

SOUTH AFRICA / JUDGMENT

T.N obo T v Road Accident Fund (42870/16) [2022] ZAGPPHC 516 (4 July 2022) [2022] ZAGPPHC 516

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes

CASE / FILE NUMBER

42870/16

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****Case****Number: 42870/16**

REPORTABLE:

NO.

OF

INTEREST TO OTHER JUDGES: NO.

REVISED.

04

July 2022

In

the matter between: T[....]2
N[....] obo
T[....]
Plaintiff
and
THE
ROAD ACCIDENT
FUND
Defendant

JUDGMENT

HUGHES J

- [1] On 19 August 2015, the minor child T[....] N[....], was knocked down by a vehicle whilst he was near Nemaqgale area on the N1, close to his primary school. The driver, John Sifanyane Maphanga, of the insured vehicle, a red microbus with registration [....], transported the injured child to the hospital. The child had sustained an injury to his head with no loss of consciousness. In addition, he fractured his ankle, which had to be placed in plaster of Paris. He was not hospitalised.
- [2] The issue of merits was settled on 23 November 2017 being 100% in favour of the plaintiff. On 28 February 2020 an order was granted in respect of General damages in the amount of R500 000.00 (five hundred thousand rand). An undertaking in terms of section 17(4)(a) of the Road Accident Fund Act[1] was also issued. The issue for determination before me is that of future loss of earnings.
- [3] In accessing the child's claim of loss of earning I have had consideration of the medical legal report filed by the parties. Pertinently, I take cognisance of the fact that the injury to the child's head was classified by Professor Patrick L Lekgwara the Neurosurgeon as being a Grade 1 concussion, though he did not lose consciousness. The professor noted that the child had complained about headaches, nightmares and memory problems and he had to repeat grade 1. He concluded that the child was suffering from post-concussion headaches. However, he clarified that in the neurosurgical literature it was documented that 80% of patients suffering from post- concussion headaches recover within 2-3 years. Even though, 20% remain with the chronic symptoms. Hence, he opined that an allocation be set aside for treatment of headaches for 5 years. Notably he conducted his assessment on 18 January 2017.
- [4] The Clinical Psychologist, Dr Mureriwa, conducted the examination on 19 January 2017. The good doctor was of the opinion that the child was easily distracted, and appeared to be mildly depressed and mildly

anxious. He concluded that the child was at risk for attention deficits and conduct problems, with a WPI at 35%.

- [5] Notably the assessment by Prof Lekgwara and Dr Mureriwa were conducted on the 18th and 19th January 2017, respectively. However, Dr Mureriwa's findings are in total contrast with Prof Lekgwara's findings, that the child paid attention well and sustained it throughout, that the child was of average intelligence and that his affect (emotional status) was adequate and appropriate.
- [6] The educational psychologist, Dr Masello Yvonne Matlala, postulated, that the child had poor perceptual skills which might affect his ability to learn. He presented with learning difficulties. The child could write his surname and write numbers 1 to 20. From the assessment, she concluded that he had not as yet mastered basic concepts and will definitely have learning difficulties. Thus, he should be referred to a LSEN School for learners with special needs. She concludes that his health, future academic performance and employability as well as career has been affected as a result of the accident. Further, that '(h)is global intelligence falls in the (borderline) intellectual range. There was a significant discrepancy between verbal and non-verbal (performance scores). It appears that T[....] performs better in performance subtests more than verbal subtests. The results of this test were interpreted qualitatively.'
- [7] According to Dr Linda Krause, the Industrial Psychologist for the defendant, the child attended Crèche, 'for an approximate period of 2 years, prior attending Grade R. He attended Grade R at the age of 5 (2015), which is year ahead of the appropriate age cohort. He attended G[....] primary school, which is a rural school, in a village in Malamulele, Limpopo. The accident intervened when he was in Grade R. There is no pre-accident academic record available to the writer... As discussed, the writer is however of the view that T[....] may not have been school ready (he was placed in Grade 1 a year ahead of the appropriate age cohort. The child was currently repeating Grade 1 when she conducted her assessment and he was now within the appropriate age cohort.
- [8] She noted that there were no past reports and that the child had only one report card of 2016 for Grade 1, where it recorded that he had failed Xitsonga, English and Mathematics, while attaining an adequate achievement in Life Skills.
- [9] Prior to the accident she postulated that if the child could have reached matric level of education, it was unlikely that he would have attained a significant level of education at a tertiary level. This

is so as she had regard to the factors set out below which she opined would have been an impediment. Hence, she stated that it was probable that he would have been a candidate for non-corporate employment. The factors she alluded to are set out hereafter:

'It is difficult to rationalise that the post-accident failing of Grade 1 are as a direct result of the accident. Primarily one has to concede that the minor had been placed in Grade 1 a year ahead of his age cohort. Strictly speaking, he should have started Grade 1 in 2017, the year of his seventh birthday, this is also rule of the Department of Education (it is thus possible that he was kept back in order to fall into the correct age cohort, or simply that he wasn't school ready). Secondly, G[....] Lower Primary school is a small rural no-fee school. The Department of Education's Education Management Information System (EMIS) records the school as having 404 pupils in 2016, with 13 educators, and there is thus the question of teacher learner ratio, quality of education etc.

- b) Given the lack of a significant head injury, the writer would be guarded in assuming a significantly altered academic potential

post-accident. The writer is of the view that the injuries sustained are not likely to have a significant impact on the minor's

educability and future career potential. Against the backdrop of the many pre-accident contingency factors, the claim for loss of potential future earnings seems to be unfounded.'

