

SOUTH AFRICA / JUDGMENT

Magada v Road Accident Fund (651/2011) [2017] ZALMPTHC 11 (16 August 2017)

[2017] ZALMPTHC 11**COURT**

Limpopo High Court, Thohoyandou

BEFORE

Mushasha M.J

CASE / FILE NUMBER

651/2011

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****DIVISION,THOHOYANDOU****REPORTABLE:**

NO
OF
INTEREST TO OTHER JUDGES: NO
CASE
NO: 651/2011
16/8/2017
In
the matter between:-
MAGADA
FHULUFHELO ROSEMARY
OBO
A.
M. PLAINTIFF
AND
ROAD
ACCIDENT
FUND DEFENDANT

JUDGMENT**MUSHASHA AJ**

- [1] The Plaintiff instituted an action on behalf of the minor child namely A. M. for damages suffered as a result of injuries sustained by the minor child in a motor vehicle accident.
- [2] The merits have been settled in favour of the minor child.
- [3] Th outstanding issue for determination by Court is loss of earnings and earning capacity. In other words the Court is to determine the amount payable to the Plaintiff as compensation for loss of earnings.
- [4] According to the pleadings the Plaintiff s minor child is alleged to have suffered injuries set out in his clinical records. The minor child sustained bruises on the forehead, right cheek, right leg and right lower limb.
- [5] The total amount of compensation claimed by the Plaintiff is reflected as R2 804 679.00.
- [6] It was held in Southern Insurance Association V Balie N0.1984 (1) SA 98 (A) at 113 G-1 that:-

"Any enquiry into damages for loss of earning capacity is of its nature speculative because it involves a predictions 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 open 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. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations on the basis of assumptions resting on the evidence....."

- [7] In this matter both parties filed expert reports to guide the Court to make a fair and reasonable amount of compensation.
- [8] In Michael V Linksfield Park clinic 2001 (3) SA 1188 SCA; it was held that the opinion of expert witnessess must be.founded on logical reasoning.
- [9] In the joint minute of Christa Du Toit and Andrie Van der Weshuizen and Nicolene Cotze, the industrial Psychologists agreed that pre-accident, the minor child could have completed matric and studied full or part time and within 3-5 years she would have opted for whatever job was available with a fragmented income somewhere on a Peterson level A1/A2 Medium basic salary. After obtaining applicable certificates should start to earn Paterson level 81with gradual progression Paterson level C1/C2 towards age 45 as a career ceiling.
- [10] All reports filed by the Plaintiff indicate that the minor child suffered non-serious injuries and as such the minor child is able to cope well academically with a good progression in relation to academic performance and work prospect.

- [11] All reports collectively considered paint the picture of the minor child who can still cope well at school and will enjoy employment in the open labour market.
- [12] Nevertheless, Ms Linda Rudenberg, the Educational Psychologists, concluded that the minor child's emotional assessment suggests that she is at risk of experiencing emotional difficulties as a result of the accident which would further affect her performance at school and that the emotional difficulties may further affect the minor child when she goes to the work place. The minor child is likely to enter the open labour market with a lower level of education than she would had she not been involved in an accident. I find merit in this

conclusion.

- [13] Regard being had to all the evidence including the experts reports I hold the view that the amount which seems to be fair and reasonable as compensation for loss of earnings would be R900 000-00.

- [14] In the result the following order is made.

[14.1] The Defendant is ordered to pay to the Plaintiff in her representative capacity the sum of R900 000-00 for loss of earnings.

[14.2] The Defendant shall pay the interest on the aforesaid sum at the rate of 10, 25% per annum as from 14 days after the date of judgment to date of final payment.

[14.3] The Defendant shall pay the Plaintiff costs of the action on the High Court scale including costs of obtaining experts reports.

MUSHASHA M.J

ACTING JUDGE OF THE HIGH COURT

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