

SOUTH AFRICA / JUDGMENT

N.S.M obo B.F.M v Road Accident Fund (12649/20) [2024] ZAGPPHC 162 (22 February 2024) [2024] ZAGPPHC 162

COURT

North Gauteng High Court, Pretoria

BEFORE

Ceylon

CASE / FILE NUMBER

12649/20

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA,****GAUTENG****DIVISION,****PRETORIA****CASE****NO: 12649/20****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED.**

DATE: 22 February 2024
SIGNATURE
IN
THE MATTER BETWEEN
N[...]
S[...] M[...] OBO
PLAINTIFF
B[...]
F[...] M[...]
and
ROAD
ACCIDENT
FUND
DEFENDANT

JUDGMENT

CEYLON AJ

A.

INTRODUCTION:

[1] This is a delictual claim in which the Plaintiff, in representative capacity, as mother and natural guardian of BF M[...], seeks relief against the Defendant as a result of injuries sustained by the said minor child, in a collision that occurred on 12 March 2017 between vehicle with registration numbers: B[...] 1[...] G[...] (the "insured

vehicle"), driven by P[...] M[...], when the latter lost control and the vehicle overturned. The minor child was a passenger in the said vehicle.

[2] In terms of the Particulars of claim the Plaintiff allege that the sole cause of the collision was as a result of the negligence of the driver of the insured vehicle and the minor child sustained several injuries, was hospitalised and received treatment, endured pain, suffering, discomfort and incurred medical expenses. As a result of the said negligence and injuries, the Plaintiff allege that she suffered damages, estimated as follows:

(i) past medical expenses:

R9000-00

(ii) future hospital expenses

R15 000-00

(iii) future medical expenses

R13 000-00

(iv) future loss of income

R300 000-00

(v) general damages

R300 000-00

Total

R637 000-00

In addition, the Plaintiff claimed for interest on said amount, costs of suit and further and/or alternative relief.

[3] According to the Plaintiff, in their Heads of Argument ("HOA"), merits were already settled at 100% and general damages at R750 000-00 in favour of the Plaintiff.

[4] The Defendant and its legal representatives were absent from Court on the hearing date and the Plaintiff proceeded on a default basis in terms of the Uniform Rules of Court.

[5] The Plaintiff proceeded to lead evidence by way of her expert witness reports and no witnesses were called to testify at the trial.

B. THE PLAINTIFF:

[6]

(i) As indicated above, the Plaintiff is S[...] N[...] M[...], an adult female person, resident at 3[...] S[...] Street, Eatonside, Sebokeng, born 01 January 1996 and is suing the Defendant in her representative capacity as mother and natural guardian of B[...] F[...] M[...], born 08 December 2013 and residing with her said mother at above mentioned address.

(ii) On 12 March 2017 on the R59, the minor child was a passenger in motor vehicle bearing registration number B[...] 1[...] G[...], driven by P[...] M[...], when the said driver lost control over the motor vehicle, which overturned.

(iii) According to the Plaintiff the sole cause of the collision was the negligence of the driver of the insured vehicle, and which caused the injuries of the minor child, and the Plaintiff (of the minor child) suffered damages to the tune of an estimated R637 000-00.

(iv) The minor child was 3 years old at the time of the accident and was healthy prior to the accident. She did not suffer of any psychological or psychiatric conditions or received treatment for these conditions. She was also never involved or injured in any accident prior to the current one. She was in creche at the time of the accident and currently in primary school, grade 4.

(v) After the accident, the minor child was taken by ambulance to hospital. She was treated at Kopanong Hospital but transferred to Sebokeng Hospital, where she was an in-patient for 06 days.

(vi) She sustained the following injuries: head injury, mouth and tooth, diffuse forearm injury. She received X-rays, analgesics, CT scans, neuro-observation and admitted for 2 weeks. She currently complains of headaches, dizziness and memory problems. She is anxious, short-tempered and even aggressive at times. She is a slow learner, easily distracted and struggles to focus for long periods of time. She receives medication for her constant headaches, experience frequent insomnia and pain in her daily activities. She does not experience other physical complaints, eg, changes in hearing, vision, taste, sense of smell or epilepsy. She is particularly anxious and nervous when she traveling in speeding cars or taxis. She struggles to concentrate at school due to headaches and has poor memory. She does not participate in sports as she tends to tire quickly.

(vii) According to the educational psychologist, the minor child has the potential to complete her matric and should be able to complete a university degree.

(viii) The minor child will have to undergo future occupational therapy treatment, psychological treatment and need medication (such as pain medication) to assist her in managing future difficulties regarding the sequelae of the injuries sustained in the accident.

(ix) The minor child's father is a scientist and her mother a teacher. She has two siblings, being two brothers, aged 16 and 5 years old respectively.

