

SOUTH AFRICA / JUDGMENT

M v Road Accident Fund (5172/2018) [2019] ZAGPPHC 1008 (1 November 2019)

[2019] ZAGPPHC 1008**COURT**

North Gauteng High Court, Pretoria

BEFORE

Swanepoel

CASE / FILE NUMBER

5172/2018

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Policy**IN THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION, PRETORIA)****(1)****REPORTABLE:**

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

Case

number: 5172/2018

Date of hearing: 28 October 2019

Date delivered: 1 November 2019

In

the matter between:

M[...],

N[...] J[...]

Plaintiff

and

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

SWANEPOEL AJ:

- [1] This is a claim for damages resulting from a motor vehicle accident which happened on 21 July 2015. The merits of the matter has been resolved, and it is agreed that defendant is liable for 70% of the plaintiff's proven damages.
- [2] The only heads of damages to determine is general damages, and the future loss of income. Plaintiff was 16 years old at the time of the accident and she was in Grade 10. She is now 20 years old. She sustained a head injury, a lower back injury, and a left knee injury in the accident. She was diagnosed with a moderately severe diffuse brain injury, a laceration of the forehead, and soft tissue injuries. Plaintiff suffered a loss of consciousness after the accident and only recovered full consciousness the following day. Pre-morbid, there is no evidence to suggest that plaintiff was anything other than a properly functional young woman.
- [3] As a result of the accident, plaintiff suffers from headaches, memory loss, a decline in her school performance and pain in her left knee. I am told that she has failed Grade 12. Plaintiff's educational psychologist reported that plaintiff shows signs of a decline in the metacognitive practical functions.. She shows poor performance. at school, her memory is affected, and she shows poor concentration.
- [4] Plaintiff's neuropsychologist reported that plaintiff presented with a number of neurocognitive impairments that represent a notable deterioration in comparison to her pre-morbid potential. She has suffered profound changes in all of the critical areas of functioning. She has difficulty in her ability to retain complex verbal information, a reduced memory capacity, and she struggles with abstract reasoning. The severity of the head injury suggests an organic aetiology to the psychological deficits which is permanent and irreversible. She displays behavioral problems and has a risk of suicide or self-harming. The clinical psychologist is of the view that her funds should be protected by the setting up of a trust.
- [5] Plaintiff's occupational therapist reported that it was likely that plaintiff would not achieve satisfactorily in mathematics and accounting subjects and that her future career results were dependent on her Grade 12 results. It has now been established that she failed Grade 12. It was also reported that plaintiff would not be able to reach her pre- accident abilities due to reduced physical endurance, psychological and cognitive challenges. Her career choices are limited and she will not be able to compete equally with psychologically stable persons. She will require an employer who is sympathetic of her challenges, and she will remain a vulnerable employee.

LOSS OF EARNING CAPACITY

- [6] Pre-accident the actuarial report postulates that plaintiff would have attained a post-Grade 12 qualification, and she would have progressed to Paterson D 5 level income. Post-morbid, the actuarial report postulates two scenarios. Scenario 1 postulates that plaintiff will receive appropriate support and motivation and would complete Grade 12 and achieve a NQF 6 or 7 level qualification. This scenario seems unlikely, specifically due to the fact that plaintiff has clearly not received such support and has not been able to complete Grade 12. She shows no sign of improvement, and little prospect of attaining a tertiary qualification.
- [7] Scenario 2 postulates that plaintiff will retain Grade 11 as her highest level of education. Her pre-morbid income is postulated at R 11 056 663. In scenario 2, her post-morbid income is postulated at R 4 785 681.00. This scenario is, in my view, the most likely, although I believe that the possibility of plaintiff improving her lot in life should be addressed by the application of appropriate contingencies.
- [8] Plaintiffs counsel submitted that a 35% contingency should be applied to the pre-morbid income, and 50% to the post-morbid income. This would result in a loss of income of R 4 793 989.50. In my view it would be more appropriate to apply a post-morbid contingency of 35% which results in a loss of income of R 4 076 137.35. Applying the apportionment of 70/30 to this amount results in an award of R 2 853 296.14.

