

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 1639/2016

2/5/2017

Reportable: No

Of interest to other judges: No

In the matter between:

J T

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KUBUSHI, J

INTRODUCTION

[1] The plaintiff instituted action against the defendant for damages in respect of bodily injuries she sustained in a motor vehicle collision on 29 November 2014.

[2] At the hearing of the case I was informed that the merits part of the claim has been settled and that the defendant accepted full liability for the damages sustained by the

plaintiff and undertook to provide the plaintiff with a certificate in terms of section 17 (4) (a) of the Road Accident Fund Act, 56 of 1996, as amended, in respect of future medical costs.

[3] What remains in issue is the damages part of the claim in respect of general damages and future loss of income. The general damages are to be postponed *sine die* as *per* agreement between the parties. I only have to decide the quantum for loss of future income.

[4] The defendant has not filed any quantum experts' reports. The parties are agreed that no evidence will be led and that arguments will be based on the plaintiff's quantum experts' reports. The plaintiff's experts' reports are contained in the 'Index to Plaintiff's Expert Bundle' which was handed in court, by consent, as Bundle "A".

[5] Bundle "A" consists of the following experts' reports:

- 5.1 Medico-Legal report of the orthopaedic surgeon;
- 5.2 Medico-Legal report of the occupational therapist;
- 5.3 Clinical-psychological report of the clinical psychologist;
- 5.4 Medico-Legal report of the neurosurgeon;
- 5.5 Psycho-Legal report of the industrial psychologist; and
- 5.6 Addendum to the medico-legal report of the orthopaedic surgeon.

[6] The crux is whether the plaintiff is entitled to damages for loss of future income, and if so, what contingencies should be applied, if any.

LOSS OF FUTURE INCOME

[7] The plaintiff is an attorney by profession. She was involved in a motor vehicle accident on 29 November 2014. She is presently 29 years old. At the time of the accident she was 27 years old. She commenced her career at Meintjies-Smit Inc in 2010 as a candidate attorney. She worked in this capacity for two years and was retrenched when the company closed down. She was earning a salary of R18 000 *per* month. Next, she was self-employed as an attorney for a period of one year and earned

an estimated income of R20 000 *per* month. On 7 January 2013 she commenced employment as an attorney, notary and conveyancer at FSF Attorneys Inc. She was employed as a senior associate and earned a salary of R30 000 *per* month with no added benefits. At the time of the accident she was employed with FSF Attorneys. Post-accident she did not take any sick leave and continued in her pre-morbid job until end of August 2016 when she resigned. No past loss of income was incurred as a result. The experts accepted that she would have in any event resigned from FSF Attorneys but for the accident. She became self-employed again working as a cost consultant. She entered into a retainer agreement with WB-Inc Attorneys earning R37 000 *per* month. She further ventured into legal/litigation work as well as conveyancing work which arise from time to time. The experts are agreed that but for the accident the plaintiff's career would have not necessarily developed any differently.

[8] As a result of the accident, the plaintiff sustained a whiplash neck injury and soft tissue injury to her back. The orthopaedic surgeon first assessed her on 14 March 2016 and later again on 31 January 2017. The MRI scan to the back revealed the degeneration of the discs at L1/2, L4/5 and LS/SI. The finding of both the orthopaedic surgeon and the neurosurgeon was that the degeneration will get worse in time and that the plaintiff would require lumbar back surgery and surgery to the neck in 10 to 20 years. The experts opined that due to the extent of the injuries the plaintiff will have to go on early retirement. Initially the prognosis was that she would retire 3 to 5 years earlier but after the second assessment of 31 January 2017 the orthopaedic surgeon confirmed that she will have to retire 5 years earlier.

[9] The experts are agreed that the plaintiff has been compromised by the injuries she sustained in the accident. The orthopaedic surgeon found that as a result of the injuries, the plaintiff showed adequate capacity for low range of medium physical work with adequate tolerance to sitting, standing and mobility in an occupational sitting. This according to the expert would result in her going on retirement 5 years early.

