

SOUTH AFRICA / JUDGMENT

L.G v Road Accident Fund (33172017) [2020] ZAFSHC 89 (11 May 2020)

[2020] ZAFSHC 89

COURT

Free State High Court, Bloemfontein

BEFORE

P.E. Molitsoane

CASE / FILE NUMBER

33172017

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FREE

STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC

OF SOUTH AFRICA

Case

No: 33172017

In

the matter between:-

L

G PLAINTIFF

and

ROAD

ACCIDENT

FUND DEFENDANT

HEARD:

25 AND 26 FEBRUARY 2020

JUDGMENT**BY: MOLITSOANE, J****DELIVERED: 11 MAY 2020**

- [1] The plaintiff instituted a claim against the defendant for damages arising out of a motor vehicle collision on 14 May 2013. The general damages were rejected. The defendant provided the plaintiff with an undertaking in terms of s17(4)(A) of the Road Accident Act. At the commencement of this trial the issue of liability had already been settled on the basis that defendant would be liable for 70% of the plaintiff's proven or agreed damages.
- [2] The issue for determination is the plaintiff's damages for past and future loss of earnings, more specifically the contingencies that needs to be applied in respect of the plaintiff's loss of earnings. The other issue is whether the loss of earnings is to be calculated on the basis that plaintiff would have progressed only to Paterson level D1/D2 as opined by Me Kheswa or D5 as opined by Ms Van Jaarsveldt.
- [3] A joint minute was compiled by orthopaedic surgeons which set out the injuries and sequelae resulting therefrom. It is common cause that as a result of the accident, the plaintiff sustained a fracture of the skull. According to Dr Ziervogel the plaintiff informed him that her left 'eardrum was ruptured' but according to Dr Moloto she sustained injury of the right ear. The RAF 4 form filed of record also refers at paragraph 4.4 to left ear injury. Nothing, however, turns on this, as none of the experts made any reference to any impact on loss of earnings as a result of any kind of loss of or diminished hearing.
- [4] Another joint minute was compiled by Industrial Psychologists, Me Kheswa and Me Van Jaarsveldt, with regard to the aspect relating to loss of earnings. On the pre-morbid stage both Industrial Psychologists agree that the plaintiff was a full-time student at the Central University of Technology, studying towards a Diploma in Engineering. They further agree that the plaintiff was in possession
- of a B.Tech. degree in Civil Engineering and might have found work as an intern for a period of approximately 1 to 2 years, with earnings equivalent to the median of Patterson B4. The experts further agree that the plaintiff would have remained employable as a Civil Engineer until she retired at the age of 65 since her qualification as a Civil Engineer was a scarce skill.
- [5] Ms Van Jaarsveldt opines that plaintiff might have progressed to Patterson D5 level with earnings equivalent to the median as her career ceiling, while Ms Kheswa opines that she could have progressed to Patterson D1/D2 with earnings equivalent to the median as her career ceiling. Because of these two conflicting disagreement a necessity arose to the Plaintiff's actuary to prepare two actuarial calculations based on the two different scenarios afore- mentioned. The parties agreed to accept the correctness of these actuarial calculations for the purposes of arguing the issue of contingencies.

- [6] On the post morbid stage, the Industrial Psychologists agree that after the accident the Plaintiff completed her National Diploma

although it took her 6 months longer to complete the same due to the accident. They further agree that the Plaintiff was left with the sequelae of physical injuries she sustained in the accident. They agree further that following the accident she obtained a degree in Civil Engineering at the of July 2018. Both experts opine that the Plaintiff's career options have been narrowed down due to the injuries she sustained during the accident although she remains employable in the open labour market.

- [7] To a certain extent the determination of loss of future loss of earning capacity is more of an informed guess work. The court has a wide discretion based on the consideration of all the relevant facts and circumstances of each case. The court in *Anthony and Another Cape Town Municipality* 1967 (4) SA 445 (A) at 451 par B-C said:

"When it comes to scanning the uncertain future, the Court is virtually pondering the imponderable, but must do the best it can on the material available, even if the result may inappropriately be described as an informed guess, for no better system has yet been devised for assessing general damages for future loss: see Pitt v Economic Insurance Co. Ltd., 1957 (3) SA 284 (N) at p 287, and Turkstra Ltd v Richards, 1926 TPD 276 at p282 in fin to p 283."

- [8] In *Southern Insurance Association v Bailey* NO 1984 (1) 98 at 113 G-H.

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

without the benefit of crystal balls, soothsayers, augurs 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 the loss.

It has to it two possible approaches:

One is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. This is entirely a matter of guesswork, a blind plunge into the unknown.

The other one is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence.

