

SOUTH AFRICA / JUDGMENT

Saai v Road Accident Fund (64634/2013) [2017] ZAGPPHC 478 (10 August 2017)

[2017] ZAGPPHC 478**COURT**

North Gauteng High Court, Pretoria

BEFORE

C Pretorius

CASE / FILE NUMBER

64634/2013

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****Case****number: 64634/2013****Date:** 10/8/2017

Reportable: No
Of
interest to other Judges: No
In

the matter between: MT
SAAI PLAINTIFF
And
ROAD
ACCIDENT
FUND
DEFENDANT

JUDGMENT

PRETORIUS J.

- (1) The plaintiff instituted action against the defendant for damages suffered as a result of personal injuries sustained in a motor

vehicle accident that occurred on 14 July 2008. The merits had previously been conceded and the defendant is liable for 100% of the plaintiff's proven or agreed damages.

- (2) Both counsel argued the matter without leading evidence. It was common cause that the only outstanding issue between the parties

was the future loss of earnings and the percentage that should be applied for contingencies.

- (3) The court was furnished with joint minutes between the occupational therapists as well as the industrial psychologists. The plaintiff furnished the court with the actuarial report by Mr Sauer, while the defendant did not have an actuarial report.

- (4) The plaintiff was a passenger in a motor vehicle on 14 July 2008, when the insured driver lost control over the vehicle and the vehicle overturned. The plaintiff sustained a left humerus fracture, a left radius fracture and radial nerve paralysis on the left side. She was taken to the Odendaalsrus Hospital by ambulance. After a day she was transferred to Bongeni Hospital. On 18 July 2008 she was taken to theatre. An open reduction was performed on her left humerus and radius with internal fixation. She stayed in the hospital for a week and received physiotherapy in hospital. She was discharged with her left arm in a sling, which she had to use for one month.

CONTINGENCIES:

- (5) Due to her injuries she is unable to open a tight jar, write, turn a key, open a heavy door or do garden and yard work. She cannot carry or lift any heavy objects. In the joint minute of the industrial psychologists, Dr Strydom and Dr Kgosana agreed that the plaintiffs reported average earnings as cashier was R12 600 per annum in 2008. They further agreed that, considering the plaintiffs educational and employment history, that the plaintiff would probably have remained "in her position as Cashier at the same or other employer or had the capacity to work in any other unskilled to low semi-skilled position until the normal retirement age. She probably would have depended on her physical ability to have secured employment. She may have suffered periods of unemployment between jobs. It is assumed that her salary would have increased and it is likely that the normal inflation rate would have been one of the determinants of the increases."

- (6) Dr Strydom was of the opinion that an amount between R18 600 and R53 500 per annum should be used for calculating purposes. Dr Kgosana disagreed and suggested that the amount of R12 600 per annum, with inflationary increases, be used. The plaintiffs highest level of education is grade 11.
- (7) Both agreed that the plaintiff did return to her pre-morbid position, after the accident. She has been unemployed since the accident, apart for the week she had returned to her previous employment. She could not cope with the work due to her injury to her arm. Dr Strydom notes that the plaintiff is a vulnerable employee in a competitive labour market. She is of the opinion that the plaintiff will find it difficult to find employment, solely as a cashier, as it is normally expected from a cashier to perform various other tasks when business is slow, like packing and cleaning. She will have to compete with employees in the open market, who are multi-skilled and who do not have her physical impediments.
- (8) Dr Kgosana disagrees with Dr Strydom and is of the opinion that she should be able to find employment as a cashier, although he concedes that there will be a loss which emanates from the limitations imposed by the injury she sustained in the accident.
- (9) The joint minute by the occupational therapists, Ms Joubert and Ms Montwedi, was submitted to court, by agreement. The plaintiff did return to work as a cashier to Overland Bottle Store, but resigned after a week due to pain she experienced when carrying heavy boxes and working with cold items. The occupational therapists agreed that the plaintiff would be able to meet the demands of working as a cashier. Ms Montwedi, for the defendant, is of opinion that the plaintiff "has the ability to work in the open labour market however in 'limited kind of work'. She notes that she cannot manage heavy duties due to 'pains and discomfort in the left arm and shoulder'. Ms Joubert's opinion is "that the claimant's residual physical capabilities, in conjunction with degeneration present in the left AC joint as well as a diagnosis of rotator cuff injury, indicates that she will be best suited for sedentary work with occasional light work".
- (10) In *Southern Insurance Association v Bailey* N.O .[1] Nicholas JA stated:
- "In a case where a Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informal guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis."
- (11) I have been furnished with several authorities but I am aware that each case has to be considered on its own merits. In *Protea Assurance Co Ltd v Lamb*[2] Potgieter JA found:
- "It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry to become a fetter upon the Court's general discretion in such matters".

