

SOUTH AFRICA / JUDGMENT

M v Road Accident Fund (44393/2012) [2017] ZAGPPHC 247 (24 May 2017)

[2017] ZAGPPHC 247**COURT**

North Gauteng High Court, Pretoria

BEFORE

Makhubele

CASE / FILE NUMBER

44393/2012

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Policy

**IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA**

Case**No: 44393/2012****24/5/2017****Not****reportable****Not****of interest to other judges****In**

the matter between:

**M
M Plaintiff
and
THE
ROAD ACCIDENT
FUND Defendant**

JUDGMENT

MAKHUBELE AJ

Introduction

- [1] The plaintiff ("M") instituted action against the Road Accident Fund ("the RAF") and claimed damages that he suffered as a result of the injuries that he sustained when, as a pedestrian, he was knocked down by a motor vehicle on 04 May 2009 at Eric Louw Road, Sasolburg, that was driven by an insured driver identified as one Mr. M.J Modibedi.
- [2] The matter came before me for oral argument that was estimated to last no longer than one (1) hour) on the one remaining issue between the parties, namely, compensation for general damages.

Counsel for the Plaintiff, Mr. Uys, handed up a document that was titled "Special Case for adjudication in terms of Rule 33 of the Uniform Rules of Court" . This was marked Exhibit "A".

It appears from this document that the issue of liability was conceded and the RAF had agreed to compensate M for 80% of his proven damages. Furthermore, all other heads of his claim, but for general damages were disposed of on 14 October 2014. This document also provided a summary of the issues arising from the various experts' reports filed by the both parties.

The injuries

- [3] In his particulars of claim, the injuries that he sustained as a result of the accident are indicated as ; (a) neck injury,
- (b) head injury and (c) further injuries and sequelae thereof as indicated in the medico legal report of Dr. Versfeld dated 05 April 2012.

In the medicolegal report, Dr. Versfeld described the injuries and treatment received as follows:

"A soft tissue injury to his right knee.

A neck injury.

Probable head injury.

- [4] The XRay report that was obtained from Sunninghill Radiology on 27 March 2012 indicates amongst others that he has a marked flexion deformity of the right knee.

The issues for decision

- [5] Mr. Uys indicated that he intended to call M to the witness stand for the court "to see for itself the condition of his right leg" .This is the only issue in dispute between the parties. He submitted further that there are three features that he wanted me to observe; firstly, the general condition of the right leg, namely, the fact that it is thinner than the left one,

secondly, it is in fixed flexion deformity, meaning that he cannot move it and as such he carries it by use of bilateral elbow crutches, and lastly, it is in this position (fixed flexion) at all times, whether he is standing, sitting, or lying down.

[6] My first reaction was to ask whether I would be able to make a determination on the second and third "features", because,

as I can imagine, there are certain exercises or tests that I would need to carry out or instruct him to perform.

I then enquired from Mr. Uys whether all these "features" have been recorded in the expert reports before me, and if so, why there was a need for me to observe the leg in view of the limitations or lack of scientific knowledge to carry out standardized tests that would normally be carried out by the experts .

My Uys assured me that these "features" have been recorded in the expert reports and that if the RAF Counsel does not take issue with the description, then there was no need for the court to "observe" the leg.

[7] Counsel for the RAF, Ms. Baloyi was of the view that the court would not be in a position to evaluate the injuries or sequelae and that if there has been new developments since the filing of the expert reports, the changes should have been recorded in an addendum report.

She submitted that the evidence in the expert reports before me was sufficient to determine the appropriate award.

[8] I then made a ruling that it was not necessary for the court to "observe " M's right leg for purposes of determining the "features" that Mr. Uys had alluded to because there was consensus that they have been sufficiently described in the expert reports.

I then directed Mr. Uys to take me through the reports where each one of the "features" was described.

Medicolegal reports

[9] The medicolegal expert reports filed on behalf of M are as follows;

[9.1] Dr. G.A Verfeld (Orthopaedic Surgeon). The assessment was conducted on 27 March 2012 and the report issued on 05 April 2012.

He also completed the Serious Injury Assessment Report (RAF 4) on 22 April 2012

[9.2] Mrs. E M Kruger (Registered Occupational Therapist). She assessed him on 14 August 2014 and issued the report on 25 August 2014.

