SOUTH AFRICA / JUDGMENT

Naude v Road Accident Fund (2656/2017) [2017] ZAGPJHC 321 (1 November 2017)

[2017] ZAGPJHC 321

COURT
South Gauteng High Court, Johannesburg

BEFORE
Rangata

CASE / FILE NUMBER
2656/2017

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
LOCAL DIVISION, JOHANNESBURG
Case
No: 2656/2017
In the

matter between:

MELLISA
NAUDE Plaintiff
And
ROAD
ACCIDENT
FUND Defendant

JUDGEMENT

RANGATA AJ,

The

Background

1. The Plaintiff, a 19 year old female is claiming an amount of R2 889 540.95 arising from damages suffered as a result of injuries sustained from a motor vehicle accident which took place on the 17 March 2015. The amount claimed therein comprises of the following heads of damages:

1.1. Past hospital and medical expenses R 148 928, 95

1.2. Estimated future hospital, R 350 000

Medical and related expenses

1.3. Past Loss of earnings R

27 601.00

1.4. Future loss of earnings / loss of earnings R 1 163 011.00

Capacity / loss of employability

Total amount claimed R2 889 540, 95

2. At the outset, it is confirmed that the following issues are not in dispute. Advocate Jonathan Herer was appointed Curator ad Litem to the Plaintiff on the 09 October 2017.The issue of merits was conceded by the defendant, and the plaintiff is entitled to 100% of the proven or agreed damages. It further recorded that both parties are not ready to deal with the issue of past medical expenses; as such head of damages is to be postponed sine die. Further that the past loss of earnings claimed is thus abandoned. It is further recorded that the general damages has become settled.

The issue in dispute is the Future loss of income which the court will only have to decide on. The legal representatives agreed that they will not be calling the expert witnesses to give evidence, that they will be addressing the court from the experts' reports, including the joint minutes that are properly before the court.

BACKGROUND

ON THE INJURIES AND THE EFFECTS

3. Advocate Valcaro for the plaintiff, argued that as a result of the accident in question, the plaintiff sustained injuries as outlined by Dr Read's report (Orthopaedic Surgeon) and Dr Edeling (Neuro surgeon). Dr Edeling assessed the plaintiff to have sustained a complicated traumatic brain injury of a moderate to severe degree. Dr Mazwi, the defendant's Neurosurgeon, concluded that the plaintiff sustained mild head injury with long term mental disturbance and deferred to neuropsychologist.

4. Both the orthopaedic surgeons for the plaintiff and the defendant agree on the Plaintiffs orthopaedic injuries. I.e. Complex fractures of the pelvis involving the left superior and inferior pubic rami and the left and right sacro–iliac joints, a fracture of the left tibia and fracture of the left ankle. They agree that the pelvic injury is long term and serious and qualifies for narrative test. The orthopaedic Surgeons further agrees that with her injuries the Plaintiff is best suited to do sedentary or semi sedentary type of occupation.

5. In the addendum joint minutes, Dr Ngobene, concedes that after discussion and review of the x-rays, the Plaintiff's pelvic injury is indeed long-term and serious as a result qualifies the patient under 5.1 of the narrative test. Further that the plaintiff is likely suited to a sedentary or semi –sedentary type of occupation only and deferred to the relevant experts with regards to the effects of the injury and her future employability. The Occupational therapists in the addendum joint minutes dated 25 October 2017 stated that having sight of the addendum joint minutes of the Orthopaedic surgeons, agrees that the plaintiff with the injuries sustained and the sequelae, will now be best suited for sedentary to light work, and not light to medium as initially

indicated by Ms Ndhlalane in the initial joint minutes. It is further conceded that she has some limitations in relation to kneeling, squatting and lifting of heavy objects.

EDUCATIONAL BACKROUND AND EMPLOYMENT

6. It is submitted that the plaintiff has a standard 8 qualification. She reportedly dropped out of school in grade 9 as she was struggling to pass. She was at the time of the accident employed as a child minder for little snails' crèche, earning an amount of R1200 per month. The Defendant contends that the plaintiff reported to the industrial Psychologist that she was employed by the same employer, only reported a different salary, i.e. R1500. It is noted that Mr Wessels went into trouble of consulting with the previous employer, and verified the position of the plaintiff at the time of the accident as well as the salary she was earning at the time of the accident. Further deference is further made to Mr Wessel report stating that the plaintiff 'salary will be increasing in the year 2018 as per published new national minimum wage (NMW) by the national economic development and labour Counsel. It is stated that the NMW to be implemented on 1 May 2018 will be R20.00 per hour, i.e. R3200. 00 per month . Mr Tsiu , Industrial Psychologist for the defendant is silent on this aspect, leaving the submission by the Counsel for the plaintiff unchallenged. On further questioning the Defendant's Counsel replied that the Defendant did not request the proof of income as provided in the rules. In the absence of any material contrary information, the court accepts the plaintiff's earning as recorded by Dr Wessels.

