

SOUTH AFRICA / JUDGMENT

## Deyzel v Road Accident Fund (1886/2013) [2014] ZAECPEHC 51 (14 August 2014)

[2014] ZAECPEHC 51

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

C Plasket

CASE / FILE NUMBER

1886/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, PORT ELIZABETH)

CASE

NO: 1886/2013

DATE

HEARD: 7/08/14

DATE

DELIVERED: 14/08/14

NOT

REPORTABLE

In

the matter between:

MICHAEL  
DEYZEL PLAINTIFF  
and  
ROAD  
ACCIDENT FUND  
DEFENDANT

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**JUDGMENT****PLASKET J**

- [1] On 17 May 2007 the plaintiff, Michael Deyzel, was severely injured when the car in which he travelled as a passenger left the road and collided with a tree.
- [2] Deyzel instituted an action for damages against the defendant, the Road Accident Fund (the RAF). Liability was conceded and now the bulk of the quantum claimed has been settled too.
- [3] Two sets of issues are outstanding. The first is the claim for past hospital expenses, past medical expenses and past cost of home alterations. I have been asked to postpone this set of issues sine die. I was informed by counsel, however, that they expected these claims to be settled shortly.
- [4] The second set of issues – and the only matter I am called upon to decide – is the percentage of the contingency deduction in respect of the agreed figure of R9 288 748 representing the value of Deyzel's pre-accident earning capacity, and the quantification of the claim for future loss of earning capacity.
- [5] It was argued by Mr Schubart for Deyzel that the usual contingency deduction of 15 percent would be appropriate, while Mr Pitt for the RAF argued for a 25 percent contingency deduction.
- [6] One witness was called by Mr Schubart. That was Dr Richard Holmes, an industrial psychologist. He confirmed his report and dealt with select issues relevant to contingencies. The purpose of his report was set out as follows:

'Essentially, the integrated clinical and industrial psychological assessment sought to determine the following, namely:

v Mr Deyzel's career development, disregarding his injuries, impairments and the consequences thereof;

v Mr Deyzel's career development, having regard to his injuries, impairments and the consequences thereof;

v The possible loss of income resulting from any discrepancies in the aforementioned;

v The effect of the physical, psychological and sociological consequences of Mr Deyzel's injuries and impairments; and

v To provide a report summarizing the Writer's observations, opinions and recommendations pertaining to the same.'

- [7] As a result of the injuries Deyzel sustained in the accident, he spent from 17 May until 11 September 2007 in hospital. He is

wheelchair-bound and will continue to be for the rest of his life. He has not been able to return to work: Dr Holmes said in his report that as the 'career path for which he had qualified himself requires of him to be mobile' that form of work is 'beyond his physical capabilities'. Prior to the accident, he was, Dr Holmes said, a generally fit and healthy person who had enjoyed an active and healthy lifestyle. He also described him as being a 'very disciplined and motivated person with an average to above average intelligence'.

- [8] Deyzel completed his secondary schooling at the end of 2002, passing grade 12. He then served an apprenticeship in the employ of Comau SA Body Systems (Pty) Ltd, (Comau SA) a company that designs assembly lines for the manufacture of motor vehicles.
- [9] He completed his apprenticeship in 2007 and qualified as an electrician. He continued to work for Comau SA as an electrician and did so for three months from him qualifying until the accident.
- [10] He had been in the process of applying for a post as an electrician at Eskom when the accident occurred. According to Dr Holmes, he would, all factors considered, have secured employment at Eskom had he not been injured. As far as his prospects for the future prior to the accident were concerned, Dr Holmes said of him:

'Mr Deyzel had successfully qualified as an electrician and was a high functioning, dependable and independent individual who had previously been able to study without any difficulty. By all accounts, his future had been full of potential since he was motivated and determined to do whatever was needed to obtain the necessary skills for his chosen career. He had already demonstrated a consistent track record of being a dependable worker in the field. Certainly, all the collateral evidence points to there having been justifiably high expectations of him having a bright future.'