- (12) The amount to be awarded is still in the court's discretion and the court will use amounts awarded in similar cases only as a guideline to exercise its discretion. All the other facts of the matter must play a roll and I am mindful that no two matters are the same regarding facts and circumstances.
- (13) The parties had agreed on the past loss in an amount of R11 340.00. Mr Sauer, the actuary, dealt with the joint minutes of the industrial psychologist. He used R25 186 per annum as basis. He took into account and illustrated the higher future post-morbid deduction to allow for "increased employment vulnerability, labour incapacity, uncertainty, possible long periods of unemployment and early retirement". The parties were ad idem that the Patterson scale that should be applied is that of an unskilled or semi-skilled person.
- (14) I cannot agree with the defendant that the basis of calculation should be R12 600 per annum, which was her salary in 2008. The court is not working on an estimate, but on the figures supplied by the actuary. It is common cause that the plaintiff falls into the category of unskilled and semi-skilled employees. An amount of R117 850.00 will be reasonable and fair to both parties in these circumstances.

(15) Taking account of all the circumstances, I make the following order:

1.1 The defendant is liable to pay 100% of the plaintiff's proven or agreed damages;

1.2 The defendant is to pay the plaintiff the sum of R129 190.00 (One hundred and twenty nine thousand one hundred and ninety Rand) in respect of loss of income/earning potential.

1.3 The payment will be paid within 14 days of this order into

ACCOUNT HOLDER: VZLR INC

BRANCH:

ABSA VAN DER WALT STREET

BRANCH CODE: 323345

TYPE OF ACCOUNT: TRUST ACCOUNT

ACCOUNT NUMBER: [...]

1.4 The Plaintiff's attorneys of record shall retain the aforesaid amount, net of the attorney's costs, in an interest-bearing account in terms of Section 78(2)(A) of the Attorneys Act, for the benefit of the Plaintiff.

1.5 In the event of default on the above payment, interest shall accrue on such outstanding amount at 10.50% (at the mora rate of 3.5% above the repo rate on the date of this order, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended) per annum calculated from due date until the date, as per the Road Accident Fund Act, of payment.

2. The defendant to pay the plaintiff's taxed or agreed party and party cost in the above mentioned account, for the instructing- and correspondent attorneys, which cost shall include, but not be limited to the following:
 - 2.1 All reserved cost to be unreserved, if any;
 - 2.2 The fees of Senior Junior Counsel;
 - 2.3 The cost of obtaining all expert medico-legal and any other reports of an expert nature which were furnished to the defendant and/or its experts;
 - 2.4 The reasonable taxable qualifying, preparation and reservation fees of all experts, including the cost of consultation fees with the legal teams, if any;
 - 2.5 The reasonable travelling- and accommodation cost, if any, incurred in transporting the plaintiff to all medico- legal appointments;
 - 2.6 The reasonable cost for an interpreter's attendance at court and at the medico-legal appointments for translation of information, if any;
 - 2.7 The above-mentioned payment with regard to costs shall be subject to the following conditions:
 - 2.7.1 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorney of record; and
 - 2.7.2 The plaintiff shall allow the defendant 14 calendar days to make payment of the taxed costs;
 - 2.7.3 In the event of default on the above payment, interest shall accrue on such outstanding amount at the mora rate of 3.5% above the repo rate on the date of taxation/settlement of the bill of cost, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.
- 3 A contingency fee agreement exists between the plaintiff and the plaintiffs attorneys, which complies with the terms set out in the Contingency Fee Act.

Judge C Pretorius

Case number

: 64634/2013

Matter heard on

: 2 August 2017

For the Plaintiff

Instructed by

: Van Zyl Le Roux Incorporated

For the Defendant

Instructed by

: Tsebane Molaba Attorneys

Date of Judgment : 10 August 2017

[1] 1 9 84 (1) SA 98 AD at p114 C-D

[2] 1 971(1) SA 530 AD at p535 H - 536 A

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Prepared on 26 October 2026 · Esheria