeds opines that she remains suited to work in her pre accident capacity.8.7. The Occupational Therapist agrees that the Plaintiff's job opportunities will be restricted due to the sequelae flowing from the accident. [7]8.8. Based on the above opinions, the Industrial Psychologist agrees that if Dr. Enslin and Ms. Cilliers, (Experts for the Plaintiff), are correct in their opinions that the Plaintiff will only be able to work in a half-day position, then they agree that her job choices have been severely truncated. The half-

day salary will equate to R 3 070 per month.[8]8.9. The two note that half-a-day positions are very scarce, meaning she will suffer much longer periods of unemployment, much as she will have to job-hop in search of an ideal type of work. A further concerning factor is that Plaintiff is already 56 years of age; which means that her chances of obtaining a sustaining employment opportunity are very limited. If she cannot obtain employment opportunities, she can for all practical reasons be regarded as unemployable in the open labour market.8.10. The Industrial Psychologists agree that if the conclusions of Dr. Read and Ms. Reeds, (experts for the Defendant); are correct, then they agree that she will still be able to work in her pre-accident job, but that she will have restrictions in her employment. If this scenario is accepted, then she will still be able to earn on par with her pre- accident income potential.ACTUARIAL REPORT OF GRS. ACTUARIAL CONSULTING.[9]

9. The Actuary is not only based on the joint minutes, but also on the Plaintiff's Industrial Psychologist report of Ben Moodie. The Scenarios postulated by the joint minutes of the Industrial Psychologists, with which the Industrial Psychologist agrees, are Scenario 1, (basis 1), and Scenario 3, (Basis 3). These agreements are found in paragraphs 2.6 and 2.9 of the joint minutes of the Industrial Psychologists.
10. There is no agreement in the joint minutes regarding basis 2 of the actuarial calculation. It is only noted by the Industrial Psychologist that half-day positions are very scarce and with her age featuring as a concerning factor in obtaining and sustaining employment, it means that she cannot find employment and therefore that she can be regarded as unemployable.
11. The Defendant submitted that the injuries the Plaintiff sustained in this accident did not render her to be unemployable. Both the Plaintiff's experts agree that she has the ability to work half-a-day as a result of the accident. The experts for the Defendant opine that she can still do the same work she was doing before the accident. The economic dynamics in the labour market and her age contribute in a major way; making it difficult for her to find a job and these are the factors to be taken into consideration when applying contingencies at basis 1 of the actuarial calculations. The Defendant submits that this is most probable and is further justified by the Plaintiff's experts.
12. The Defendant submits that scenario 1 is the most probable, when applying 5% contingency on the past loss of earnings. The amount is R 214 574.6. When applying 10% on the figure of R581 164 and 25% contingency on the figure of R 234 141; the total amount for future loss of earning is R 346 691.85. Including past loss of earnings, the total loss is R 561 266.45.
13. The high contingencies applied on the post-morbid figure of R 253 141, takes into consideration scenario 2, which implies that she might suffer longer periods of unemployment. Half-positions are scarce and it is a further concerning factor that Plaintiff is already 56 years old. This limits her chances of obtaining and sustaining employment. The Plaintiff resigned when her company relocated. She stood to struggle to find employment or to remain unemployed even if the accident did not happen. The defendant submits that it was highly unlikely for Ms. Cowan to secure a half-day job regardless of whether the accident took place or not, taking into consideration the high employment rate in South Africa.
BASIS 1 PER ACTUARIAL CALCULATIONS.
14. The actuarial computation of past loss of income is as follows:
Past income loss: Uninjured Income: Past Injured income.
R 353 352 R 127 484
Contingency 5%: (17 667) (6 374,2)
335 684,4 121 109,8
PAST LOSS: R 214 574,6
15. Future loss of income is computed as follows: Future uninjured income: Future injured income
R 581 164

: R 235 141 Contingency 10% : (58 116,4) 5% (58 785.25)

523 047,6 176 355.75.

R 346 691.85 Total for Loss of Earnings: R 561 266,45 (Past and Future loss).

