

SOUTH AFRICA / JUDGMENT

Gositamang v Road Accident Fund (RAF 196/2020) [2023] ZANWHC 125 (13 April 2023)

[2023] ZANWHC 125

COURT

North West High Court, Mafikeng

BEFORE

A H Petersen

CASE / FILE NUMBER

RAF 196/2020

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****CASE****NO: RAF 196/2020**

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the matter between:

KABELO
LOUVINIA GOSITAMANG
PLAINTIFF
and
ROAD
ACCIDENT FUND
DEFENDANT

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 10h00am on 13 APRIL 2023.
ORDER
The
Draft Order marked "X" (attached hereto) is made an order of Court.

JUDGMENT

PETERSEN J

Introduction

[1] The action was set down on 13 March 2023, with the defendant being in default, and merits having been settled at 100% in favour of the plaintiff, who was a passenger at the time of the accident.

[2] The plaintiff testified in support of her claim for loss of earnings and relied on the oral testimony of one expert, who completed a report and on actual calculations:

Nomali Sibeko (Industrial Psychologist)

[3] Munro Actuaries report on the postulations of Ms Sibeko, the industrial psychologist.

[4] Under the heads of damages, this Court is called upon to assess the quantum of damages in relation to loss of earnings only.

Factual

background

[5] At the time of the accident on 31 July 2016, the plaintiff a 49 year' old female at the time, was a passenger in a Toyota Quantum motor vehicle with registration number F[...] driven by Isaac Gaobepe ('the

first insured driver') travelling on the Vryburg Road to Ganyesa when a Toyota Tazz motor vehicle with registration number

F[...] ('the second insured driver') approaching from the opposite direction entered the lane of travel of the first insured vehicle causing a head on collision.

- [6] The negligence of the second insured driver is not in dispute which entitles the plaintiff to 100% of her proven damages.
- [7] The plaintiff lost consciousness, was transported by ambulance to Joe Morolong Hospital and only regained consciousness at hospital. On the same day of the accident following treatment at Joe Morolong Hospital the plaintiff was transferred to Klerksdorp Hospital and ultimately to Wilmed Private Hospital in Klerksdorp. She sustained a left femur fracture, pubic ramus fracture, bilateral rib fracture, and multiple soft tissue injuries. She was hospitalised for 24 days where she received treatment until being discharged on 24 August 2016.

The plaintiff's evidence

- [8] Counsel was initially not intent on calling the plaintiff as a witness. However, when it became clear that there was evidence which Professor Sibeko could not testify to in relation to the plaintiff's current employment status on which the actuary had based calculations, the plaintiff was called to testify. As the only issue related to loss of earnings, the plaintiff testified that she was placed on early retirement with effect from 01 February 2022. The plaintiff returned to work in 2017 as teacher. From January 2019, however, she was medically unfit to work and awaited confirmation of an early retirement application. During the period January 2019 to the end of January 2022, the plaintiff received her full salary. The plaintiff's application for early retirement was approved, with her last day of employment being 31 January 2022. On 5 May 2022 gratuity payments of R10 976,68 and R588 259,48 were processed and paid to the plaintiff.

The expert evidence

The Industrial Psychologist

- [9] Professor Sibeko's evidence provided a background to the plaintiff's employment history and earnings as at the time of assessment by Professor Sibeko on 3 May 2021. The information of the early retirement of the plaintiff and the confirmation of the said date was not available to her at the time of assessment of the plaintiff. The said information was supplied to the actuaries by the plaintiff's attorneys of record. I accordingly deal with the information under discussion of the actuarial report.

The Actuarial Report – Munro Consulting Actuaries

- [10] The actuary, Ryan Immerman, under cover of an affidavit deals with the assessment of loss of earnings as follows. The plaintiff is presently 56 years old with normal life expectancy. At the time of the accident, the plaintiff was employed by the North West Department of Education ('the Department') as an educator. She commenced her service as an educator in the Department on January