[9.3] Dr. W Pretorius and Mr. D C Jooste of Dr. Pretorius Inc Industrial Psychologists.

They assessed M on 22 July 2014 and issued a report on 26 September 2014.

[9.4] Actuarial calculations dated 09 October 2014 by Munro Forensic Actuaries.

[10] Only the first two reports were addressed and are relevant for purposes of the argument relating to the condition of the right leg.

[11] The RAF filed the following reports;

[11.1] Dr. PFB von Bormann (Orthopaedic Surgeon)

He assessed M on 08 July 2013 .The report is not dated.

[11.2] Suzanne Harmse of Anoet Rossouw Occupational Therapists Inc.

He was evaluated on 21 February 2017 and the report issued on 23 February 2017.

[12] The joint minutes of;

[10.1] the Orthopaedic Surgeons dated 14 October 2014; and

[10.2] the Occupational Therapists dated 07 March 2017.

[13] The only submission with regard to the alleged dispute about the condition of the right leg made by Counsel for the RAF, Ms. Baloyi was that M's Orthopaedic Surgeon has indicated in his report that it is not possible to straighten the right leg, not that there is a possibility of an amputation.

This submission was made in the context of Mr. Uys's argument that M's leg is useless and although not amputated, it feels so, but without the advantage of amputation.

Other than this, all other issues relating to the condition of the right leg are common cause. I will summarize the expert opinions hereunder.

The Orthopaedic Surgeon's respective opinions

[15] With regard to the features of the right leg; Dr. Versfeld made the following findings;

"The right knee was in a flexed position.

There was a 125degree fixed flexion deformity of the right knee. The range of right knee movement was from 125 degrees to 150 degrees. (underlined for emphasis to indicate that he is not able to move the leg as it is in a fixed position)

The range of the left knee movement was from 0 degrees to 145 degrees.

The right calf measured 3cm less in circumference than did the left.

The right thigh measured 9.5 cm less in circumference than did the left, 24 cm above the knee. (highlighted for emphasis to indicate thinness of the right leg)

The power of the muscles of the right foot were reduced when compared to the left.

There was a fixed flexion deformity of 30 degrees of his right hip

[16] Under "PROGNOSIS AND FUTURE MEDICAL COSTS", Dr. Versfeld stated that " It would be reasonable to make provision for the release of the knee contracture. However, because of the magnitude of the contracture the probability is that it will not be possible to fully straighten this leg"

[17] The findings made by Dr. Versfeld were confirmed by the Orthopaedic Surgeon of the RAF, Dr. Bornmann where he stated the following in his report;

"LOWER LIMBS

There is marked wasting of the right lower limb. The leg is equal, probably.

The left leg is normal in appearance and is straight. The right leg has a flexed knee.

The range of movement at the hips is that : the left is normal, and on the right the range of movement is restricted with internal rotation. There is restricted abduction of the right hip compared to the left hip. Fixed flexion deformity of the right hip is of 20 degrees.

The right thigh has several scars from the deep abrasions that were suffered at the time of the accident. The left thigh is covered in scars from skin grafts of donor operations.

KNEES

Both knees are scarred from abrasions that were suffered at the time of the accident. the right knee has fixed flexion deformity of 130 degrees and has probably 20 degrees of the range of movement of the right knee.

There is extensive scarring of the right knee, posteriorly medially, and extending into the thigh proximally and then into the lower leg, distally.

LOWER LEGS, ANKLES AND FEET

The right lower leg is wasted compared to the left side. The range of movement of the right ankle is diminished compared to the left ankle. The pulses are not palpable in either the feet or the ankles.

PAIN AND SUFFERING

Pain and suffering was very severe initially with the bleeding and mangled right lower limb. It is now still very severe with a uselessly deformed right lower limb.

PROGNOSIS AND FUTURE MEDICAL COMPLICATIONS

Four years later, prognosis must be very guarded. The circulation of the right lower limb may be jeopardised so that surgical straightening of this limb is a possibility.

CONCLUSION

Mr. M is totally crippled at the present time. Depending on his lower limb's circulation, one can at least give him a straight lower limb, albeit it considerably shorter.

It is unlikely that he will work on a physical level again."

