

SOUTH AFRICA / JUDGMENT

Prinsloo v Road Accident Fund (54699/16) [2019] ZAGPPHC 532 (16 October 2019)

[2019] ZAGPPHC 532

COURT

North Gauteng High Court, Pretoria

BEFORE

FMM Snyman

CASE / FILE NUMBER

54699/16

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

CASE NUMBER: 54699/16

16/10/2019

In

the matter between:-

JUSTUS

DANIEL PRINSLOO

Plaintiff

and

ROAD

ACCIDENT FUND

Defendant

JUDGMENT

FMM SNYMAN (AJ):

- [1] I am to determine the contingency differential to be applied to the plaintiffs future loss of income, alternatively future loss of earning capacity. I will refer to this loss collectively as "future loss of income".
- [2] On 3 November 2017 an order was made in terms of which the liability of the defendant has been conceded 100%, a certificate of future medical expenses were given in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 ("RAF Act") was provided and the plaintiff was granted an amount of R750,000 for general damages suffered.
- [3] The plaintiff has received a Workman's Compensation Award ("WCA") of which the monetary amount has already been brought into account with the calculation of general damages suffered. For purposes of this judgment the WCA would consequently not be taken into account at all. Counsel for both parties confirmed this position in argument.
- [4] The parties are ad idem that there would be a future loss of income as a result of the injuries that the plaintiff suffered. The extent of the future loss of income is in dispute.
- [5] The plaintiff has filed expert notices and reports in terms of Rule 36(9) whilst the defendant has filed no such notices. The parties agreed to accept these reports as evidence before Court as if the content thereof was testified to by the individual experts. I accepted it as such.

Plaintiff's injuries and capabilities

- [6] Plaintiff was involved in a motor collision on 8 May 2015. At that stage the plaintiff was employed as a Project Engineer and in full time employment.
- [7] Medical treatment was rendered to the plaintiff from the date of the collision to 6 June 2017 for the following injuries: integrate loss of memory, head injury – haemorrhage laceration of the right eye, fracture of the right humerus multiple rib fractures left and right (9 in total), a fractured hip, small bowel resection, fractured acetabulum; and a ruptured bladder.
- [8] The effect of these injuries, individually and collectively would most definitely have an impact on any future income of the plaintiff. The injuries itself, as well as the nature of the injuries might worsen the condition of the plaintiff in future. The injuries of which future surgical procedures will in all probabilities be necessitated, must be included as factors to determine a reasonable amount based on the calculation of contingency differential.
- [9] The Industrial Phycologist specified that the shortening of the small bowel and the top of the pelvis of the plaintiff would in all probabilities needed to be done when the plaintiff is at the top ceiling of his career at age 45, or earlier. The same applies to the impact that the injuries of rib fractures may cause long term pulmonary disease.

- [10] The plaintiff was born on 1 January 1986 and consequently was 29 years old at the time of the collision. The plaintiff would reach the proverbial ceiling of his career at the age of 45 which subsequently would be in the year 2031.
- [11] The neurosurgeon and clinical psychologist agree that the plaintiff would be increasingly indisposed to advancing in his career, most likely due to an increase in memory loss and concentration. It is furthermore worth mentioning that the plaintiff would also suffer from the psychological impact due to the disadvantages he would be facing both physically and psychologically.
- [12] It follows that the plaintiff would be placed in a disadvantaged position as a direct result of the collision. It is very difficult, if not impossible, to estimate the extent of the future disadvantages, foreseen and unforeseen.
- [13] On behalf of the defendant it was argued by Ms Madjoe that cognisance should be taken thereof that the plaintiff has not only had one employer throughout his career, and can change his field of employment. Furthermore the plaintiff is not limited in career choice, but is able to obtain other forms of employment.
- [14] It is also taken into regard that the plaintiff was re-registered in his chosen profession in 2018 and consequently he was not registered as a mechanical engineer in the period between the collision (2015) and re-registration in 2018. The argument is that the plaintiff is able to obtain other suitable and even more profitable employment or method of income, despite the injuries and consequential impact there-of.
- [15] Post collision, the plaintiff has successfully completed the IOW program ("Improve Our Work" program), which made the plaintiff more marketable in the field of his chosen profession. He also completed and obtained a further qualification in Project Management, also rendering him more marketable in mechanical engineering.

