

SOUTH AFRICA / JUDGMENT

Gomes v Road Accident Fund (39738/2020) [2024] ZAGPJHC 1313 (5 December 2024) [2024] ZAGPJHC 1313

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weideman

CASE / FILE NUMBER

39738/2020

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
CASE
NO: 39738/2020

DATE:

05-12-2024

(1)

REPORTABLE: YES / NO.

(2)

OF INTEREST TO OTHER JUDGES: YES / NO.

(3)

REVISED.

In

the matter between

MARIA

IOLANDA PEDRO GOMES

Plaintiff

and

ROAD ACCIDENT

FUND

Defendant

JUDGMENT

WEIDEMAN, AJ: Matter number 32 on this week's roll is the matter of Maria Iolanda Pedro Gomes and The Road Accident Fund, case number 39739/2020. In preparing for the matter, I was concerned about whether or not the plaintiff sustained a moderately severe or a severe head injury.

If, as is reflected in the medical legal reports, the head injury is severe, then the question arises whether the plaintiff is capable of providing her attorney with adequate instructions. If any significant award is made, it should be considered whether she will have the mental capacity to understand that it is her future income for the rest of her life and that it should not be squandered on luxuries in the short term, which would later leave her destitute.

I was uncomfortable whether the plaintiff should be allowed to proceed with the matter on her own. I engaged counsel for the plaintiff to confirm the severity of the plaintiff's head injury. Counsel's instructions were that the plaintiff's head injury was severe and that the matter should proceed on that basis.

Having been presented with the plaintiff's case that, in addition to all other injuries, the head injury should be considered to be serious, I ordered that a curator ad litem be appointed to ensure that the plaintiff is properly represented if her head injury is indeed severe.

This all happened on the 3rd December 2024. On the 4th December 2024 Adv Herman Kriel was formally appointed as curator ad litem to the plaintiff.

The Court is very grateful for his willingness to, on very short notice, become involved and to assist both the plaintiff and the Court in ensuring that all relevant issues are properly aired and canvassed and, at very short notice, to engage the plaintiff and prepare a report. On the 5th December counsel formally presented the plaintiff's case.

The accident from which this claim arose occurred on the 25th July 2018. The plaintiff was born on the 6th February 1981. On a previous occasion the aspect of negligence was resolved on the basis that the defendant shall be liable for 90 percent of such damages as the plaintiff may be able to substantiate. This agreement was concluded on the 10th November 2021.

The plaintiff sustained extensive and significant orthopaedic and other injuries, consisting inter alia of the following: bilateral acetabular fractures, a pelvic injury, a right knee dislocation, multiple rib fractures, a hematoma of the liver, and blunt abdominal trauma resulting in the rupture of her bowels leading to sepsis. She further has multiple lacerations and scarring as well as the severe traumatic brain injury.

In investigating the plaintiff's employment record, which was modest and checkered, the industrial psychologist, Christa du Toit prepared an original report and an updated report. The updated report, on CaseLines 012/385, contains a paragraph setting out her proposed quantification of the claim for loss of income. I read from her report:

“For quantification purposes and as it refers to the above points there is no guarantee that Ms Pedro Gomes would have continued earning on a par of what she earned at the time of the accident. It is very difficult to detail earning capacity but as a guideline it is suggested to refer to the upper notch of semi-skilled workers (per Robert Koch) [R218 000] as a guideline for likely earnings with increases mainly inflation based”.

Considered against the complete suite of medico legal reports, her suggestion appears to be appropriate. A calculation by the actuary Wim Loots based on the proposal of the industrial psychologist appears on CaseLines 012/399.

Having considered the figures in conjunction with the injuries and its sequelae, the Court has no hesitation in accepting the calculation.

The Court accepts that the plaintiff's claim, pre - contingency deductions and pre - apportionment on liability, amounts to R999 565. If a 10 percent contingency is applied to this amount, the figure is reduced to R899 608, which must be further adjusted by the apportionment on negligence. Similarly, the Court has no objection to the figure calculated in respect of future loss of income, being R3 151 826.

If a 25 percent contingency is applied to this amount to provide for pre-existing conditions and non-trauma related co morbidities, the amount, after applying the contingency deduction is R2 363 870.

If the combined amount for past and future loss of income and impairment of earning capacity is adjusted to make provision for the apportionment on negligence, then the net amount will be R2 937 130.20.

There is a small claim for past hospital and medical expenses in the sum of R3946.35 and which, post apportionment on negligence, yields an amount of R3551.71. This amount will also form part of the order.

The plaintiff shall naturally be entitled to have her future hospital medical ancillary expenses covered by an undertaking. This leaves only the aspect of general damages.

Having considered the extent of the polytrauma and the interaction between the injuries and on the life and dignity of the plaintiff, the case which resembles the position in which the plaintiff finds herself most closely, bearing in mind that prior cases can only serve as broad guideline, is the matter of *Seme v The Road Accident Fund 2008 (5) (A4) QOD33D*.

Based on these considerations, the plaintiff's award in respect of general damages will be the sum of R2 500 000. Deducting the 10 percent liability apportionment from the above, results in a net award of R2 250 000.

With Adv Kriel's assistance, and based on his report the Court is satisfied that the concern which was verbalised on the 3rd December was unfounded and that there is no need for the protection of any funds awarded. On the same basis there is also no need for a trust or any other form of protection of the award.

My order is therefore as follows:

1. In respect of the plaintiff's claim for past hospital medical expenses the defendant shall pay the plaintiff the amount of R3551.71.
2. In respect of the plaintiff's claim for loss of income and/or impairment of earning capacity, the defendant shall pay the plaintiff the nett amount of R2 937 130.20.
3. In respect of the plaintiff's claim for general damages the defendant shall pay the plaintiff the nett amount of R2 250 000.
4. The defendant shall provide the plaintiff with an Undertaking in respect of section 17(4)(a) of the Road Accident Fund Act, limited to 90%, for such future hospital, medical or ancillary expenses as the plaintiff may require.

The final aspect is that of costs. In respect of costs it follows that the plaintiff is entitled to her party and party costs as taxed or agreed.

As far as the scale applicable to counsel is concerned the matter is certainly of significant value. It is complex, it contains aspects which are not in the ordinary course, and it is the type of matter which justifies an award of costs on scale C.

The order in respect of costs must provide for the costs associated with the appointment of the curator ad litem.

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE:

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Prepared on 11 October 2026 · Esheria