

SOUTH AFRICA / JUDGMENT

Molepo v Road Accident Fund (94695/2016) [2020] ZAGPPHC 649 (17 November 2020) [2020] ZAGPPHC 649

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

94695/2016

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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

17/11/2020

Case number: 94695/2016

In

the matter between:

MM MOLEPO

PLAINTIFF

ID:

[...]

versus

ROAD ACCIDENT

FUND

DEFENDANT

JUDGMENT**MAKHOB A J**

1. The plaintiff instituted an action against the defendant for damages suffered as the result of Injuries sustained in a motor vehicle accident that occurred on the 17th July 2015 on the N1 freeway Gauteng Province.
2. The merits of the matter have been settled 100% in favour of the plaintiff. Settlement negotiations between the plaintiff and defendant did not succeed and on the day of trial plaintiff asked for a default judgment as the defendant was not represented and there were no witnesses present for the defendant. The matter was heard via video link. Plaintiff is claiming against the defendant future

medical expenses and future hospital expenses. (section 17(4) (a) undertaking); general damages and future loss of earnings.

3. In his heads of argument counsel for the plaintiff submitted and referred me to case law. He motivated by means of reference to case law the amounts claimed by the plaintiff were justified.

4. Plaintiff obtained medico-legal reports from the following experts in support of her claim:

4.1 Dr .E. Mennen (Orthopaedic Surgeon)

4.2 Dr J.J Du Plessis (Neurosurgeon)

4.3 Dr J.P.M Pienaar (Plastic and reconstruction surgeon)

4.4 Dr .A. Pauw (Clinical Psychologist)

4.5 A Greeff (Occupational Therapist)

4.6 J.J Prinsloo (Industrial Psychologist)

4.7 Argen Actuarial Solutions (Actuary)

Defendant filed the following reports on caselines.

4.8 Dr Mashaba (Orthopaedic surgeon)

4.9 Dr Berkowitz (Plastic and reconstructive surgeon)

4.10 Elfrieda Tromp

4.11 Portia Shakoane (Occupational Therapies)

4.12 Vuyo Nako {Industrial Psychologist)

5. The Plaintiff was admitted at Jubilee hospital on the 18th July 2015 later was also seen at Selby hospital and Naledi hospital. At Selby hospital she was admitted for one and half months. She was later admitted to Naledi hospital where she stayed for five days.
6. She had stopped working prior to the accident. She has matric as her highest qualification. She has not worked since the accident.

According to the joint minute between Ms R Van Zyl and Ms V Nako (Industrial Psychologist) paragraph 3.2. The plaintiff "

re-entered the labour market on the 4th April 2018 functioning as a receptionist at RPP Developments (Pty) Ltd and is currently still functioning in the latter capacity".

7. According to Dr Mashaba (Orthopaedic surgeon) for the defendant) he says "Based on the reasonable degree of medical probability and after consolidating the findings the author is of the opinion that Miss Molepo does not have a serious long term impairment, loss of body function or serious disfigurement due to the accident at hand"
8. In Road Accident fund v Marungo 2003 (5) the court said that there was no hard and fast rule of general application requiring the court or a court of appeal to consider past awards. The court further said that awards on decided cases might be of some use and guidance. In Sandler v Wholesale coal supplier Ltd 1941 AD, the court held that the amount to be awarded as compensation and the figure arrived at depends on the Judge's view of what is fair in all circumstances.
9. Thus therefore I am of the view that under the circumstances the fair and just amount to be awarded to the plaintiff for general damages is R400 000.00.
10. The Locus classicus with regard to contingencies is the Judgment of Nichols JA at 116 - 117 of the decision in Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) "where the method of actuarial calculation is adopted, it does not mean that the trial Judge is "tied" down by inexorable actuarial calculations. He has a large discretion to award what he considers right". Zulman JA, with reference to various authorities including Southern Assurance decision, said the following in Road Accident Fund v Guedes (611/04) [2006] ZASCA [2006] SCA 18 (RSA)" the calculation of the quantum of a future amount, such as loss of earning capacity, is not easy as I have already indicated, a matter of exact mathematical calculation. By its very nature, such an enquiry is and a court can therefore only make an estimate of the present value of the loss that is often very rough estimate (see, for example, southern insurance association Ltd v Baney NO) courts have adopted the approach that, in order to assist in such calculations, an actuarial computation is a very useful basis for establishing the quantum of damages".
11. The plaintiff's highest qualification is a matric certificate and she continued to work after the accident, I am therefore of the view that the amount of R442 552.10 is just and fair for loss of earnings.

