

SOUTH AFRICA / JUDGMENT

S.E obo De Jager v RAF (85353/14) [2017] ZAGPPHC 1151 (6 June 2017)

[2017] ZAGPPHC 1151

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes

CASE / FILE NUMBER

85353/14

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 85353/14

6/6/2017

(1)

NOT REPORTABLE.

(2)

NOT OF INTEREST TO OTHER JUDGES.

(3)

REVISED

In the matter between:

S.E. obo

A. DE

JAGER

PLAINTIFF

and

THE ROAD

ACCIDENT

FUND

DEFENDANT

Coram: HUGHES J

JUDGMENT

HUGHES J

[1] The plaintiff, Anzelle de Jager, was a mere six years old when the vehicle her grandfather was driving was involved in a collision on 23 February 2014. Her grandmother, who succumbed to her injuries was also a passenger in that motor vehicle. Anzelle sustained the following injuries: a compression fracture C3; compression fracture L3; abdominal injury and emotional trauma.

[2] The parties advised that the other heads of damages had been settle and this. court need only determine the issue of future loss of earning capacity. The plaintiff had instructed experts who compiled the necessary medical legal reports. Whilst the defendant only instructed one expert. The plaintiff and the defendant agreed that the summary of facts compiled by the plaintiff could be handed into court by consent.

[3] I do not propose to go through the entire contents of the medical legal reports but will highlight the salient futures necessary to assist in the determination of the award to be made for future loss of earnings.

[4] Dr du Plessis, a neurosurgeon opined that Anzelle had a 80% chance of undergoing a multilevel fusion to her vertebral column sometime in the future and a 50% chance of a third operation thereafter. The doctor further states that Anzelle now has a 15% loss of work efficiency due to the sequelae of the back injury and the operations that are to follow. Of importance, Dr du Plessis states that there is a probability of early retirement at 60 years of age.

[5] The occupational therapist, Ms Grove, states that the plaintiff would have to use ergonomic principles throughout her life. The plaintiff was to avoid employment where static positioning is expected for long periods.

From a joint saving perspective the plaintiff would have to avoid heavier demands, climbing stairs and long distance driving.

[6] The two clinical psychologist, Dr Truter and Ms Thomp, instructed by the plaintiff and defendant respectively, concluded that the plaintiff suffered from anxiety and panic attacks. They recommended that the plaintiff

undergo psychotherapeutic treatment to assist with the problem.

[7] Ms Prinsloo, the educational psychologist, stated that prior to the collision the plaintiff was an above average student and now that the collision had occurred her general performance exhibits pattern of deterioration.

She thus requires extra classes to assist and accommodate her difficulties. From the collateral information obtained it was established that the plaintiff came from a family who had a scholastic background, most having passed matric and having obtained diploma's or degree's, even post grade qualifications. Ms Prinsloo stated that the plaintiff premorbidly would have completed grade 12 in a mainstream school and she would have gone on to obtain a degree qualification. There was also a possibility that the plaintiff would have attained postgrade qualifications. Postmorbidly, Ms Prinsloo stated that if the plaintiff attained the proposed therapies to enable her to consolidate her skill and to regain emotional strength, she would be able to attain her premorbid educational level of grade 12. Ms Prinsloo adds a rider to the equation, that it would require increased effort and perseverance. With further treatment and surgery, being out action for long periods there was a likelihood that she will not attain her degree.

[8] The industrial psychologist, Mr K Prinsloo, in essences postulated two pre morbid scenarios. The first being scenario 1 where the plaintiff finishes grade 12 in 2025 then obtains her B degree in 2028, then six months unemployment is catered for and temporary employment for a year thereafter in the general labour market. On the Paterson income scale he states that the plaintiff would have earned starting on the 25th percentile of Paterson 84 progressing to level D1/D2 at age 40 to 50 then inflationary increase until retirement at 65 years. Scenario 2 makes provision for her attaining her honours degree which enables her to earn on Paterson D3 level at age 45 thereafter inflationary increase until retirement at age 65.

[9] As regards the postmorbid calculation, Mr K Prinsloo states that she still has the potential to attain a grade 12 and the degree. In addition there will also be the delayed employment of six months and a year working in the general labour market. There after the lower quartile of Paterson 84 increasing till 01/02 at 45 then inflationary increases until retirement at age 60.

[10] The following was advanced for the court to consider when deciding on the issues of contingencies to be applied. The early retirement of 60 years instead of 65 needs to be taken into account. The plaintiff's compromised performance resultant in her declined personal productivity. Her diminished access to work opportunities, career growth and the fact that she would have to take sick leave. Mr K Prinsloo opined that for the aforesaid reasons a substantially higher than normal contingency be applied to the postmorbid.

[11] I have been provided with an actuarial calculation on behalf of the plaintiff from Greg Whittaker

an actuary. What emerges from the suggestive contingencies applied by the plaintiff is that the spread between the premorbid and the postmorbid calculates to 25%, being the application of 15% on the premorbid and 40% on the postmorbid.

[12] I have considered the arguments from both the plaintiffs representative, Adv. Grabler and Adv.