16. The Plaintiff submits that the amount for future loss of earnings should be R 561 266.45. She further submits that the reasonable amount for General damages has to be R 250 000.00. The Defendant disagrees with Plaintiff's assertion that the Clinical Psychologists, noting that Plaintiff will struggle due to psychological disorders, justify a conclusion that she is unemployable; much as they also deferred to the Industrial psychologists in this regard. GENERAL DAMAGES.
17. Concerning general damages; in order to arrive at a decision, the court has to take into consideration court decisions arrived at by other courts when faced with similar situations. In the case of *Strydom v Road Accident Fund*[10], the plaintiff was a 55-year-old female who sustained a neck-fracture in the area of her upper cervical spine. A conservative management was elected and she was supplied with a SOMI neck-brace. She was hospitalised for three days. Over most of the time, she was confined to the bed for the first six weeks at home. After three months, it became convenient for her to remove the neck-brace.
18. Over a period of time, her neck acquired increased mobility, thus becoming more comfortable although she still experiences discomfort. About once a month, she experiences spasms on her neck. She still experiences pain in her neck, going down into her back. The pain she has is persistent at all times. It is highly unlikely that she will ever recover. She has to live with this discomfort and pain for the rest of her life. She is on pain-killers almost daily. She cannot lift or move heavy objects in her house and cannot work as she used to.
19. Plaintiff used to enjoy dancing. She cannot do that anymore. She cannot drive a motor vehicle because she cannot properly move her head from side to side. She is dependent on other persons for transport. According to an Orthopaedic Surgeon, a fracture of the nature she suffered, is unusual because it is usually fatal, much as it is associated with a very severe neurological deficit. Plaintiff survived without neurological sequelae, but has been left with limited movement of her head. This disability was measured by an Orthopaedic Surgeon and was considered to be a whole-person-disability. It is also considered to be a number one vulnerable impairment of 21%. In 2018, she was awarded an amount of R 193 000.00.
20. In *NK M v Road Accident Fund*[11], the claimant was an adult male, graphic-designer whose age was not provided. On 14th August 2011, in an accident, he sustained what is referred to as a 'C2 Odontoid Fracture of the neck. He remained admitted to hospital

until the 31st of August 2011. On the 26th of August 2011, a Posterior C1/2 fusion was performed as well as instrumentation.

21. Post-operatively, he was nursed in High Care. After discharge, he had to use a brace for several months. He also received physiotherapy in hospital. He was followed up for about five months until January 2012, which marked the completion of his formal treatment. He was on sick-leave for about three months. The Plaintiff can complete his daily tasks, although neck-stiffness compels him to take a break about every 75 minutes. This causes him to take longer than he used to take prior to the accident to complete a specific task. When he was interviewed by an Orthopaedic Surgeon in June 2013, he did not experience any pain of note and there was no referral pain into his arms. On occasion at night, he would experience discomfort in his neck. He can walk vast distances however, if he were to run, his neck becomes stiff. He was not using any medication.
22. Where it concerns loss of amenities, it was noted that Plaintiff did skateboarding prior to the accident but was advised not to do it any longer. He will have to refrain from contact type of sports. He will still be able to perform his work as a graphic designer with a work-station which is appropriate for his spinal condition. If the work station is well planned ergonomically, he should be able to work until normal retirement age. The court awarded an amount of R 325 000.00 for General damages.
23. In the case of *Battle v Road Accident Fund*[12]; as a result of an accident, a 31-year-old business-woman sustained soft-tissue injury to the neck. This is referred to as 'whiplash'. She wore a neck-brace for six to eight weeks. Over that period, she was unable to work and she was laden with intermittent neck-pain and post-traumatic stress-disorder. This resulted in heightened anxiety whenever she travelled by motor vehicle. She suffered panic-attacks when travelling by air and in lifts. Some improvement of the psychological sequelae could be expected with psychotherapy. The failure to mitigate loss by undergoing appropriate treatment was taken into account in the assessment of general damages.
24. It was submitted that Plaintiff is a successful businesswoman who derives income from two close corporations. She laid claims for loss of earnings, predicated on the basis that she required extra physical assistance in executing her duties in running a fashion business. She had future plans to expand the fashion business but this plan no longer stood a chance to come to fruition. Because of the many imponderables concerning the issue of loss of earnings, a lump-sum was awarded instead of an amount arrived at by actuarial calculations. In 2018, the amount awarded was R 224 000.00.
25. In *Daniels v Road Accident Fund*[13], a 33-year old married woman aged 39 years at time of trial had sustained a neck-whiplash, giving rise to severe psychological disturbance in the form of post-traumatic stress-disorder; (PTSD). The physical sequelae consisted of chronic, but mild whiplash symptoms, i.e. neck and shoulder pain accompanied by headaches, as well as a diminished range of neck movement. This condition was exacerbated by anxiety. The PTSD, had become chronic in that it lasted for about 3½ years after the accident, over which time Plaintiff presented with depression and anxiety. She also had episodes of panic-

attacks and agoraphobia[14]. She could no longer drive her car. She attempted suicide on two occasions and she resorted to self-mutilation in the form of scratching and trichotillomania[15].