C. THE INJURIES SUSTAINED AND ITS SEQUELAE:

[7] The Plaintiff enlisted the services of several medical and other experts, who detailed the injuries sustained, treatment received, and future treatment required. The experts the Plaintiff consulted are (i) Narropi Sewpershad (clinical psychologist), (ii) LK Kgwete (educational psychologist), (iii) Moipone Kheswa (industrial psychologist), (iv) Dr JA Nimbani (neurosurgeon) and (v) M Nzemilame (occupational therapist). The reports revealed the following: head injury sustained and deep laceration on her forehead. Upon admission to the Kopanong hospital, the minor child was admitted for observation and the insertion of an intravenous line, medication administered, and laceration was sutured, X-rays and CT brain scans and blood test were done. No abnormalities, bleeding or fractures appeared from the X-rays and scans. She was transferred to the Sebokeng hospital for further management.

[8] The neurosurgeon reported complaints of headaches, dizziness, hyperactivity and memory problems. He noted that the minor sustained moderate diffuse brain injury but no focal motor deficits. He reported moderate to severe memory impairment, behavioural problems, post traumatic dizziness, headaches and a risk of post traumatic epilepsy. He noted further that the brain injury with its neurocognitive sequelae negatively impacts on learning and will have limitations on her career choice. Her quality of life was negatively affected by her chronic headaches.

- [9] The minor's hearing, vision, sense of smell and taste were intact. Her gait is normal, speaks fluently and helps with household tasks. She is forgetful, tires easily, short tempered and get angry when classmates gossip about her. She is friendly and has a large group of friends. She plays tennis, skipping rope and playing with her friends. There are no symptoms social phobia, suicidal idealisations and she is not psychotic.
- [10] The neurosurgeon consulted detected no epilepsy, urinary and bowel symptoms, no insomnia, no hearing or visual problems. He reported that the child is independent in the basic activities of daily living, normal mobility, no deformities or tenderness and no problems regarding the abdomen, pelvis and chest. He also reported normal cranial nerves and sensors. This expert reported poor concentration, mathematical ability, general knowledge and abstract thinking.
- [11] With regard to future medical cost the neurosurgeon indicated that provision be made for headache treatment (+/-R25 000-00), epilepsy treatment (+/-R16 000) for 2-5 years, depending on clinical response. The expert did not foresee that the injuries sustained would influence life expectancy.
- [12] The actuaries (SNG Argen) calculated the past and future loss of earnings/earning capacity of the minor child and provided the basis upon which the calculations were made in the actuary report and took into account the report of the industrial psychologist (M Kheswa).

D. MERITS:

[As indicated previously, the Defendant conceded liability fully (100%) in favour of the Plaintiff. Accordingly, this Court records that the Defendant is fully liable to compensate the Plaintiff's agreed or proven damages in this matter.

E. QUANTUM:

-

(i) past and future loss of income:

- [14] According to the actuarial report, the gross past loss of earnings would be R0-00 as the minor child had no earnings at the time of the accident.
- [15] The gross future loss of income was calculated at R12 587 547 (pre-morbid) and R811 631-00 (post-morbid). The total loss is calculated at R9 979 834-00 (loss limited to CAP). The actuary applied contingency deductions at 25% (pre-morbid) and 45% (post-morbid) in relation to future loss of earnings. Accordingly, R3 146 893-00 and R365 234- 00 respectively. Therefore, the net value would amount to R9 440 680-00 and R446 397- 00 respectively after the deductions. Therefore, a total of RS 761 793-00 loss of earnings.

[16] In the view of this Court, nothing appears to be contentious, unreasonable or unfair regarding the calculations of the actuary, given the age of the minor, the severity of the injuries and its sequelae, the treatment received and still required in future and the decrease in the value of money. Accordingly, the Court is inclined to make an award in accordance with these calculations.

- (ii) general damages:

[17] As indicated above, this head of damages was already settled at R750 000-00 in favour of the Plaintiff.

.- (iii) future hospital, medical and related expenses:

[18] It is clear from the expert reports and evidence before this Court, that the injuries sustained by the minor child will attract future medical, hospital and related costs and expenses. Accordingly, this head of damages will be dealt with according to section 17(4)(a) of the RAF Act 56 of 1996 and this Court intends to make an award to this effect.

F.

CONCLUSION:

[19] Having considered the evidence and circumstances in his matter cumulatively, this Court is of the opinion that the injuries sustained by the Plaintiff is serious and there is no doubt that the Plaintiff will derive benefit from the treatment and interventions recommended by the experts in their reports. These will afford the Plaintiff limited assistance and relief. Most of the damages caused by the injuries will have a serious and lasting impact on the Plaintiffs health, general well-being and amenities of life.

