

SOUTH AFRICA / JUDGMENT

Dikolomela v Road Accident Fund (34938/12) [2017] ZAGPPHC 548 (22 August 2017) [2017] ZAGPPHC 548

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

34938/12

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IN THE HIGH COURT OF
SOUTH AFRICA

(GAUTENG DIVISION,
PRETORIA DIVISION)

Case

No. 34938/12

Not

reportable

Not

of interest to other judges

22

August 2017)

In

the matter between: DIKOLOMELA,
 ARLENA
 RATSANYANG PLAINTIFF
 and
 THE
 ROAD ACCIDENT
 FUND DEFENDANT

JUDGMENT

MILLAR, A J

1. This is an action brought by the Plaintiff for damages against the Defendant as the statutory insurer in terms on the Road Accident Fund Act 56 of 1996.
2. All issues between the parties have been settled save the claims for loss of income and the claim for past medical expenses. By agreement I am only called upon to decide the question of the loss of earnings. The determination of the quantum of the past medical expenses is by agreement to be postponed sine die.
3. It was agreed by the parties that none of the experts, who had furnished reports for the respective parties, would be called to testify and that I could have regard to the contents of those reports and the common minutes prepared by them as though the contents had been given in evidence before the court.[1]
4. By agreement between the parties, only one witness was to be called. This was Mr Schoombee, an Industrial Psychologist[2] who examined the Plaintiff. His expertise was admitted by the Defendant. The Defendant did not procure a report from an Industrial Psychologist briefed by it.
5. The facts of the matter are common cause. The Plaintiff is a 41 year old woman. She was injured in a motor vehicle collision on 27 December 2010 and also lost her husband to injuries sustained by him in the same accident. The situation was complicated and exacerbated by the fact that the Plaintiff was 7 months into her confinement and while her baby in utero was uninjured, she besides having to deal with her own injuries, and the loss of her husband, found herself two months later as a single parent. Against this background, the Plaintiff was at the time of the collision employed as a Deputy Director in the North West Department Of Rural Environment and Agricultural Development.
6. The Plaintiff is a highly educated person who had distinguished herself within the department where she had worked since leaving university in 1998[3]. While working there she studied further and her career progressed steadily.

7. Mr Schoombee testified that he had spoken to the Plaintiffs previous superiors, Mr Mosifane and Mr Matiwane who had both given positive references about her pre-collision performance. In respect of her post collision performance, they had identified difficulties that were consistent with the findings in the reports of the physical, neuropsychological and psychological sequelae of the injuries. Mr Schoombee testified that he had made the same findings[4].
8. The Plaintiff, notwithstanding the injuries and their sequelae has continued with her employment and has advanced. This was in keeping with the evidence of Mr Schoombee that as a result of the collision the Plaintiff would have progressed with her career path as before save that now, injured she would not be promoted to the position of Chief Director when she was between the ages of 45 and 50 as she would have been had she not been injured. Mr Schoombee testified that this was the Plaintiffs career ceiling and that she would have remained in that position to retirement at the age of 65.
9. The Plaintiffs claim is thus for a loss of capacity and earnings being the difference between what she will earn in her current position as a District Director and her pre- collision capacity to have advanced to Chief Director at the age of 45 to 50.
10. Having regard to the Plaintiffs educational and work record and progression, I am in no doubt that as a probability she would have reached the position of Chief Director by the time she reached the age of 45.
11. The value of this difference has been actuarially calculated in the sum of R1 283 330,00.[5]
12. The question of whether or not any contingency is to be deducted from either the pre-accident (current) scenario or from the post accident (the difference) must be considered.
13. The principle to be applied is that set out in Southern Insurance Association Ltd v Bailey NO[6] -

"Even where method of actuarial calculations is adopted the trial Judge still has a discretion to award what he considers right - Can make a discount for contingencies - Nature of contingencies that can be taken into account - Such contingencies not always adverse "

14. Another factor to be considered and which weighs heavily in this particular matter, is the age of the Plaintiff.[7]
15. The Plaintiff in this matter is clearly a woman who is dedicated to her career. Besides attaining a university qualification before embarking on her career, she continued to

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further her studies and improve her prospects before the collision[8]. Even after suffering injury and loss she continued to try to further her studies albeit unsuccessfully[9]. Additionally, the Plaintiff has worked without interruption (besides her confinement and to recuperate from her injuries) for the same employer for almost 20 years - a testament to her commitment to her career and employer.

16. It is for these reasons that I have come to the conclusion that in respect of the loss of capacity and earnings arising therefrom, that no contingencies should be deducted.
17. In respect of her pre-collision career path, which is her current career, the factors that would have militated contingencies there are still there and accordingly no deduction for this needs to be made.
18. The parties furnished me with a draft order in respect of costs and subject to the exercise of my discretion I have incorporated this into the order I intend making.
19. In the circumstances, I make the following order:

19.1. The Defendant is ordered pay to the Plaintiff the amount of R1 283 330.00 (one million two hundred and eighty three thousand three hundred and thirty rand only) on or before the 15th day of September 2017.

19.2. The Defendant is ordered to pay interest on the aforementioned sum from 15th September 2017 at the rate of 10.5% per annum to date of payment.

19.3. The aforementioned amount shall be paid into the following bank account:

Name of Account Holder: Ramapuputla Attorneys Trust Account

Bank Name: FNB

Branch Code: 251445

Trust Account Number: [...]

19.4. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs, which costs are to include the reasonable taxed costs of the Plaintiffs expert witnesses: Dr I A Khan (orthopedic surgeon); Prof PL Lekgwara (Neurosurgeon); N Sewpershad (Clinical Psychologist); Dr EJM Matthews (Educational Psychologist); C Schoombee (Industrial Psychologist); G Mathala (Occupational Therapist) ; and Robert Koch (Actuary). Such costs are also to include the qualifying fees of Mr Schoombee and the cost of his testifying in the trial together with the costs of counsel.

19.5. The determination of the issue of the quantum of past medical and hospital expenses is postponed sine die.

A MILLAR

ACTING JUDGE OF THE HIGH COURT

- [1] The pleadings bundle was marked "B", the bundle of Expert reports "C", the bundle of joint minutes "D", an actuarial report "E" and the schedule of past medical expenses "F".
- [2] Bundle "C" pages 244 to 275
- [3] Bundle "C" paragraph 5.3 on page 248 and paragraphs 7.1 and 7.2 on pages 250 and 251
- [4] Bundle "C" paragraph 10.2 on pages 261 to 263
- [5] An additional calculation was requested by me at the conclusion of the argument in the matter. This additional calculation has been added to Bundle "E".
- [6] 1984 (1) SA 98 (A) at 98 E-F
- [7] Goodall v President Insurance Co. Ltd 1978 (1) SA 389 (WLD)
- [8] see footnote 3 supra
- [9] see Bundle "C" page 255 paragraph 9.3

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