26. The Plaintiff was referred to a succession of psychologists and psychiatrists and was hospitalised on three occasions; including once at a Psychiatric Hospital. She was placed on anti-depressants and was given ongoing Psychotherapy. She became asocial and her attitude to her husband and children became emotionally blunted. After frequent sick-leave from work, she was placed on medical retirement in September 1999 because she was no longer considered fit for employment. Her Psychotherapy continued, and by March 2000, (more than five years after the accident), a significant improvement in her condition was noted. She had started driving and participating in other anxiety-producing activities. The PTSD had now responded to treatment, (particularly following the discontinuance of her work). She no longer appeared to present with problems. Although some residual depression remained, continued treatment was expected to overcome it. Plaintiff stood to achieve the skills required to cope with those areas of her life which remained vulnerable, except that her prognosis in the occupational field was far more difficult to predict. In the year 2018, she was awarded an amount of R 222 000.00.
27. In the case of *Marais v Road Accident Fund* [16], a 36-year-old married woman aged 40 at the time of trial was involved in a motor vehicle accident. She sustained neck, head and back injuries. She suffered a massive-flexion force, (forwards and sideways), exerted on plaintiff's head, neck and back during collision, causing severe whiplash of the head and neck. She also had acute, chronic headaches, fractures of T7 and T8 vertebrae, and slipped discs at C6 and C7. Plaintiff initially experienced pain in various regions, including headaches, pain and stiffness of the neck on the interscapular[17] region, the mandibular region, the chest, both clavicles, both shoulders and the lower back. Fusion was done at level C6-C7.
28. Two years after the accident, she was still experiencing severe pain on the neck, (with restricted movement), as well as frequent

interscapular pain and intermittent lower back pain, but the persistent debilitating headaches had now become the major remaining

problem. These headaches were severe and were accompanied by nausea, vomiting, blurred vision, dizziness and disorientation and they occurred twice a week, thus constituting major disablement. Plaintiff was boarded from her job and deprived of a multitude of pre-accident sporting and other physical and social activities. She underwent a radical change of lifestyle and personality. At the trial, she appeared to be "worn out". Prospects of the amelioration of pain were poor, and prospects of future employment equally poor. In 2018 she was awarded an amount of R 265 000.00.

29. In the case of *Klisiewicz v Road Accident Fund*[18], a 44-year-old Polish Neurosurgeon living and working in South Africa sustained a whiplash injury in an accident . This "ended up with a dreadful result" from a physical point of view, and it ultimately also had "a devastating effect on his psyche". The initial treatment consisted of three episodes of hospitalisation for

traction and physiotherapy but no success was achieved. What followed was surgery to fuse the 5th to 7th cervical vertebrae. Not only was this operation also unsuccessful; but the plaintiff became cyanosed (hypoxia), on the operating table before eventually being intubated and resuscitated. Thereafter he spent three weeks in the intensive care

unit. A measure of brain damage occurred. Physically, the plaintiff's neck movements were restricted and severely painful, and there was marked weakness of the right arm, from the shoulder, through the upper arm, the elbow, the forearm and the hand.

30. The Plaintiff was no longer able to handle fine objects or do fine movements with the fingers and thumb of the right hand. Brain damage also resulted in impaired memory and concentration. His learning ability, motor co-ordination, and hand motor dexterity were all adversely affected. His cognitive and intellectual deficits only became evident after the surgery. Thereafter, clear changes of personality also became evident. The Plaintiff became childlike, depressed, irritable and aggressive. He became forgetful, indecisive,

and unable to head his family appropriately. He was practically reduced to doing only simple and unsophisticated domestic chores. He was deprived of his great passion for neuro-surgery and became unemployable and 'useless'. He required 'babysitting' by his wife and others. The hypoxic brain damage also deprived him of other pleasures such as reading and watching television. He also suffered loss of libido. He had to live with ongoing pain, a cervical collar, a portable home-traction device, and a special apparatus for writing. Plaintiff retained insight into his problems and an awareness that they are and shall remain permanent”.