- [11] Turning to Deyzel's specific qualifications and skills, Dr Holmes stated:

'As a qualified electrician competing in a skills deprived economy, such as is evident in the Republic of South Africa, Mr Deyzel would have enjoyed many opportunities for growth in his chosen vocation. In the broadest sense, he is likely to have made every effort possible to advance in his career in the structured business sector – either in the corporate domain or in the para-statal sector.'

- [12] He added that, when all factors were taken into account 'following a career as an artisan electrician would have afforded Mr Deyzel the best possible opportunities for growth and development in the workplace' as well as security of tenure.
- [13] Dr Holmes concluded that, as far as a pre-accident contingency deduction is concerned, consideration should be given to three

factors, namely 'the fact that Mr Deyzel was well suited to following a career as an artisan, that he should not have experienced

any significant difficulty in completing further in-house training programmes and that he would have been advanced by the fact that there is a dearth of qualified and skilled electricians in the Republic of South Africa’.

[14] He expressed the view that on these facts, there was no reason to apply a higher than usual contingency in respect of the value of Deyzel’s pre-accident earning capacity. This view was not seriously challenged by Mr Pitt in cross-examination and, in my view, nor could it be.

[15] I need say no more than that I agree with the view expressed by Dr Holmes. There is not a single fact that indicates that a higher than usual contingency deduction may be justified. I take into account that Koch in his Quantum Yearbook at 114 speaks of a 15 percent contingency deduction for future loss being the normal contingency. I am of the view that a 15 percent

contingency deduction is appropriate in this case.

[16] I make the following order, which comprises of the settlement reached by the parties as well as the issue I was required to determine expressed both as a declaratory order and as a final calculation of Deyzel’s claim for future loss of earning capacity.

1. The defendant shall pay to the plaintiff the following amounts in respect of the following heads of damages:

1.1 Cost of carer:

R299 520.00

1.2 Past loss of earnings: R706 889.65

1.3 General Damages:

R1 400 000.00

2. Interest shall accrue on these amounts at the legal rate of 9 percent per annum as from 14 days from date of this order until date of payment.

3. The defendant is to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for payment of the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the collision in which he was involved on 17 May 2007, after such costs have been incurred and upon proof thereof.

4. The following claims are postponed sine die, but interest shall accrue on such award as is made in respect of these claims at the legal rate of 9 percent per annum payable as from 14 days from date of this order until date of payment:

4.1 past hospital expenses;

4.2 past medical expenses;

4.3 past cost of home alterations.

5. With regard to the claim for future loss of earning capacity the parties agree that:

5.1 the value of the plaintiff's pre-accident income is R9 288 748.00;

5.2 the value of the plaintiff's post-accident income, which will not be subject to a contingency deduction, is in the sum of R1 964 324.00.

6. It is declared that the contingency deduction in respect of the value of the plaintiff's pre-accident income shall be 15 percent.

7. The defendant shall pay to the plaintiff the amount of R5 931 111.80 in respect of the plaintiff's claim for future loss of earning capacity.

8. Interest shall accrue on the amount referred to in paragraph 7 at the legal rate of 9 percent per annum as from 14 days from date of this order until date of payment.

9. The defendant shall pay the plaintiff's costs of suit, as taxed or agreed, on the party and party scale. Such costs shall include:

9.1 The cost of photographs;

9.2 The qualifying expenses, if any, of the following:

9.2.1 Dr Keeley;

9.2.2 Dion Rademeyer;

9.2.3 Dr Olivier;

9.2.4 Ansie van Zyl;

9.2.5 Ilonka Wessels;

9.2.6 Dr Enslin;

9.2.7 Dr Holmes;

9.2.8 Arch Actuarial Consulting.

C Plasket

Judge of the High Court

APPEARANCES

Plaintiff: L Schubart SC instructed by Heine Ungerer Attorneys

Defendant: D Pitt instructed by Mnqandi Inc

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Prepared on 11 October 2026 · Esheria