[18] That M was unable to carry the right leg without the assistance bilateral crutches was confirmed by the Occupational Therapist for the RAF where the following, amongst others, is stated in the report;

"Right knee contracture

- He has a right knee flexion contracture and is unable to straighten the right leg as a result.
- He is unable to walk as a result of the contracture and depends on bilateral crutches.

[19] The differences between the Orthopaedics relate to the soft tissue injury of the neck. Dr Versfeld believes that he did suffer this injury and that provision should be made for future management and treatment. I was advised that I do not have to make a ruling in this regard.

It is common cause though between the Orthopaedic Surgeons that he has a fixed deformity of the knee, which is 20 or 25 degrees and a fixed flexion which is either 20 or 30 degrees.

[20] The Orthopaedic Surgeons agree that straightening the right knee completely may be impossible. This leg is described by the RAF orthopaedic Surgeon as "wasted".

Personal circumstances of the claimant

[21] The following information appear from the both parties' respective Occupational Therapists' reports.

[21.1] He was 46 years old at the time of the accident. He is now 54.

[21.2] His highest educational qualification is Grade 7. The average educational level in his family is Grade 8. He previously worked as a fitter, cleaner, mine machine cleaner and finally as a gardener for two years before the motor vehicle accident.

[21.3] He relies on public transport for his travels. The nearest taxi point from his home is 60 minutes' walk, but he can access local taxis right outside his home.

[21.4] He gets fatigued when he walks long distances but does not experience pain.

[21.4] He relies on his sister to fetch water. He can however take care of his own personal hygiene chores such as washing, dressing, grooming, toilet and small loads of laundry and clean the house.

Although he is independent, his sister cooks and when necessary they hire /repair assistance.

He can short for small quantities that he may be able to carry on his crutch.

[22] With regard to the degree of possible movement of the right leg, my attention was directed to the opinion expressed Ms Suzanne Harmse (RAF's Occupational Therapist) in her report under "Clinical findings", where she stated, amongst others, the following:

"He presented with a 90 degree flexion contracture of the right knee. With less than 5 degrees passive movement available. He presented with limited hip extension with the hip not able to extend to neutral"

Mr. Uys submitted that this view contradicts the opinion of the Orthopaedic Surgeons. It proves that the hip does not come back. This is all that was submitted and nothing more with regard to whether she is duly qualified to overrule the opinion of the Orthopaedic Surgeons.

[23] Mr M is unable to stand on his right foot due to the significant contracture in the right knee. It has also caused secondary

limitation in hip and ankle ranges of movement.

Legal principles on assessment of General Damages

[24] I deem it necessary to reproduce the following paragraphs in the judgment of Navsa JA In the matter of Road Accident Fund v Marunga 2003 (5) SA 164 (SCA) that sums up the principles and earlier authorities in the assessment of claims for general damages. I deem it necessary to reproduce the paragraphs;

"[23] This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. This Court will interfere where there is a striking disparity between what the trial court awarded and what this Court considers ought to have been awarded:

See Protea Insurance Company v Lamb 1971 (1) SA 530 (A) at 535AB and the other cases cited there.

[24] At 5358 and following of the Protea case Potgieter JA considered what regard should be given to awards in previously decided cases. After considering dicta in several decisions of this Court the learned judge of appeal stated that there was no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. He pointed out that it would be difficult to find a case on all fours with the one being heard but nevertheless concluded that awards in decided cases might be of some use and guidance.

[25] In the Protea case, above, this Court in determining the measure of damages considered all relevant factors and circumstances and derived assistance from the 'general pattern of previous awards'.

[26] The following case (with synopsis) which was included in the list of cases to which the trial Court was referred for purposes of comparison, demonstrates the difficulty and (paradoxically) the usefulness of considering awards in previously decided cases:

Wright v Multilateral Vehicle Accident Fund a 1997 decision of the Natal Provincial Division Corbett and Honey Vol 4 E331 The plaintiff, a 28year old woman, sustained a open comminuted fracture of the right femur with complete division of the quadriceps muscle and loss of substantial quantity of bone which extended into the knee joint. There was an initial surgical procedure to repair the quadriceps mechanism and to apply an external fixator plaintiff hospitalised for two weeks and discharged on crutches. Readmitted two weeks later for treatment of infection. Later readmitted for a period of one week for further treatment for infection. At the same time the external fixator was removed and replaced with a pin. Traction applied at home for four weeks. The fracture failed to unite and the plaintiff was again hospitalised for a few weeks during which an open reduction was carried out for an internal fixation. The plaintiff wore a leg brace with a hinge for several weeks and left with a limitation of flexion in her right knee, bad scarring of the right leg, a shortening of the leg by 3 ll2 cm requiring raisers in footwear. She experienced weakness of the leg, residual pain and recurring infections and abscesses, which would in future probably require antibiotic therapy and surgical drainage. Removal of the pin was expected. Plaintiff experienced a great deal of pain, particularly during episodes of infection. She had been an outdoors person but was now permanently unable to run or play sport, kneel or squat. She experienced difficulty in negotiating stairs awarded R65 00000 as general damages [value in 2001 (at time of trial in the present case) R81 00000].

[27] In the Wright case (Corbett and Honey Vol 4 E336) Broome DJP stated:

'I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.'

[28] The Wright case at E334 to E337 is instructive. The learned trial judge considered all the relevant circumstances and set out in detail the reasoning that motivated the award".

[24] In the matter of De Jongh v Du Pisanie NO 2004 (2) ALL SA 565 (SCA), Brand JA dealt with issues such as fairness in the context of previously decided cases of similar facts. The comparision is not a mechanical process because the court must still exercise its discretion . They only serve as broad guidelines to indicate a pattern of previous awards based on the facts of each case.

[25] On fairness of the award, Brand JA also cited, with approval the following passage from the judgment of Holmes J in the matter of Pitt v Ecomnomic Insurance Co. Ltd 1957 (3) SA 284 (D) where he stated the following;

"The courts must take care to see that its award is fair to both sidesit must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant' s expense."

[26] The approach and process of comparison of previous awards was described as follows in the matter of Protea Insurance Co. Ltd v Lamb 1971 (1) SA 530 (A) 534 to 536B ;

"It should be emphasized, however, that this process of comparison does not take the form of meticulous examination of awards made in other cases in order to fix the amount of compensation, · nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters.

Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible in an appropriate case to test any assessment arrived upon this basis by reference to general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration. "

Submissions

on comparable awards

[27] Mr. Uys submitted written heads of argument and referred three previous awards in the following cases. They are all amputation

cases.

[27.1] Ehlers v South African Railways and Harbours 1959 (IE20 QOD 250 (E). A seven year old girl who lost her right leg above the knee and half of her left foot after being hit by a railway bus. She had an artificial right leg fitted as well as a left foot appliance. These had to be replaced at regular intervals for the rest of her life. She also had to use elbow crutches and a wheelchair. She had to undergo a further operation to the stump of her right leg. The skin cover that the surgeon who performed the last operation had left became gangrenous and caused a large raw wound. In order to obtain adequate skin cover, they had to remove another inch or two of the bone. The court took into account the excruciating pain she suffered during the initial change of dressing and subsequent changes. The award to the Plaintiff on her behalf was R 14 000.00, that translates to R 1 183 098.00 in present monetary terms.

[27.2] Van Deventer v Premier of Gauteng 2004 (5E2) QOD 1 (T) . A 49 year old whose right leg was amputated above the knee due the negligence of doctors. He was fitted with a prosthesis and would in future probably require one or two crutches and a wheelchair. He would also require operations to trim the stump in future. He was prone to falls and had already fallen about four times and had a 20% chance of fracturing his right femur. He required a permanent assistant for 1 hour per day. He also required a dietician because of weight gain as a result of lack of mobility. An active sports person before the incident but had since become shy and withdrawn. An award of R300 000.00, that translates to R568 800.00 in present monetary value was made.

[27.3] Msiza v Road Accident Fund 2014 (7E20 QOD 1 (GNP)) . A 62 year old crafter of mats, bracelets and neclaces. She had a left femur fracture and her leg had to be amputated above the knee. She also suffered a fracture of the right humerus and lacerations of the scalp. She is unable to walk because of the amputated limb and she cannot wear a prosthesis because her stump is short. She walks with a walking frame. She experienced severe pain for a long period due to the injuries and she also had prolonged period of subacute pain because of her osteomyelitis and re operations. She has disfiguring scars on her face and right upper arm. She has difficulties with the daily demand of evryday activities involving standing and walking or lifting and carrying light to medium object.