31. The other case of Koch referred to by the plaintiff was also more severe in that it is a whiplash with a cervical root irritation with more psychological

consequences. The plaintiff in this case has an anterior fusion of C4- C6, which was successful. Plaintiff's submission that the he had two fusions and that the first fusion was unsuccessful which necessitated the second fusion is incorrect and not reported in the expert's reports. The X- Ray reports are clear that plaintiff had an anterior fusion of C4- C6, which was successful. It does not identify two fusions.

32. Plaintiff submitted that cases referred to by the Defendant above in paragraph 6 are more or less similar to the Plaintiff's case and some of them are more severe and that an amount of R 250 000.00 is reasonable for General damages.
33. Based on the facts in this case, as contrasted with decisions held by courts in the cases cited, the Defendant prays for an order as follows:1. Payment for General Damages at an amount of R 250 000.002. Payment for L loss of E earnings at an amount of R 561 266.453. Total: R 811 226.45

34. The contentions of the Applicant in this matter have not been challenged. It remains undisputed that an accident took place on the date and time alleged by the plaintiff. No evidence in this matter contradicts allegations by the Plaintiff. The plaintiff proved the injuries alleged. Submissions by the Respondent provided no tangible facts in opposition to the averments of the Plaintiff.
35. In the result, the court finds that the plaintiff proved her case against the Defendant. In the result, the following order is made:

ORDER

1. The Defendant is ordered pay 100% of the plaintiff's damages and the Defendant is ordered to pay the plaintiff the amount of R1 337 622-20 (one million three hundred and thirty-seven thousand six hundred and twenty-two rand and twenty cents) consisting of:

- Loss of income and income capacity R 737,622.20
- General damages

R 600,000.00

Total

R 1,337,622.20

"capital" on or before 28th day following the month of this order ("due date").

2. The issue of past medical and / or hospital expenses is postponed sine die.
3. The capital to be paid directly into the Trust Account of Elmarié De Vos Incorporated, details of which are as follows:

Account holder - Elmarié De Vos Incorporated

Bank

- Standard Bank

Branch

- Vereeniging

Type Account - Trust / Cheque Account

Account number - [...]

Branch code - 014637

4. The Defendant will not be liable for any interest on timeous payment of the aforesaid capital. Should the capital or any part thereof not be paid on the 28th day of the month following the date of this order, the arrear capital or any part thereof will bear interest at the rate of 10.25% per annum from and including the due date up to and including the date of final payment of such capital or any part thereof.
5. The Defendant will supply the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, for the costs of the future accommodation of ALMA COWAN in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to ALMA COWAN arising out of the injuries sustained by him in a motor vehicle collision of 23 APRIL 2014, in terms of which Undertaking the Defendant will be obliged to compensate the Plaintiff in respect of the said costs after the costs have been incurred by the Plaintiff and on proof thereof. The Defendant is also ordered to pay the reasonable travelling costs and accommodation for the Plaintiff to and from the treatment covered under the Undertaking.
6. The Defendant is ordered to pay the Plaintiff's costs of suit to date, on the High Court party and party scale, which costs include (but not be limited to):
 - 6.1 The reasonable taxable preparation, qualification and reservation fees (if any) of all the Plaintiff's experts on trial on 30 January 2019, the reasonable taxable costs of necessary consultations with the said experts, the costs of all the reports (and joint reports including the costs of the meetings between the experts) of all the Plaintiff's experts and the costs of all the Plaintiff's actuarial calculations / reports (as per the discretion of the taxing master).
 - 6.2 The costs of attending to the examinations and obtaining the medico-legal and actuarial reports, addendum reports and any joint reports, as well as the qualifying- and reservations fees (if any) of the following experts (as per the discretion of the taxing master):
 - i. Dr. H.B. Enslin
 - ii. Dr. H.J. Swanepoel
 - iii. Ms. T. Cilliers
 - iv. Mr. B. Moodie
 - v. GRS Actuarial Consulting cc
 - 6.3 The reasonable taxable costs of transportation subsistence and accommodation of the Plaintiff to the medico-legal examinations.
 - 6.4 All subpoena and subpoena duces tecum costs, if any.
 - 6.5 The costs of the preparations of 6 trial bundles as per the Directive issued by DJP W van der Merwe and as agreed upon the pre-trial minutes.
 - 6.6 The costs of senior counsel for the full day fee on 30 January 2019 as well as reasonable preparation.