[20] Taking into account the relevant facts, legal principles, decrease in the value of money and the nature of the injuries sustained by the Plaintiff and the resultant sequelae thereof, the Court is inclined to award, as just, fair and adequate compensation, the following in favour of the Plaintiff:

(a) past medical and hospital expenses

not applicable

(b) past loss of earnings

R583 766-00

(c) future loss of earnings

R3 247 497-00

(d) future medical and hospital expenses undertaking in terms of section

17(4)(a)

(e) general damages

R750 000-00

G. COSTS:

[21] In view of this Court, there are no factors or good grounds to suggest that costs should not follow the result.

H. ORDER:

[22]

- (a) Merits: already settled at 100% in favour of the Plaintiff.
- (b) General damages: Previously settled at R750 000-00.
- (c) Loss of earnings: R3 247 497-00.
- (d) The Defendant shall pay the Plaintiff's attorney the total amount of R4 581 263-00. In full and final settlement within 180 days of date of order in respect of the claim arising out of the motor vehicle collision on 12 March 2017 in which the "minor child" was injured. The Plaintiff nominates as his account into which this amount must be paid, the Plaintiff's attorneys trust account.
- (e) The defendant is ordered to furnish to the Plaintiff's attorney an limited to 100% Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of the Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the Plaintiff arising out of injuries sustained by the Plaintiff in the motor vehicle collision that occurred on 12 March 2017, in terms of which undertaking the Defendant will be obliged to compensate the Plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.
- (f) The Defendant shall pay the Plaintiffs party and party costs on the High Court scale either as taxed or agreed to date hereof which costs will inter alia include (subject to the discretion of the faxing master):
 - (i) Counsel's fees.
 - (ii) The costs consequently in the preparation of and obtaining all the medico legal reports;
 - (iii) The Plaintiff's costs of traveling in attending the medico-legal assessments.
 - (iv) A Trust is already established (attached hereto please see letter of Authority attached hereto).
 - (v) The powers of the trustees will be subject to the supervision of the Master.
 - (vi) And any other reasonable costs that the Trustee may incur in the administration thereof including his/her fees in this regard, which costs shall include:

- (vii) The monthly premium that is payable in respect of the insurance cover which is to be taken out by the Trustee to serve as security in terms of the Trust Deed;
- (viii) The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed, but which costs shall be subject to the following:
- (aa) The fees and administration costs shall be determined on the basis of the directives pertaining to Trustee's remuneration and the furnishing of security in accordance with the provisions of the Trust Property Control Act and/or any later directives issued by the Master of the High Court, as amended from time to time;
- (bb) All the above-mentioned costs shall be limited to payment of the reasonable costs which the Defendant would have had to pay in relation to the 1% management fee of the Trustee.
- (g) The net proceeds of the payment referred to in paragraph 6 above as well as the taxed or agreed party and party costs payable by the Defendant, after deduction of the Plaintiffs attorney and own client legal costs (the "capital amount"), shall be payable to the Trust, subject to the following:
- (i) Such Trust will be based on a trust deed containing the provisions as more fully set out in the draft Trust Deed attached hereto marked as Annexure "A";
- (ii) Such Trust shall have, as its main objective, the controlling and administration of the capital amount on behalf of B[...] F[...] M[...].
- (iii) The Trustee, Tshepo Itumeleng Mosimege, has been appointed.
- (iv) The trustee will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all his/her obligations towards the trust.
- (v) The Trustee is authorised to pay the Plaintiff's attorney and own client costs out of the Trust funds in so far as any payments in that regard are still outstanding after the establishment of the Trust.
- (vi) Until such time as the Trustee is able to control the capital sum and to deal with same in terms of the trust deed, the Plaintiff's attorneys (Raleswanga Attorneys) are:
- (aa) authorised to invest the capital amount in an interest-bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of B[...] F[...] M[...]; with a registered banking institution pending the finalisation of the directives referred to in paragraph 6 above;
- (bb) authorised and ordered to make any reasonable payments to satisfy any of B[...] F[...] M[...]; needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.

(cc) prohibited from dealing with the capital amount in any other manner unless specifically authorised thereto by this Court, subject to the provisions contained in paragraphs 6-8 hereof.

- (h) The party and party costs on the High Court scale either as taxed or agreed shall include any costs attendant upon obtaining of payment referred to in paragraph 3 above, subject to the following conditions:
- (i) The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorney of record; and
- (ii) The Plaintiff shall allow the Defendant 180 days to make payment of the taxed costs.
- (iii) Contingency Fee Agreement is applicable and is in order.
- (j) The Plaintiff's attorneys to serve this order on the Defendant or its attorneys.

B CEYLON

Acting Judge of The High Court

of South Africa

Gauteng Division, Pretoria

Hearing date: 03 November 2023

Judgment

date: 22 February 2024

APPEARANCES

FOR THE PLAINTIFF: Adv C Maluleke INSTRUCTED BY: Raleswinga Attorneys Pretoria
FOR THE DEFENDANT: Not Applicable INSTRUCTED BY: The Road Accident Fund Pretoria

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