[10] The parties are in agreement that the plaintiff is entitled to be compensated for loss of future earnings due to the fact that she will have to go on early retirement. The parties are, however, not agreed as to when she will go on retirement. The plaintiff's contention based on the evidence of the orthopaedic surgeon is that she will go on

retirement 5 year earlier. The defendant's submission is that the plaintiff will go on retirement 3 years early because she was not seriously injured. According to the defendant, the plaintiff was injured over the weekend and was able to go back to work immediately thereafter.

[11] I am not inclined to accept the submission by the defendant that the plaintiff will go on retirement 3 years earlier. This submission is unfounded. I am more prepared to accept the substantiated evidence before me provided by expert witnesses which show that the plaintiff will retire 5 years early. The orthopaedic surgeon had initially indicated that the plaintiff will retire 3 to 5 years early but had to revise that time after assessing the plaintiff again. The new assessment indicates that the injuries have caused further degeneration of the L112, L4/5 and L5/S1.

[12] The defendant's further submission that the plaintiffs injuries are not serious is also unsubstantiated. The experts confirm that she was seriously injured. Besides the orthopaedic surgeon, the industrial psychologist also concludes in her report that the plaintiff has been compromised by the injuries sustained and that her condition is likely not going to improve much. The neurosurgeon's opinion is that the plaintiff sustained serious soft tissue lumbar back injury that will require surgery going forward.

[13] I am as such inclined to accept that the plaintiff will retire 5 years early.

CONTINGENCY CALCULATIONS:

[14] The plaintiff relies on the contingencies used in the actuarial report contained in Bundle "A". The actuary has made the following deductions: 15% to the pre- morbid future earnings and 25% to the post-morbid future earnings.

[15] The defendant's submission is that a higher contingency should be applied because the plaintiff had a hip replacement at the age of 4 years and suggest a contingency deduction of 20% pre-morbid. I do not agree. It is evident from the reports of the various experts that the hip replacement was not taken into account when assessing the plaintiff for the current claim. It is also evident from the injuries sustained by the plaintiff, namely the neck and the back, that there is no nexus between these

injuries and the previous injury of the hip replacement.

[16] As is trite, contingencies are within the discretion of the court. The deduction of 15% pre-morbid is normal and to me reasonable in the circumstances of this case. As such the plaintiff should be awarded an amount of R2 486 319 for loss of future income.

ORDER

[17] I make the following order

17.1 The Defendant is:

17.1.1. declared liable to pay 100% of the damages sustained by the Plaintiff, which forms the subject matter of this action;

17.1.2. ordered to pay the sum of R2 486 319 (Two Million Four Hundred and Eighty Six Thousand Three Hundred and Nineteen Rand) being for damages for loss of future earnings with interest on the above sum at the rate of 9% *per annum* calculated from the date of this order; and

17.1.3. furnish an undertaking as envisaged in section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996, as amended, to the effect that the defendant shall compensate the plaintiff in respect of 100% of the costs of future accommodation of the plaintiff in a hospital or nursing home, treatment of the plaintiff, rendering of a service to the plaintiff and supplying of goods to the plaintiff, after such costs have been incurred and on proof thereof arising from injuries sustained by her, which forms the subject matter of this action.

17.2 The damages claim for general damages is postponed *sine die*; and;

17.3 Costs are reserved.

E.M. KUBUSHI
JUDGE OF THE HIGH COURT

APPEARANCES:

HEARD ON THE	: 24 APRIL 2017
DATE OF JUDGMENT	: 2 May 2017
PLAINTIFF'S COUNSEL	: ADV. L. COETZEE
PLAINTIFF'S ATTORNEYS	: SURITA MARAIS ATTORNEYS
DEFENDANTS' COUNSEL	:ADV. B.T. MOELETSI
DEFENDANTS' ATTORNEY	: BRIAN RAMABOA INC.