

SOUTH AFRICA / JUDGMENT

Mthimkhulu v Road Accident Fund (48531/2014) [2017] ZAGPPHC 666 (21 September 2017) [2017] ZAGPPHC 666

COURT

North Gauteng High Court, Pretoria

BEFORE

D Makhoba

CASE / FILE NUMBER

48531/2014

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA,
GAUTENG
DIVISION, PRETORIA
CASE
NO: 48531/2014

DATE: 21/09/2017
In

the matter between: GADIHELE
BETTY
MTHIMKHULU
Plaintiff
and
ROAD
ACCIDENT
FUND
Defendant

JUDGMENT

MAKHOBHA, AJ:

[1]. 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 9th July 2013. The Defendant is the Road Accident Fund, a juristic person established in terms of section 2 (1) of the Road Accident Fund Act, Act 56 of 1996.

[2]. The issue of liability was previously settled between the parties, Defendant agreeing to pay 100% of the Plaintiff's proven or agreed damages. Future hospital and medical expenses as well as general damages were settled between parties. Defendant formally admitted the content of all the expert reports of the Plaintiff.

[3]. The only issue in dispute between the parties is loss of income/ earnings.

[4]. The parties agreed not to present oral evidence but to argue the issue on the papers, specifically the expert reports filed on behalf of the Plaintiff. The only dispute is the calculation of the amount to be awarded.

[5]. Plaintiff filed the following reports,

5.1 Dr T. Birrel (Orthopaedic Surgeon)

5.2 Dr D.A. Sherel (Psychiatrist)

5.3 Dr K. Truter (Clinical Psychologist)

5.4 Dr T. Holshausen (Occupational Therapist)

5.5 Dr Esme Noble (Industrial Psychologist)

5.6 Greg Whittaker (Actuary)

The Defendant filed only one report.

[6]. Plaintiff submitted that according to Plaintiff's Industrial Psychologist (Dr Esme Noble), Plaintiff will not find suitable

employment and will remain unemployed. This report is contained on page 110 paragraph 8.2.4 of Plaintiff's expert report/ Greg Whittaker (Actuary) calculated Plaintiff's past and future loss of income based on the opinion of Esme Noble (Industrial Psychologist). Plaintiff prepared annexure A as the summary of the fair and reasonable compensation for both parties based on the fact that the Plaintiff were paid cash and could not provide proof thereof.

[7]. Counsel for the Plaintiff submitted that a 15% contingency should be deducted on the past loss income uninjured resulting in a net past loss of R87 350-25 and 30% should be deducted on the future loss income uninjured, resulting in a net future loss of R215927.00. Plaintiff's total loss (past and future) amounts to R287317.85.

[8]. Counsel for the Defendant in his submissions in court, he submits in his Heads of Argument in paragraph 13.4 that "the basis of the calculation is incorrect as R1500.00 should have been used instead of R1800.00 so as 35% reduction should apply to the original amount." During his submission, he handed in Exhibit B and argued that Plaintiff can still be employed. Exhibit "B" is a spread sheet in terms whereof the Plaintiff's future loss of income was calculated based on contingency where it is accepted that the Plaintiff will be employed post-accident.

[9]. Counsel on behalf of the Plaintiff submits that Defendant has already admitted the opinion of Esme Noble and therefore cannot contradict it. Defendant in fact admitted all the reports.

[10]. That is the totality of the submissions including their submission contained in their Heads of Argument.

[11]. In *Gordon v Tamow* 1947 (3) SA 525 (A) para 531-532, Davis AJA said, "But this admission in the plea is of the greatest importance for it is what Wigmore (paras 2588-2590) calls a Judicial admission' (Cf the *confessio judicialis* of voet (42.2.6)) which is conclusive, rendering it unnecessary for the other party to adduce evidence to prove the admitted fact, and incompetent for the party

making it to adduce evidence to contradict it."

[12]. In *AA Mutual Assurance Association Ltd v Biddulph and Another* 1976 (1) SA 725

(A) at page 735 paragraph B the court said, "For an admission of a fact in a plea has important and serious consequences for the defendant: while it stands it usually binds him, the plaintiff need not adduce any evidence to prove the admitted fact, and the defendant cannot seek to contradict it."

[13]. It is clear therefore that the Defendant cannot contradict any of the reports after it has been admitted. In terms of the admissions made by the Defendant, Defendant admitted the opinion of Esme Noble (Industrial Psychologist) that the Plaintiff will not find suitable employment and that she will remain unemployed in future. It is clear from the admitted report of Esme Noble that she did take into consideration all of the experts opinions regarding the Plaintiff's working capacity post-accident.

[14]. Furthermore , the Defendant's calculations on paragraphs 13 of the Heads of Argument contradicts what has been admitted.

[15]. The court finds that the Plaintiff has succeeded on preponderance of probabilities to prove the fair and reasonable

compensation for the Plaintiff's claim for loss of

income/ earnings.

[16]. The following order is made

16.1 Payment in the amount R287317.85

16.2 Interest on the amount R287317.85 at a rate of 15.5% per annum calculated 14 (fourteen) days from the date of judgment to date of payment.

16.3 Costs of suit.

D MAKHOBHA

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

CASE NO.:

48531/2014

HEARD.ON: 25 AUGUST 2017

FOR THE STATE: ADV. M. VAN ANTWERPEN

INSTRUCTED BY: ADAMS & ADAMS

FOR THE DEFENSE: ADV. GNC RAKGETSI

INSTRUCTED BY: TSEBANE MOLABA ATTORNEYS

DATE OF JUDGMENT: SEPTEMBER 2017

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