2001. As at June 2016, the plaintiff earned a monthly salary of R21
934. In addition to the monthly salary, the plaintiff received an annual bonus equal to 100% of one month's salary. A R1200 per month housing allowance and a R1014 per month medical aid subsidy.
- [11] The plaintiff's salary was on notch 99 for Educators in June 2016. In July 2016, her salary would increase to R265 839 per annum on notch 100. The plaintiff's basic salary as at the time of the accident was therefore calculated at R22 153.25 per month. As at March 2021, the plaintiff received a basic salary of R28 206 per month, prior to her early retirement on 31 January 2022.
- [12] Mr Immerman took into account the gratuity payment to the plaintiff based on the rules of the GovernmeNt Employees Pension Fund (GEPF). He further moved from an assumption that the plaintiff has received a pension payment of R13 483.52 per month with effect from February 2022 which increased to R13 607.12 per month from April 2022 (pro-rata increase based on 5.5% annual increase). No loss of earnings was assessed until January 2022.
- [13] Premised on the industrial psychologist's postulation that the plaintiff would have continued working in her pre-morbid capacity but for the accident, in future annual inflationary increases and notch increases of 1.5% per annum (i.e. 3 notches per annum) would have been applicable thereafter until retirement age of 65.
- [14] Mr Immerman has further moved from the assumption that the plaintiff would have received a non-pensionable cash allowance of R1450.00 per month from April 2021. Once the 2022 cost of living adjustment for government employees is implemented, this allowance may stop. Since the 2021 scales have been adjusted to account for the cost of living adjustments in future, the non-pensionable cash allowance is only accounted for to date.
- [15] The relevant basic salaries effective 1 July 2021 applicable to the plaintiff's future career path are set out as follows. On salary levels Notch 210 – R353 979; Notch 213 – R359 292; and Notch 237 – R407 064. Since the plaintiff was a member of the GEPF, which is a defined benefit fund and on normal retirement at age 65, she would have received a pension of 56.515% of average pensionable salary over 2 years prior to retirement plus an allowance of R360 per annum and a gratuity of 2.089 times average pensionable salary over 2 years prior to retirement. Members contribute 7.5% of pensionable salary to the fund. Pensionable salary is basic salary only.
- [16] As a result of the accident, Mr Immerman moved from an instruction that the plaintiff would remain unemployed for the remainder of working life and he moved from an assumption that in future her pension will increase in line with inflation. No loss was assumed in respect of medical aid as the plaintiff would continue to receive this benefit after retirement.

[17] Mr Immerman premised on the foregoing, sets out the basis of his calculation as follows. Past and future income but for the accident, with retirement age taken at 65 and no loss of earnings assessed until 31 January 2022. Basic salary from 1 February 2022 is as follows:

Date of Salary Increase Educators Salary Level Salary on 1 July 2021 Money Terms Salary adjusted to DATE or 1 Oct 2022 1 Feb 2022 Notch 207 n/a R348 747 1 Jul 2022 Notch 210 n/a R353 979 1 Oct 2022 Notch 210 R353 979 R390 867 1 Jul 2023 Notch 213 R359 792 R396 733 1 Jul 2031 Notch 237 R407 064 R449 484

[18] Annual Bonus is taken as 8.33% of basic salary. Housing allowance is taken as R19 001 per annum from 1 February 2022 increasing in line with CPI from 1 July 2021 to R19 877 per annum at 1 October 2022. Non-pensionable cash allowance is taken as R17 400 per annum as at 1 October 2022 to date. With future inflation, the plaintiff's earnings would have increased after 1 October 2022 due to the effects of inflation at the rate of 6.43% per annum compound. Pension benefits are assumed to increase at a rate of 6.34% per annum compound after retirement.

[19] Past and future income having regard to the accident, was assessed on the assumption that the plaintiff would receive her pension for life and no loss of earnings is assessed from the date of the accident until 31 January 2022. Tax rates and tax rebates were taken into account. Interest of 9% was accounted for. The plaintiff's pension from 1 February 2022 was calculated as follows, with due regard to the lump sum gratuity of R596 691:

1 February 2022 : R161 802 per annum;

1 April 2022 : R163 285 per annum;

1 October 2022 : R171 862 per annum.

[20] The loss of earnings was calculated on the basis of the difference between the value of the plaintiff's income but for the accident and the value of her income having regard to the accident. Contingencies taken into account, whilst being the ultimate decision of the Court is in line with the factual scenario applicable to the plaintiff's circumstances at 5% and 10% respectively for past and future loss in the but for accident and having regard to accident scenarios.

[21] Mr Immerman ultimately provides a summary of the loss of income which brings the loss to R1 999 773.00.

[22] In *Southern Insurance Association Ltd v Bailey* NO[1] the following is stated in this regard:

"Any enquiry into damages for loss of earning capacity is to its nature speculative, because it involves a prediction as to the

future without the benefit of crystal balls, soothsayers, augers or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of a loss."

[23] It is accepted that the plaintiff will suffer a loss of earning capacity as is evident from the evidence.

Conclusion

[24] Having regard to the peculiar facts of the matter, I am satisfied that the plaintiff be awarded an amount of R1 999 773.00 for loss of earnings.

Order

[25] I accordingly make the following order:

A H PETERSEN

JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

Appearances

For the Plaintiff: Adv. N. GAMA Instructed by: Mokhetle Attorneys Inc 18 Havenga Street
GOLFVIEW MAHIKENG For the Defendant: No appearance (in default) Date of hearing: 13 March
2023 Date of Judgment: 13 April 2023

[1] 1984(1) SA 98 AD at 113G.

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