[10] She concluded that when one has regards to the extent of these factors that would likely have impeded on a significant educational attainment and later formal sector employment for the child, there is a probability that he would have been a candidate for non-corporate employment and earnings related thereto. She was of the view that he may not have had the necessary access to financial, academic and other support structures at home or at school in order to achieve more than a Grade 12 level of education. His mother has never worked, and his father functions at a low vocational level, and the family relies heavily on social grants.

[11] Probable scales for earnings may be within the unskilled realm and Dr Koch's (2016:130) estimates, which are as follows: (LQ) R7700 — (median) R19 500- (UQ) R56 000 p/a. It is generally accepted that unskilled workers will initially generate an income within the lower quartile, steadily expanding and growing their business to reach the

median within 5 to 7 years, where earnings usually remain some time.

[12] Thereafter, depending on their access to funds and their competence in financial management, and based on the assumption that they managed to remain mostly employed throughout their careers, they may reach the upper quartile of the earnings between the age of 40 and 50, depending on the nature and scope of their business.

[13] The conclusion by Dr Krause, is that the child may have worked until the normal age of retirement, which she suggests a variable age of 63 years be allowed.

[14] On the other hand, the plaintiff's Industrial Psychologist, Dr Lowane Mayayise, opined that due to a drop in the child's scholastic and educational level he would only attain a lower career and earning levels. This she concluded would translate in the child only ascending to be a worker with strong reliance on supervision in a structured environment. This is due to his attention, memory and behavioural challenges. However, his career prospects would

depend on the highest educational level he will attain. Further, his level of functioning and earnings will most likely not grow much further beyond the entry level with only annual inflationary growth. A considerably higher than normal post-accident contingency should be considered, so Dr Mayayise opines.

- [15] The first difficulty that I have in this matter, is that, according to the Neurosurgeon, Professor Lekgwara, the child sustained a Grade 1 concussion to the head with no loss of consciousness. Even though he concluded that the child was suffering from post-concussion headaches 80% of patients suffering from post- concussion headaches recover within 2-3 years and the remaining 20% remain with the chronic symptoms. It bears reference that he had conducted his medical examination of the child on 18 January 2017. Hence, he opined that an allocation be set aside for treatment of headaches for 5 years. That being the case when this matter was heard in 2021 that period of five years had come and gone. No follow up assessment was provided to assess the situation of the Grade 1 concussion of the child and its progression or regression. According to the Professor, by then (2021) the chronic symptoms were supposed to be over. Thus, without any updated assessment, specifically after the so-called

condition was supposed to have resolved itself, a current assessment is essential in order to assess the child's prognosis,

currently.

- [16] Importantly, Dr Mureriwa's findings are in total contrast with Prof Lekgwara's findings, that the child paid attention well and sustained it throughout, that the child was of average intelligence and that his affect (emotional status) was adequate and appropriate.

- [17] A further difficulty is that Dr Linda Krause, the Industrial Psychologist, has not projected a difference in his educational levels, prior to the collision as opposed to after the collision. He would still attain grade 12 as he would have done. She even goes further to state that the claim for future loss of earning is unfounded. Hereafter purely for emphasis I restate this below:

'b) Given the lack of a significant head injury, the writer would be guarded in assuming a significantly altered academic potential

post-accident. The writer is of the view that the injuries sustained are not likely to have a significant impact on the minor's

educability and future career potential. Against the backdrop of the many pre-accident contingency factors, the claim for loss of potential future earnings seems to be unfounded.'

- [18] Much emphasis has been placed on the fact that the child failed grade 1 in

2016. However, the reality is that he commenced grade R earlier than his peers were required in 2015 (the year of the collision). In addition, he was promoted from grade R to grade

1. It therefore stands, to reason to me, that attempting grade 1 in 2016 just after the accident and his youthfulness played a part in his failure of that grade. Telling is the fact that, when he repeated grade 1 at the correct age for such grade, the child performed substantially and adequately in achieving a promotion to the next grade. Therefore, in my view, the experts are being short sighted in hammering the above point, as there are plausible reasons for failure of grade 1, and thus it is not solely accident related.[2]
- [19] During the course of this matter, I requested to have site of all the school reports. I was provided with copies of Grade R to Grade
4. Turning to the school reports, these in my view, are consistent with a child of average intellect, which is demonstrated throughout. There is no comparison that can be made as there are no pre-accident reports, as the child had just commenced schooling when the accident occurred. It is thus informative to look to his parent and sibling's school progression, the fact that the 'educational landscape' has changed and importantly the economic climate that our country finds itself, with the majority of the youth being unemployed for more than a decade now.[3]
- [20] Thus, nothing takes away from the fact that the child still has the opportunities he would have had prior to the collision. He would still attain a grade 12 pass according to the experts. It would be foolish for an expert not to recognise that there was nothing one could compare against in terms of his level of education as he had just started his educational journey and he was still young with a developing brain.
- [21] I am therefore not persuaded that the plaintiff has proven his child's case for future loss of earnings at all, rather what has come to the fore, in my view, is that the child would be in the same position had he not have had the accident.
- [22] As regards the issue of costs the Road Accident Fund did not grace this court with its presence and input. For this reason, I am of the view that they are not entitled to costs.
- [23] In the result, the claim for future loss of earnings is dismissed with no order as to costs.

W. Hughes

Judge of the High Court, Pretoria

Heard on: 16, 17 & 18 November 2020

Electronically Delivered: 04 July 2022

Appearance:

For the Plaintiff: Adv. Bothetele

[1] Road Accident Fund Act 56 of 1996.

[2] Hlalele obo Hlalele v Road Accident Fund 41304/2013)

[2015] ZAGPJHC 54 para 14.

[3] Ibid para 16 & 20.

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