She was awarded R7000 000.00 that translates to R910 000.00 in present day monetary value.

[28] Mr Uys submitted that in his view, the award in the last mentioned case (Msiza) was more appropriate and would represents a fair quantification of the general damages in the matter before me.

[29] Ms Baloyi, referred to two (2) previous awards;

[29.1] Pitt v Pitt 1971 Quantum Year Book Vol.2 at 268.

The Plaintiff had suffered a dislocation of the left knee and embarrassment to circulation of the limb. Four operations were done

and the knee was grossly disabled. It had no movement and had to wear a garment spring. The award was R8 000.00. It translates to R510 000.00 in present monetary value.

Ms Baloyi submitted that looking at the sequelae, this award is comparable to the circumstances of the matter before me.

[29.2] Aeschlima v Road Accident Fund (2010 Quantum Yearbook Vol.6 at E712.). The plaintiff, a 20 year old woman was involved in a motor vehicle collision and sustained the following injuries; 1 centimeter laceration of the upper lip, blunt trauma to the right shoulder, a compound injury to the right knee consisting of a fracture of the medial plateau, rapture of the posterior cruciate ligament and rapture of the post lateral corner ligament.

An award of R300 000.00 was made in respect of general damages.

[30] Ms Baloyi submitted that R510 000.00 would be a reasonable award in the circumstances of the present matter..

[31] In reply, Mr. Uys argued that the two cases that Ms Baloyi referred to were distinguishable. In the Pitt V Pitt matter. the plaintiff retained the use of his leg. He could still walk, though with a limp.

The plaintiff in the Aeschlima case retained the use of the leg too. The sequelae in the present matter included inability to stand or walk long distances.

Accordingg to him the awards submitted by the RAF are not appropriate.

Analysis

of the "comparable awards".

[32] Mr. Uys argued that the Plaintiff does not have the advantage of an amputated leg. I do not see the advantages of an amputated leg from the awards that he relies on, much as I do not see the disadvantage of an amputated leg in the present matter.

Instead, in the cases that he referred to, the pain did not end with the amputation, but management of the stumps and further revisions. In the Ehlers case, the little girl had to redo the operations now and again to manage the cover on the stumps and this requires at times removal of a bone. This was reported to be an excruciatingly painful process.

The plaintiff in the Van Deventer matter must have further operations to trim the stumps.

The old lady Msiza is unable to walk because of the amputated limb and she cannot wear a prosthesis because her stump is short. She walks with a walking frame.

On the other hand, whilst the Plaintiff's right leg in the matter before me is wasted or crippled, he does not have pain as the Occupational Therapist has opined. He can walk with bilateral crutches and only gets fatigued.

The sequelae in the cases that he relied on are far more serious than in the present matter.

[33] Previous awards do not have to be on all fours with the matter under adjudication for the simple reason that no two cases may have similar facts. However, there must be a common thread, either with regard to the nature of the injuries and or sequelae thereof. In two of the amputation cases that he relied on the victims were in addition to double crutches also wheelchair bound (Ehlers) or these devices were indicated in the future (Van Deventer) .

If one has to take account of future pain, it is clear that the amputees will endure more pain in the future due to management of the stumps. Mr. M on the other hand has suffered pain in the past and is likely not to suffer pain in future because corrective surgery has been ruled out.

[34] The main features of M's right leg as indicated by Mr. Uys in his opening address and request that I should 'observe' it are that (a) it is thinner than the left one, (b) he cannot carry it without using crutches (fixed flexed position); and (c) it is in this position at all times, whether he is sleeping, standing or seated.

It was described as "wasted".

[35] I tried, on my own to source previous awards in cases where the plaintiff had some orthopaedic injuries with resultant "wasting",

shortening, and "thinning" of the limbs.

The parties have a duty to bring evidence before the court. This includes cases (precedents} that they rely on. The simple reason is to enable the opponent and the court, naturally, an opportunity to interrogate it, and in the case of an opponent, to bring an appropriate counter argument. It may be that the cases that I have looked up are under appeal, a fact that a diligent counsel would know.