7. Counsel for the Plaintiff submitted that given the physical injuries as well as the head injury and the sequelae, the plaintiff will not cope with the demands of the current job that she did prior to the accident. It is reported by Mr Wessels that the plaintiff returned to her work post-accident. She stated that the reason for her leaving was that the job was no longer appealing for her, further that she struggled to cope with the physical requirements of the job as a result of sequelae to her orthopaedic injuries and was forced to resign.

9. It is however reported to Mr Tsiu that she resigned for reasons unrelated to the accident. Mr Tsiu concluded that post-accident

the plaintiff has the ability to continue in her pre accident position and further that she is likely to remain slightly less competitive and an accommodated worker until she receives medical and psychological treatment.

9. From the plaintiff's perspective s per actuarial report by Mr Gregory Whittaker, it is calculated that the plaintiff has a total loss of income post morbid given the injuries sustained. The plaintiff's industrial psychologist submitted that post-accident the plaintiff has been further curtailed intellectually and physically. The defendant on the other hand argued that the reasons for the plaintiff resigning post-accident are not accident related and that she is capable of continuing with her pre morbid work. The court has considered the addendum reports by the Orthopaedic surgeons as well as the Occupational therapist. It is recorded by the experts, in particular, in the joint minutes, that the Plaintiff's injuries are serious and have long term consequences. It can be accepted that the plaintiff was irrational in making the decision to resign, and this fact cannot be ignored. However this does not take away the concession by the occupational therapists that the injuries are serious and have a long term effect. Further that the plaintiff will be able to do sedentary to light work.

10. The court has accepted the calculations as submitted by the Plaintiff, in so far as it relates to the basis of the calculation, taking into account the anticipated salary increase in 2018. It is further accepted as stated by Mr Wessels that the plaintiff Pre morbid would have worked until the age of 65. It is however the courts view that accepting the injuries of the plaintiff as reported by the experts, the court cannot also ignore that the plaintiff has the capacity to do sedentary work. The only problem is the plaintiff has no educational background, and ability to do such work and that she relies on her physical strength to work.

11. The calculations by Whitter show the plaintiff's income from the time of accident up to age 65 as follows:

Past loss

Value of income uninjured:

R 39, 810

Less contingency deduction @ 5% R 1, 991

Total income uninjured

R 37, 819

Value of income injured:

R 10, 218

Total past loss of income

R 27, 601(claim abandoned)

Future loss

Value of income uninjured:

R 1, 368,248

Less contingency deduction: @ 15% R 205, 237

Net future loss:

R 1, 163,011

Total net loss

R 1,190,612

The calculations above are on the basis that had it not been for the accident, the plaintiff would have continued working as a Child

Minder, at a salary of R1200.00 per month, taking into account inflationary increases up to November 2017. Further consideration is given to the new national minimum wage of R20 per hour for 40 hours per week, with effect from May 2018. Such income to increase with inflation up to age 65.

12. The court is therefore satisfied that the Plaintiff is indeed compromised by the injuries sustained as a result of the accident in question. Further that the plaintiff will suffer loss of income as a result of the limitations that she has post-accident. With the injuries as recorded in the respective reports as well as the addendum joint minutes, the plaintiff's capacity to compete with her physically abled peers in the open labour market is limited. The plaintiff's income should be subjected to an extra ordinary contingency deduction to cater for the probabilities that she is no longer an equal competitor amongst her peers and there is a slight chance that she might be able to do lesser demanding jobs.

I therefore allow the plaintiff's calculated income as detailed in paragraph 11 above, on the future loss of income, less 35% contingencies, i.e.

Total value of income uninjured

R 1 368,248

Less 35% contingency R 889.361.20

13. I therefore make the following order:

13.1. The defendant pay to the Curator ad litem the amount of R 889 361.20 in respect of the loss of earnings

13.2. The defendant to pay the Plaintiff's taxed or agreed party and party costs

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B. RANGATA AJ

ACTING JUDGE OF THE SOUTH GAUTENG

HIGH COURT, JOHANNESBURG

Heard on 26 October 2017

Date of Judgement: 01 November 2017

Counsel for the Plaintiff: Advocate Valcaro

Counsel for the Defendant: Advocate Malatjie

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