Prospective damages: future loss of income

- [16] The Quantum of Damages in Bodily and Fatal Injury Cases Jutastat e-publications[1] General Principles on pages 33 and 34 the following is stated in relation to future loss of earning capacity:

"Allowance for a prospective loss necessarily introduces a speculative element into the assessment of damages. While the general rule is that loss must be established upon a balance of probabilities, it has been held that justice may require that a contingency allowance be made for a mere possibility of certain forms of loss. In this regard the distinction is drawn (in principle, and not without difficulties) between causation and quantification."

- [17] I am guided by the expert's opinions, the actuarial calculations and the submissions made during argument on behalf of both parties in arriving at a conclusion of which the contingency allowance is to be made on the basis of a possibility.

- [18] The common cause facts before me indicate that the plaintiff would in all likelihood suffer disadvantages as opposed to his peers who did not suffer the emotional and physical trauma of plaintiffs injuries.

Calculation of contingencies

- [19] It is common cause that the plaintiff would in all probability suffer a future loss of income as a result of the injuries, of which most pertinent is the brain injury. I agree with both counsel that the plaintiff is entitled to compensation for these future loss of earnings.
- [20] Mr de Klerk argued on behalf of the plaintiff that a contingency differential of 25% should be applied. This is derived at by applying the plaintiff's pre-collision abilities at 85% and his post-collision abilities at 60% thus leaving the contingency differential (or "spread" as more commonly referred to) at 25%.
- [21] Ms Madjoe argued on behalf of the defendant that, although a possible loss of future income is conceded, it is not as large as depicted by the plaintiff. Ms Madjoe argued in favour of a 15% contingency differential, derived at applying the pre-collision contingency at 25% and the post-collision contingency at 10%. The percentages of pre- and post- collision on which the differential is based, was not supplied. In light of the fact that the differential is the essential element on which the calculations are based, I deem the exact values of the conditions not as relevant as the differentials itself.
- [22] The calculations made by GRS Actuarial Consulting calculated the future income of the plaintiff up and until retirement at age 65 and with average annual increases of 6-8%, at R17,118,763.00. (Seventeen Million One Hundred and Eighteen Thousand Seven Hundred and Sixty Three Rand). Inflation of 2.5% per year were applied to the future income.
- [23] It was recently held in *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) that expert evidence should not to be accepted on face value and without any substance thereto. It was emphasised that both the courts and the Road Accident Fund should actively evaluate all the facts on which the expert evidence is based.
- [24] Considering all the facts and probabilities as set out above, I hold the view that a fair and reasonable contingency of the pre-collision abilities would be 75%. This calculation takes into account the plaintiffs work history, qualifications and relatively young age which currently is 33 years and seven months.
- [25] I also have specific regard to the managerial position occupied by the plaintiff, in relation to the plaintiff's increasing difficulties in communication with colleagues and personnel under his management, the plaintiffs memory and human relations on the basis of the plaintiff's brain injury.

[26] I further hold the view that a fair and reasonable contingency of the plaintiffs post-collision abilities would be 55%. This calculation takes into account the plaintiff's injuries, possible future complications of current injuries, and increasing difficulty in exercising his preferred occupation and employment. I also take into account that the plaintiff, similar to any other individual, would not necessarily be enjoying his preferred occupation or preferred managerial position but would be subject to the eventualities of life.

[27] The above calculation would result in a contingency differential of 20% to be applied. Applying the 20% contingency differential to the actuarial calculations of R17,118,673 leads to a monetary difference of R3,423,735.00.

[28] I was not made aware of any Contingency Fee agreement.

The following order is made:

1. The defendant is ordered to pay to the plaintiff the amount of R3,423,735.00 in compensation of future loss of income.
2. The defendant is ordered to pay the plaintiffs costs on a party- and party scale.

FMM SNYMAN , AJ

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 20 AUGUST 2019

DATE OF JUDGMENT: 16 OCTOBER 2019

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[1] Based on the loose-leaf publication Quick Guide: Quantum conversion Tables By Christo Potgieter B.luris, LLB Attorney of the High Court of South Africa Volume I: General Principles originally by MM Corbett f QC, BA LLB (Cape) BA LLB (Cantab) LW he (Cape) LLD he (OFS) LLD he (Rhodes) Chief Justice of the High Court of South Africa fourth edition by JJ Gauntlett SC BA LLB (Stell) BCL (Oxon) Advocate of the High Court of South Africa and of Lesotho and Namibia Barrister, Gray's Inn

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