
SOUTH AFRICA / JUDGMENT

Keswa v Road Accident Fund (45261/15) [2017] ZAGPPHC 373 (8 June 2017)

[2017] ZAGPPHC 373

COURT

North Gauteng High Court, Pretoria

BEFORE

Wright

CASE / FILE NUMBER

45261/15

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 45261/2015

PRETORIA

8 JUNE 2017

BEFORE

THE HONOURABLE MR JUSTICE WRIGHT

In

the matter between:

TSHOLOFELO
REBECCA KESWA
PLAINTIFF
AND
ROAD
ACCIDENT
FUND DEFENDANT
HAVING
HEARD counsel(s) for the parties and having read the documents filed
the court reserved its judgment.
THEREAFTER
ON THIS DAY THE COURT ORDERS

JUDGMENT

The Draft Order marked "X" be and is hereby made an order of court.

BY THE COURT

REGISTRAR

LS

Att: EHLERS

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Before the Honourable J. Wright

Case No: 45261/2015

Date: 8.6.17

TSHOLOFELO REBECCA KESWA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

After having heard counsel:

IT IS ORDERED THAT:

1. The Defendant is liable for 100% of the Plaintiff's proven or agreed D

2. The Defendant pay the Plaintiff an amount of R 325 00 and
(R337 515 – 00 respectively)

for General Damages and Loss of Income, all payable within 14 days from date of this order being granted into the Plaintiffs attorneys of record trust account with the following details:

Account Holder : Ehlers Attorneys

Bank Name : FNB

Branch Code : 261550

Account Number : [6....]

3. The Defendant will not be liable for interest on the above mentioned amount, save in the event of failing to pay on the due date, in which event the Defendant will be liable to pay interest on the outstanding amount at a rate of 10,5% per annum.
4. The Defendant is ordered to furnish the Plaintiff with an undertaking, in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, for the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 23 August 2014.
5. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court scale, subject to the discretion of the taxing master, which costs will include, but will not be limited to the following:

5.1 The reasonable taxed fees for consultation with the experts mentioned below, together with delivery of expert bundles including travelling and time spent travelling to deliver such bundles, preparation for trial, qualifying and reservation fees (if any and on proof thereof), as well as costs of the reports, addendum reports, joint minutes and attendance fees of the following experts, and subject to the discretion of the Taxing Master:

5.1.1 Dr P Engelbrecht - Orthopaedic Surgeon;

5.1.2 OT Preininge r

- Neuropsychologist;

5.1.3 M Sissison - Clinical Psychologis;t

5.1.4 Dr A Potgieter- Plastic Surgeon;

5.1.5 N September - Occupational Therapist;

5.1.6 Jacobson & Talmud Consulting - Industrial Psychologist;

5.1.7 GW Jacobson - Actuary.

- 5.2 The costs of an inspection in loco by the Plaintiff's attorney (if any).
- 5.3 The costs of appointing an assessor to investigate merits (if any).
- 5.4 The costs of accommodation and transporting the Plaintiff and a family member, with JT Transportation Services or any other transportation service provider, to the medical legal examination(s) arranged by Plaintiff and the Defendant.
- 5.5 The costs of accommodation and transport with JT Transportation Services or any other transportation service provider and accommodation for the Plaintiff, to attend Court on 8 June 2017.
- 5.6 The costs for the Plaintiff's, attorney travelling to and spending time travelling to pre-trial conferences and attendance at pre-trial conferences by the Plaintiff's attorney, subject to the discretion of the Taxation Master.
- 5.7 The costs for preparation of Plaintiffs bundles of documents for experts, as well as the travelling costs and time spent to deliver these bundles.
- 5.8 The costs for preparation of Plaintiff's bundles of documents for trial purposes, as well as the travelling costs and time spent to deliver these bundles.
- 5.9 The full costs of Plaintiff's counsel, K Strydom to attend court on 8 June 2017.
- 5.10 The full costs of the Plaintiff's attorney to attend court on 8 June 2017.
- 5.11 The cost of an interpreter to attend the medico-legal appointments as well as court on 8 June 2017.
6. The Defendant is ordered to pay the Plaintiffs taxed and/or agreed party and party costs within 14 days from the date upon which the accounts are taxed by the Taxing master and/or agreed between the parties.
7. Should payment of taxed costs not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 10,5% on the taxed or agreed costs from date of allocator to date of payment.
8. The issue of future non-medical expenses are hereby postponed sine die.

Counsel for Plaintiff: K Strydom (083 271 8350)

For Defendant: Adv Sima (082 525 9968)

BY ORDER – REGISTRAR

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION,

PRETORIA

CASE NO: 45261/15

DATE: 8.6.17

REPORTABLE: YES/NO OF INTEREST TO OTHER JUDGES: YES/NO REVISED

TSHOLOFELO REBECCA KESWA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

WRIGHT J

1. The plaintiff is a woman who was 38 years old when she was injured in a motor vehicle collision on 23 August 2014. She was employed as an unskilled worker in a peanut packing capacity. She was not rendered unconscious in the accident. She spent about 2 months in hospital. Her left femur was broken. She had an operation on her left leg. Her left leg is 1.5 cm shorter than it was prior to the accident. Before the accident she was normal. She broke her right tibia and fibula. She had operations to her right leg. She has a 10cm scar on her left thigh. She has 9cm, 14cm, 6cm and 16cm scars on her right leg. She walks with a crutch because of the accident.
2. The plaintiff has produced an actuary's report, dated 30 May 2017 and which I have marked as Exh A, dealing with loss of income both past and future. The defendant accepts the correctness of the report except for two aspects relating to contingency deductions. The actuary assumes a retirement age of 65 without the accident. The plaintiff is unemployable as a result of the accident but will receive a disability grant to age 60 from which age she will receive an old age pension. She is now 41 years old.
3. The actuary applied a 5% reduction for past loss of earnings. The defendant accepts this reduction and the net figure for past loss of earnings as calculated by the actuary. The actuary applies a 15% contingency to future loss of earnings both with and without the accident. The defendant contends for a 35% reduction from loss of earnings without the accident and for a 10% reduction from loss of earnings with the accident
4. The plaintiff seeks R450 000 for general damages while the defendant contends for R300 000. In my view R325 000 is reasonable for general damages.

5. In my view the contingency deductions applied by the plaintiff's actuary are accurate. See Koch, The Quantum Handbook, 2017 page 126 and RAF v Gueddes 2006 (5) SA 583 SCA Defendant's counsel could submit no reason why these deductions are wrong. The total loss of income figure as calculated by the actuary at R337 515 is correct.
6. The parties prepared a draft order and all I am to do is to fill in the awards for damages.
7. I make an order in terms of the draft marked X.

GC WRIGHT J

JUDGE OF THE HIGH COURT,

GAUTENG DIVISION,

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