The validity of this approach depends of course upon the soundness of the assumptions and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or lesser extent,"

- [9] On the issue of the Paterson level it must be taken into account that the Plaintiff is a BTech graduate in Civil Engineering. The Industrial Psychologists are in agreement that she might work initially for a year or two earning income equivalent to the median in Paterson B4. Ms Van Jaarsveldt however opines that as a Civil Engineer, a 'professional scarce skill qualification' she may have progressed to a D5 as her career ceiling. Ms Kheswa on the other hand opines that the calculation of future earnings should be done on a lower level. She

proffers no reasons why this should be so. She gives no motivation for her opinion. On the available evidence I am unable to fathom how she arrives at that conclusion. As alluded to above, on the other hand, Ms Van Jaarsveldt opines that the scarcity of the type of skill the plaintiff has, calls for this assumption. On the available evidence, I am inclined to agree with the sentiments expressed by Me Van Jaarsveldt that because of her scarce qualification, the Plaintiff might have progressed to D5 on the Paterson level and the actuarial qualification ought to be done on that scale.

[10] It is the case of both parties that the plaintiff is employable in the open labour market. As indicated, both agree that seeing that the accident has left the Plaintiff with sequelae of physical injuries, her career options have been narrowed down. In their joint minutes, the Occupational therapists opine that the current residual capacity of the Plaintiff did not match the physical requirements of her current occupation. It is also their opinion that she needs reasonable accommodation at work and that she would be disadvantaged if she were not accommodated in the work place. The Occupational Therapists further opines that the plaintiff lacked the physical capacity to meet the full range of physical demands of light, medium, heavy and very heavy category work owing to her walking, standing, bending and crouching which restrict frequent weight handling.

[11] In view of the above I consider that the plaintiff should be compensated for loss of earnings taking into account the normal

vicissitudes of life as a result of the injuries sustained. I am of the view that such calculations be in accordance with the scenario

suggested by Me Van Jaarsveldt as Me Kheswa failed to motivate her conclusion. I am of the considered view that the appropriate

contingencies in respect of the pre-morbid scenario should be the normal one and in respect of future loss of earnings the total

contingency should be 30%.I accordingly make the order as set out below.

ORDERS

1. The defendant shall pay the Plaintiff the total amount of R 1,574,726.43(one million five hundred and seventy four seven hundred and twenty six rand and fourty three cents) made up as follows:
 - i. For past loss of earnings an amount of R130,690,70(One hundred and Thirty Thousand Six Hundred and Ninety Rand and seventy cents)
 - ii. Future loss of earnings an amount of R1, 423,565.50(One Million Four Hundred and Twenty Three Thousand Five Hundred and Sixty Five Rand and fifty cents)

2. Defendant provides the Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund, Act 56 of 1996, as amended, within 30(thirty days) from the date of this order for 70% of the costs of future accommodation of the Plaintiff in a hospital, a nursing home or treatment of or rendering of service to him or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision on 14 May 2013, after such costs have been incurred and upon proof thereof;
3. Defendant is liable for payment of the Plaintiff's taxed or agreed party and partly costs, which will include the following:

3.1 The reasonable travelling and accommodation expenses for attending medico legal examinations;

3.2 The reasonable preparation, qualifying, reservation, accommodation, travelling fees and expenses as well as the income forfeiture fee for court attendance, including travelling expenses of obtaining the expert reports of:

3.2.1 Dr JF Ziervogel, Orthopaedic Surgeon;

3.2.2 Letitia Delport, Occupational Therapist;

3.2.3 Susan van Jaarsveld, Industrial Psychologist;

3.2.4 Wim Loots, Actuary

3.3 The costs attended upon obtaining the payment of the amounts referred to in this order;

3.4 The Plaintiff shall serve the Notice of Taxation on the Defendant's attorney of record;

3.5 The Plaintiff shall allow the Defendant sixty (60) court days to make payment of the amount referred to in paragraph 1.1 above as well as taxed costs;

3.6 Defendant will be liable for payment of interest on the amount referred to in paragraph 1. Above as well as taxed costs calculated at 10% per annum from 28 February 2020 should Defendant fail to make timeous payment of the amount as well as of the taxed costs within the time stipulated in paragraph 3.5 above. all payments herein shall be made into the account of the plaintiff's attorneys the particulars of which are as follows:

PIETER SKEIN ATTORNEYS – TRUST ACCOUNT

BANK: ABSA

BRANCH CODE: 632 005

ACCOUNT NO: 408 698 6327

REFERENCE: GRI 1/ 0001

3.7 The issue relating to the medical expenses is postponed to the pre-trial roll for later determination.

P.E. MOLITSOANE, J

On behalf of the Plaintiff: Adv. M.C Louw

Instructed by:

Pieter Skein Attorneys

BLOEMFONTEIN

On behalf of the Defendant: Adv K.N. Peterson

Maduba Attorneys

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Prepared on 11 October 2026 · Esheria