6.7 The reasonable costs of attorney and correspondent attorney (Verster Roos Incorporated), which include travelling costs, attendance at Court, costs for pre-trial conferences and formulation of the pre-trial minutes and costs of actual attendances to the pre-trial conferences, subject to the taxing master's consideration.

6.8 All costs previously reserved.

6.9 The reasonable costs of consulting with client, to discuss the Settlement Offer made by the Defendant.

6.10 The reasonable costs associated with an inspection in loco, if any.

6.11 The costs of Plaintiff's attorney for preparing for and attending the pre-trial conference, as well as the reasonable

travelling costs of the Plaintiff's attorney for attending the pre-trial conference and trial.

6.12 The reasonable costs for preparation for trial.

6.13 The costs attendant upon the obtaining of payment of the amounts and undertaking referred to in this order.

7. The Defendant pays the Plaintiff's taxed or agreed party and party costs on the applicable High Court scale subject to the following conditions:

7.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and

7.2 The Plaintiff shall allow the Defendant 14 (fourteen) court days to make payment of the taxed costs.

8. Should the Defendant fail to pay the Plaintiff's party and party costs as taxed or agreed within (14) days from date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable for interest at the rate of 7% per annum on such costs as from and including the date of taxation, alternatively settlement of such costs up to and including the date of final payment thereof.

9. The party-and-party costs to be paid as follows:

Account holder - Elmarié De Vos Incorporated

Bank

- Standard Bank

Branch - Vereeniging

Type Account - Trust / Cheque Account

Account number - [...]

Branch code

- 014637

10. The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 5 above, serve the notice of taxation on the Defendant's attorneys of record and shall allow the Defendant seven court days to make payment of the taxed costs.
11. The Plaintiff and his Attorney has entered into a Contingency Fees Agreement and have complied with Sections 4(1) and (2) of the Contingency Fees Act 66 of 1997. The affidavits in terms hereof are attached hereto.

T.A. Maumela.Judge of the High Court of South Africa.

REFERENCES

For the Plaintiff: Adv. J du Plessis SC

Instructed by: Elmarié de Vos Inc.

For the Defendant: Adv. M M Kgwale

Instructed by: Verster-roos Attorneys

Judgment

reserved: 31 January 2019

Judgment

delivered: 04 September 2020

[1].See Index to PLAINTIFF'S EXPERT REPORTS bundle 1, Page 26 under heading Discussions paragraph 3.

[2]. See Page 20 of plaintiff's expert bundle 1, report of Dr. Enslin; page 20 under the heading.

[3]. Defendant's expert bundle reports, report of Ms. Moodley the Clinical Psychologist page 57 paragraph 3.

[4]. Page 3 and 4 of the joint minutes of the clinical psychologists Ms. Moodley and Dr. Swanepoel.

[5]. Page 1 and 2 of the joint minutes of the Industrial psychologists, B Moodie and Ms. Hough.

[6]. Page 2 and 3 of the joint minutes of the industrial psychologists.

[7]. Page 13 and 14 of the joint minutes of the Occupational Therapists.

[8]. Page 18 and 19 of the joint minutes of the INDUSTRIAL Psychologists.

[9]. See page 6 of the Plaintiff's bundle on actuarial calculations.

- [10]. 2007 (5C2) QOD 1 (SE).
- [11]. 2017 (7C6) QOD 1 (GP).
- [12]. 2015 (7C3) QOD 1 (WCC).
- [13]. 2000 (5C3) QOD 1 (C).
- [14]. Fear of places and situations that might cause panic, helplessness or embarrassment.
(Treatment can help, but this condition cannot be cured.
- [15]. A disorder that involves irresistible urges to pull out body hair.
- [16]. 2000 (5C3) QOD 12 (C).
- [17]. The region in-between the shoulders.
- [18]. 2000 (5C3) QOD 76 (W).
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