[36] In the matter of Lee Z v Road Accident Fund (North Gauteng High Court Case No. 24915/2008, judgment delivered on 18 February 2010). The plaintiff was represented by Advocate Uys. It could have been another Advocate Uys, and not the one appearing for the plaintiff in this matter.

Some of the injuries were described in the judgment as follows;

[8] With regard to the right knee, Dr. Versfeld found that the plaintiff had sustained a comminuted fracture of her right patella, which was treated by internal fixation. She had an effusion present in her right knee and had wasting of her right calf muscles when compared to the left. There was also a fixed flexion deformity of 4 degrees of her right knee, with evidence of medical collateral and cruciate laxity of her right knee. The plaintiff needed removal of internal fixation present in the right patella. Dr. Versfeld was of the opinion that in approximately 20 years, it is probable that the plaintiff's symptoms would deteriorate to the point where surgical intervention of a total knee replacement was likely"

[37] Other sequelae of the orthopaedic injuries that were noted in this case (Lee Z v the RAF) were that there were differences in the size of the right and left calf as well as right and left thigh. This in my understanding is what is referred to as "thinning" of the right leg in the present matter.

The plaintiff also had reduced range of her lumbar spine movements with pain on extension and lateral flexion to the left side. There was also narrowing of the L4/5. An award of R250 000.00 for general damages was made.

[38] One of the awards that was considered by Van Oosten J in the matter of Schmidt v the Road Accident[1] Fund was an earlier award in the judgment of Goldstein J in the matter of Khumalo v Road Accident Fund (2006) JOL 17136 (W)[2]. The plaintiff, a domestic worker of about 41 years of age sustained a fracture of the midshaft of the left humerus, a comminuted left upper tibia fracture and fracture to the neck of the left tibia. The sequelae in the matter of included a gross deformity of the limb that resulted in a clawlike unsightly hand that she would probably not use again. This disability was equated to that of a person whose left arm had been amputated There was decreased muscle strength in the left leg and it was 1 cm shorter.

The award for general damages was R400 000.00 .

- [39] A wasted limb is as good as having no limb, but as I have already stated above, the sequelae are not as severe as what has been described in the amputation cases that Mr. Uys has referred me to. There is no more pain, unlike in the case of amputated stumps in the cases referred to.
- [40] I am mindful of the fact that it is not always possible to find cases that are in all fours with the one under adjudication, it is my view that the cases presented by the respective counsel lack those special features that would place them in the category of amputated and wheelchair cases that Mr. Uys has referred to.
- [41] Coming to the awards submitted by Ms Baloyi, I agree with Mr. Uys that they are distinguishable because the plaintiffs retained the use of their legs.
- [42] The case that I have referred to above (Lee Z v RAF and Khumalo v RAF) at least provide a guideline for parameters to determine the pattern of similar awards in cases where the sequelae include deformity , wasting or thinning of limbs.

The orthopaedic Surgeons in the present matter have agreed that straightening the knee is not possible. The Occupational Therapist

indicated in the report that he gets fatigued when walking, but does not experience pain.

- [43] Taking into account all the relevant factors I am of the view that an appropriate amount for general damages is R700 000.00.

Consequently I make the following order;

[43.1] The defendant is ordered to pay to the plaintiff, as general damages, the sum of R750 000.00;

[43.2] In the event of the aforementioned sum not being paid timeously, the defendant shall be liable for interest therein at the prescribed rate of 10.50% per annum calculated from the 15th calendar day after the date of this order to date of payment.

[43.3] Costs.

ACTING JUDGE OF THE HIGH COURT

05 April 2017

Date heard: 10 March 2017

APPEARANCES:

PLAINTIFF: ADVOCATE P UYS

Instructed by Mills & Groenewald

C/O WNA Attorneys

Garsfontein

PRETORIA

DEFENDANT: ADVOCATE M BALOYI

Instructed by: Mathipane Tsebang Attorneys

C/O Macintosh Cross & Farquarsen

[1] 4834/05 (2006) ZAGPHC 64 (23 June 2006)

[2] Van Oosten J noted that the case was apparently under appeal. The law reports are however silent on this aspect. Even if so, the issues that I intend to highlight would not change, and that is, that there are cases that are similar in terms of sequelae to the present one.

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