Netshiozwi for the defendant. Both are in agreement that the contingency to be applied to the pre morbid scenario against the backdrop of either scenario 1 or scenario 2 should be 15%. However both differed in respect of the contingency deduction to be applied

to the postmorbidity scenario. On the one hand Adv. Grabler sought the application of 40% whilst on the Adv. Netshiozwi sought the

application of 30%. Both in my view are substantially high contingencies as was suggested by the industrial psychologist, Mr K

Prinsloo.

[13] I am mindful of the dicta in Southern Insurance Association v Baily NO 1984 (1) 98 at page 113 which is stated below:

"Any enquiry into damages for loss of earning is of its nature speculative, because it involves a prediction as to the future,

without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It opens to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to make an assessment, by way of mathematical calculations, on this basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative."

[14] I have taken cognisance of the fact that the family members of the plaintiff mostly have scholastic

achievements and I also take into account that she was an above average learner when the collision took place. Now that the collision

has taken place she is not far removed from what she could have possibly achieved and will probably achieve though with difficulty

and perseverance.

[15] For the aforesaid reasons I am of the view that scenario 2 is to be applied in this plaintiff's instance. Thus doing so, I am giving the plaintiff the benefit of the doubt that she would have attained an honours degree. In the circumstances I am of the view that a 40% contingency is substantially high if applied on the postmorbidity calculation of scenario

2. To this end I agree with the defendant that a contingency of 30% ought to be applied instead.

[16] The loss will remain as is depicted in the value of the income uninjured at R8 085 471.00 (with

a 15% having been applied).

The value of the income uninjured:

R8 085 471.00

The value of the income injured is set out below:

Value of income injured R7 470

429. 00

Less contingency deduction: 30%. R2 241 128. 70

R5 229 300.30 R 5 229 300.30

TOTAL NET LOSS:

R2 856 170.70

[17] The future loss of earnings to be paid to the plaintiff amounts to R 2 856170.70.

[18] Consequently the following order is made:

[a] The order attached marked X is made an order of court.

W. Hughes

Judge of the High Court Gauteng, Pretoria

Appearances

For the Plaintiff: Advocate J.F GROBLER

Instructed by:

Adams & Adams

For the Defendant: Advocate Netshiozwi

Instructed by:

Marivate Attorneys

Date delivered:

06 June 2017

[GAUTENG DIVISION, PRETORIA]

HELD AT PRETORIA ON THIS THE 5TH DAY OF JUNE 2017 AT COURT 6E BEFORE THE
HONOURABLE JUSTICE HUGHES (J)

CASE NO: 2014/85353

In the matter between:

DE JAGER, SURETT ELIZABETH obo

Plaintiff

DE JAGER, ANZELLE

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER OF COURT

HAVING HEARD COUNSEL for the Plaintiff and the Defendant and by agreement between the parties.

THE COURT GRANTS JUDGEMENT in favour of the Plaintiff against the Defendant in the following terms:

1. The Defendant shall pay the sum of R 3 558 844.08 to the Plaintiff's attorneys, Adams & Adams, In settlement of the Plaintiff's claim, which amount shall be payable by direct transfer into their trust account, details of which are as follow

Account holder : Adams & Adams Trust Account

Bank

: Nedbank

Branch : Pretoria

Branch code : 198 765

Account number : [...]

Reference : NK/AMP/P1273

1.1 The aforementioned amount of 3 558 844.08 is comprised of as follows:

As settled between the parties:

1.1.1. Past medical, hospital and related expenses

R 202 673.38

1.1.2. Future hospital, medical and related expenditure

Section 17(4)(a)

undertaking

1.1.2. Future loss of earnings/earnings capacity

R2 856 170.70

1.1.3. General Damages

R 500 000.00

Total

R3 558 844.08

2. The Defendant must furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) in respect of 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 23 February 2014.

3. The Defendant must make payment of the Plaintiffs taxed or agreed party and party costs on the High Court scale which costs shall include the following:

3.1 The fees of Senior/Junior Counsel on the High Court Scale (inclusive of but not limited to his full day fee and the reasonable taxable costs for counsel's preparation of Plaintiff's Heads of Argument);

3.2 The reasonable taxable costs of obtaining all expert, medicolegal (inclusive of addendum reports and joint minutes) and RAF4 reports from the Plaintiff's experts which were furnished to the Defendant;

3.3 The reasonable taxable preparation and reservation fees, if any, of the following experts of whom notice have been given, being:

3.3.1 Dr JJ Du Plessis (Neurosurgeon);

3.3.2 Dr Kobus Truter (Clinical Psychologist) ;

3.3.3 Petro Grove (Occupational Therapist);

3.3.4 Elmarie Prinsloo (Educational Therapist);

3.3.5 Kobus Prinsloo (Industrial Psychologist);

3.3.6 Mr G Whittaker (Actuary).

3.4 The reasonable, taxable accommodation and transportation costs (including Toll gates and E toll charges) incurred by or on behalf of the Plaintiff in attending all medicolegal consultations with the parties experts,

consultations with her legal representatives and the court proceedings, subject to the discretion of the Taxing Master;

3.5 The above costs will also be paid into the aforementioned trust account.

4. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

4.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

4.2 The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;

4.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 10.25% on the taxed or agreed costs from date of allocator to date of final payment.

BY ORDER OF THE COURT

NK/AMP/P1273

Plaintiff's Counsel : Adv Francois Grobler (012 942 2233)

Defendant's Counsel :

Adv.....

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Prepared on 26 October 2026 · Esheria