12. Judgment is granted in favour of the plaintiff against the defendant in the following terms:

12.1 The Defendant awards the plaintiff the sum of R400 000.00 (Four Hundred Thousand rand and zero cents), in respect of the Plaintiff's claim for General Damages.

12.2 The Defendant awards the plaintiff the sum of R442 552.10 (Four Hundred and forty two thousand, five hundred and fifty two rands and ten cents) in respect of the plaintiff's claim for loss of Earnings;

12.3 The amounts mentioned in paragraphs 2 and 3 above in the sum of R 842 552.10 (Eight Hundred and forty two five hundred and fifty two rands and ten cents), in respect of general damages and loss of earnings, are. to be paid to the Plaintiff within 14 (FOURTEEN) days of the date of this Court Order.

12.4 In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 7.25% per annum, calculated from the 15th calendar day after the date of this Order to date of payment.

12.5 The Defendant shall furnish the Plaintiff with an undertaking, in terms of Section 17(4)(a) of Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to his resulting from the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on 17 July 2015, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof.

12.6 The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale, subject to the discretion of the taxing Master and subject thereto that,

12.6.1 In the event that the costs are not agreed:

12.6.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

12.6.1.2 The Plaintiff shall allow the Defendant 14 (FOURTEEN) Court days from date of allocator to make payment of the taxed costs;

12.6.1.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 7.25% per annum on the taxed or agreed costs from date of allocator to date of final payment.

12.6.2 Such costs shall include, but not be limited to:

12.6.2.1 The reasonable and taxable costs incurred in obtaining payment of the amounts mentioned in paragraphs 2 to 7 above;

12.6.2.2. The reasonable and taxable costs of and consequent to the employment of Counsel, including counsel's charges in respect of his full day fee for 27 and 28 October 2020, as well as reasonable preparation, drafting of heads of argument, joint memorandum on settlement and any other costs;

12.6.2.3 The reasonable and taxable costs of and consequent to the confirmation of this order on the Settlement Roll, including the employment of Counsel, and counsel's charges for reasonable preparation, and any other costs;

12.6.2.4 The reasonable and taxable costs of all medico-legal, radiological, actuarial, pathologist, joint minutes, and addendum reports obtained by the Plaintiff, as well as such reports furnished to the Defendant and/or its attorneys, as well as all reports in their possession and all reports contained in the Plaintiff's bundles, including, but not limited to the following:

12.6.2.4.1 Dr Mennen, Orthopaedic Surgeon;

12.6.2.4.2 Dr Pauw, Clinical Psychologist

12.6.2.4.3 A Greeff, Occupational Therapist;

12.6.2.4.4 Dr du Plessis, Neurosurgeon;

12.6.2.4.5 Dr JPM Pienaar, Plastic- and reconstructive surgeon;

12.6.2.4.6 JJ Prinsloo & Associates, Industrial Psychologist;

12.6.2.4.7 Argen Actuarial Solutions, Actuary.

12.6.2.5 The reasonable and taxable costs incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico-legal examinations of both parties which costs will include all travelling costs and time spent travelling for the Plaintiff to attend medico-legal examinations, and interpreter / translation costs, as well as travelling costs of Plaintiff from residence to office for attending medico legal examinations;

12.6.2.6 The reasonable and taxable costs incurred to conduct an inspection and to obtain the Accident Report, medical records and completed RAF1. The cost will include travelling time and time spent travelling to obtain the above,

12.6.2.7 The reasonable and taxable costs consequent to the preparation of Plaintiff's trial bundles for Counsel, court, witness, Defendant's attorney, Judicial Case Management Meeting.

12.6.2.8 The reasonable and taxable costs of holding all pre-trial conferences, Judicial Case Management Meeting, as well as round table meetings between the legal representatives for both the Plaintiff and the Defendant, including counsel's charges in respect thereof, subject to the discretion of the taxing master;

12.6.2.9 The reasonable and taxable costs of and consequent to compiling all minutes or any other document required in respect of pre-trial conferences and Judicial Case Management Meeting;

12.6.2.10 The reasonable accommodation costs, travelling costs and travelling time of the Plaintiff, who is hereby declared a necessary witness;

13. The amounts referred to above will be paid to the Plaintiff's attorneys, Spruyt Incorporated, by direct transfer into their trust account, details of which are the following:

Standard Bank

Account number: [...]

Branch code: Hatfield (0115 45)

REF: 5D2519

14. There is no contingency fee agreement between the Plaintiff and the attorney.

D MAKHOB

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA,

GAUTENG DIVISION

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