GENERAL DAMAGES

- [9] Plaintiff submitted that general damages of R 950 000.00 is appropriate. Defendant contended for R 500 000.00 to R 600 000.00.
- [10] I was referred to various cases, of which *Mngomezulu v Road Accident Fund* (South Gauteng High Court case number 04643/2010) was perhaps the most useful. In that matter the plaintiff, a 25 year old man was rendered unconscious in an accident as a result of a significant secondary head injury. He also suffered fractures and a lung contusion. As a result of his injuries the plaintiff has pain in his right leg, memory difficulties, difficulty concentrating, he is irritable, easily distracted and suffers from periodic depression. He has, as in the instant matter, suffered a decrease in social activities and a diminished enjoyment of life. An amount of R 600 000.00 was awarded for general damages in 2011. It must be borne in mind that in *Mngomezulu* the plaintiff had orthopaedic injuries which are more severe than in the instant matter.
- [11] In *Bogosi v Road Accident Fund* (Northwest Division case number RAF 4/2015) the plaintiff suffered a severe head injury resulting in plaintiff not being able to function independently. His balance and coordination is affected and his interpersonal relationships are poor. In this matter R 1 200 000.00 was awarded in 2018, although the brain injury strikes me as being substantially more severe than in the present case.
- [12] Having read the authorities handed to me, as well as the cases referred to therein, I am of the view that an award of R 800 000.00 is appropriate in the circumstances.

[13] Having asked counsel to address me on the protection of plaintiff's funds, as suggested by the clinical psychologist, I was presented with a draft order which provides for the creation of a trust. I have inserted the award in manuscript, and consequently I make the following order:

[13.1] The draft order marked "X" is made an order of Court.

Swanepoel AJ

Acting Judge of the High Court,

Gauteng Division, Pretoria

"X"

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO. 5172/18

HELD AT PRETORIA ON THIS THE 1ST DAY OF NOVEMBER 2019 AT COURT 8D BEFORE THE
HONOURABLE MR JUSTICE SWANEPOEL (AJ)

M[....] N[....] J[....]

PLAINTIFF

ROAD ACCIDENT FUND

Defendant

ORDER

HAVING HEARD COUNSEL for both parties, the following order is made:

1. The Defendant is ordered to pay 70% of the Plaintiffs proven or agreed damages.
- 2.

The Defendant shall pay the sum of R3 653 296 – 14 (three million six hundred and fifty three thousand two hundred and ninety six rand fourteen cents) in settlement of the Plaintiffs claim to the Plaintiffs attorneys, Mphela & Associates, payable by direct transfer into their trust account with the following details:

ACCOUNT HOLDER : MPHELA & ASSOCIATES

BANK

: STANDARD BANK

BRANCH CODE : 05-26-27

ACCOUNT NUMBER : [...]

REFERENCE NUMBER : Mr KhumalofTP4850/02/dtm

3. The aforementioned total amount of R

_ referred to above will not bear interest unless the Defendant fails to effect payment thereof within 14 (FOURTEEN) calendar days of the date of this Order, in which event the capital amount will bear interest at the prescribed rate of 10% per annum calculated from and including the 15th (FIFTEENTH) calendar day after the date of this Order and including the date of payment thereof.

4. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on a High Court Scale,

4.1 The reasonable taxable costs of the experts mentioned herein below including, but not limited to, travelling, travelling time, preparation for trial, qualifying and reservation fees (if any and upon proof thereof) as well as the costs of the RAF 4 serious injury assessment reports, medico-legal reports, addendum reports, actuarial/revised actuarial calculations, court attendance and joint minutes of all of the Plaintiff's experts, which include, but will not be limited to, the following experts:

4.1.1 Dr Moja (neurosurgeon);

4.1.2 WM Kumalo (Educational Psychologist)

4.1.3 N Sewpershad (Clinical Psychologist)

4.1.4 A Phasha (Occupational Therapist).

4.1.5 T Tsiu (Industrial Psychologist);

4.1.6 Manala (actuary)

4.1.7 All other experts' reports served on the Defendant;

4.2 All the fees of the Plaintiffs Counsel on a High Court Scale, inclusive of the drafting of the Heads of Argument and Advice on Evidence,

where applicable, and Plaintiffs Counsel's day fee for the reservation for trial, preparation for trial, consultation with client, attorney and experts;

4.3 The reasonable costs for plaintiffs attorney, correspondent attorney and Counsel which includes pre-trial preparation, traveling, traveling time and attendance of the respective pre-trial conferences, court attendances and trial preparation;

4.4 The reasonable costs in respect of the preparation, drafting and copying of all the bundles of documents, including trial bundles and bundles for the experts, containing expert reports, pleadings and notices, and all other documents and all indexes thereto, the traveling time, traveling costs and time spent traveling to deliver the bundles;

4.5. The reasonable costs for the preparation, attending, traveling expenses and time spent for conducting an inspection in loco, inclusive of work site visits;

4.6 The costs attendant upon the obtaining of payment of the amounts referred to in this Order, including the costs to obtain and administer the Undertaking in terms of Section 17(4)(a); limited to 70%.

4.7 The reasonable traveling costs (inclusive of toll gate and e-toll charges}, traveling time, subsistence, accommodation and transportation costs, if any and upon proof thereof, incurred by the Plaintiff in attending medico-legal examination(s) with the parties' experts and in attending Court on the day(s) of trial;

4.8 The costs of a consultation between the Plaintiff and his/her attorney to discuss the settlement offer received from the Defendant and the terms of this Order;

4.9 The above costs will be paid into the aforementioned attorneys trust account.

5. Payment of the above costs by the Defendant is subject to the following conditions:

5.1 The Plaintiff is ordered to serve the Notice of Taxation of the Plaintiffs party and party bill of costs on the Defendant's attorneys

of record;

5.2 The Defendant is ordered to pay the Plaintiffs' taxed and/or agreed party and party costs within 14 (fourteen) days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties;

5.3. Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the prescribed rate of 10% on the taxed or agreed costs from the date of the allocator to date of final payment.

6. The capital must be protected by way of a trust. To this end, the Defendant is ordered to pay:

6.1 The reasonable costs of the creation of a trust for the benefit of the minor as principal beneficiary, in accordance with the Trust Deed attached hereto marked as Annexure "A";

6.2 The costs of the first trustee to be appointed as well as reasonable costs of Trustees to be appointed in administering the capital amount referred to in paragraph 2 hereof as determined by the Administration of Estate Act 66 of 1965, as amended, and which is usually the reasonable costs in the administration of an estate, according to the prescribed tariff applicable to curators as provided for in the Government Gazette R 1602 of 1 July 1999 and subsequent amendments thereof and more specifically paragraphs 3(a) and 3(b) of the Schedule thereto, alternatively as prescribed by Section 22 of the Trust Property Control Act 57 of 1988, as amended and;

6.3 The reasonable costs of the furnishing of security of the obtaining of an annual bond, if required by the Master of the High Court, or to meet the requirements of the Master of the High Court.

7. The Defendant shall pay the capital into the trust account of Mphela & Associates; and
8. Mphela & Associates shall be entitled to make payment of the expenses incurred and accounts rendered by experts and Counsel employed on behalf of the minor from the said sum and/or costs upon taxation or agreement;
9. Mphela & Associates shall pay the capital of the said amount and taxed or agreed costs directly into the trust account of the Trustee of the Trust to be created and administered by Standard Trust Limited;
10. The party and party costs referred to, as agreed or taxed, shall be paid by the Defendant directly into the trust account of Mphela & Associates, for the benefit of the minor;
11. Mphela & Associates shall be entitled to deduct the fee of legal costs consultant for the drafting of the party and party Bill of Costs and for the attendance pertaining to settlement;
12. Standard Trust Limited is ordered to furnish security to the satisfaction of the Master;
13. Until such time that the trustees are able to take control of the capital sum and ot deal with the same terms in terms of the Trust Deed, Mphela & Associates are:

13.1 authorized to invest the capital in an interest-bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of the minor, with a registered banking institution, pending finalization of the directives in paragraph 7 above;

13.2 are authorized and ordered to make any reasonable payments to satisfy the needs of the minor that may arise and that is required to satisfy any reasonable need for treatment, medical intervention, care, schooling, equipment and any other reasonable ancillary needs that may arise from time to time, pending the finalization of the directives referred to in paragraph 7 above.

BY ORDER OF COURT

Counsel for Plaintiff: Adv Leopeng – 083 665 1466

Counsel for Defendant: Adv Matsetela

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Prepared on 10 October 2026 · Esheria