IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

17/2/2010

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

17/2/2010 (DATE) .... (SIGNATURE)

CASENO: 18422/08

In the matter between:

RABE P J — PLAINTIFF

AND

THE ROAD ACCIDENT FUND — DEFENDANT

JUDGEMENT

TOLMAY, J:

Plaintiff was in a motor car accident on 16 April 2006 after which he instituted a claim against the RAF. The merits were conceded by the defendant and a very limited dispute was placed before me for determination namely the determination of appropriate deductions for contingencies on past and future loss of earnings, and the amount that should be awarded as general damages. The parties advised me that they had settled the claim for past medical and hospital expenses and the defendant has given an undertaking in terms of sec 17(4)(a) of the Act.

The expert reports filed by the plaintiff were handed in by consent and I was informed that the basis of the calculation of the actuary regarding past and future loss of earnings was not disputed only the applicable contingencies were disputed.

The plaintiff was the only witness that testified. Defendant called no witnesses. Plaintiff was working as a senior protection officer, Grade 6 at SBV at the time of the accident. His work involved the loading of Saswitch machines and he carried heavy bags of money in the execution of his duties. His work was of a physical nature. He enjoyed his work and would have preferred to stay in the security business.

From the expert reports it seems he suffered the following injuries: a left-supra-orbital laceration, abrasion of the left forearm, fracture of the left clavicle and a tibial plateau fracture of the right knee. The most serious injuries were the fracture of the right knee joint and the fracture of the shaft of the left clavicle. An open reduction and internal fixation of the right tibial plateau was performed. Plate fixation with an L-type plate was performed.

The plaintiff remained in hospital for 2 weeks. On 5 June 2007 a right knee arthroscopy was done. Plaintiff also testified that his shoulder causes him only mild discomfort at present, but his knee continues to cause him great discomfort and pain. The pain in his knee is experienced on a daily basis. He suffered from disruption of his sleeping patterns and he has to sleep with a pillow between his legs due to discomfort.

He uses panado and disprins as pain killers. The plaintiff testified that he can't run or jog nor can he play rugby any longer. Before the incident he jogged and planned to run the comrades. It is clear that his general enjoyment of life was seriously impaired as a result of the incident.

The plaintiff testified that he resigned his work after a dispute regarding a demotion and a decrease of his salary. His employer demoted him because he was after the accident not capable of dealing with the physical requirements of his job. He was thus not capable of doing the physical work required by a Grade 6 guard. After his resignation he started a business with his pension monies. The business failed due to plaintiff's inexperience and youthful ignorance. In March 2008 he joined his brother in his brother's business, Rabe's Metal Stitching CC where he assists in the financial and administrative side of the business. The business is small but is apparently doing well. He would have loved to stay on in the security business but is doing well in his present position. It was conceded by the defendant that due to the plaintiff's limitations it would be harder for him to compete in the open market.

At the time of the accident the plaintiff received a basic income of R4 800-00 per month and in all probability the plaintiff would have been promoted to Senior Protection Officer (Grade 7 level) in 5 years time (earning a basis income of R7 838-00 per month. At the time of the accident the plaintiff received R2 200-00 per month as a fringe benefit.

On 1 March 2008, the plaintiff started working at Rabe's Metal Stitching CC earning a basis salary of R4 500-00 per month. He does not receive any fringe benefit in his present position.

The calculated capitalised value of losses experienced by the plaintiff as a result of the incident amounts to R1 227 498-00, as calculated as follows by the actuary; this calculation was done without taking into consideration any contingencies.

PAST AND FUTURE LOSS OF INCOME

	Before the calculation date	After the calculation date	Total
Capitalised value of income as if no incident	R 340 098	R2 2378 352	R2 718 450
Capitalised value of income regarding the incident	R 228 637	R1 262 315	R1 490 952
Capitalised loss of income as a result of the incident	R 111 461	R1 116 037	R1 227 498

In **Southern Insurance Association *versus* Bailey N.O. 1984(1) 98 AD** the two approaches that can be used to ascertain future loss of earnings are discussed on p 113 where the following is said by Nicholas JA:

> *"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 guess work, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations, on the 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. It is manifest that either approach involves guesswork to a greater or lesser extent."*

Continues on page 114 C – D to state:

> *"In a case where the 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 a logical basis."*

Both positive and negative contingencies are taken into account by me. The plaintiff is a young man who will be limited in competing in the open employment market as a result of the injury. He resigned from his former employment due to the demotion and drop in salary, but I also have to take into account the fact that he started a business which was obviously not viable and which resulted in financial loss. Although he may not be living his dream he is in a relatively stable environment and there is no indication that this business may be at risk. The business has been doing well according to the evidence and there is no evidence that he may lose his job.

In the light of all the circumstances of this case I apply the contingencies as set out hereunder:

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1. **Past loss of income:**

Pre morbid :	R340 098-00 min 7%	R316 291-14
Post morbid:	R228 637-00 min 5%	(R217 205-20)
TOTAL 1:		**R 99 085-94**

2. **Future loss of income:**

Pre morbid:	R2 378 352-00 min 18%	R1 950 248-00
Post morbid:	R1 262 315-00 min 23%	(R 971 982-60)
TOTAL 2:		***R 978 265-40***

In the premises an amount of R1 077 351-30 is awarded as past and future loss of income.

General damages:

Regarding general damages for pain and suffering, disability and loss of enjoyment of amenities of life, I was referred to several cases dealing with fractured knees and comparable injuries *inter alia* **Marunga v RAF 2003(5) Corbett & Buchanan E3-8**. In that case an amount of R178 000-00 was awarded which relayed to today's values amounts to R280 000-00. In the matter of **Kerspuy v RAF 2002 Vol 5, Corbett & Buchanan** an amount of R35 000-00 was awarded in today's terms it would amount to R56 000-00. In **Titus v RAF 2003(3) Corbett & Buchanan** an amount of R80 000-00 was awarded which relayed to today's terms amount of R120 000-00. In the matter of ***Putuma v RAF Vol 5 Corbett & Buchanan 2008 E8-13*** an amount of R105 000-00 was awarded, relayed to today's terms this amount to R120 000.

In **Southern Insurance Ltd *versus* Bailey (Supra) on p 119 F-H** Nicholas JA said the following regarding the way in which general damages should be determined:

> *"This Court has never attempted to lay down rules as to the way in which the problem of an award of general damages should be approached."*

The accepted approach is the flexible one described in the often quoted statement of ***Watermeyer JA in Sandler versus Wholesale Coal Suppliers Ltd 1941 AD 194 at 199:***

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case."

It is thus clear that there is no uniform approach in the classification of general damages. In considering all the evidence as set out above as well as the authorities referred to I award an amount of R180 000-00 as general damages to the plaintiff.

Consequently I make the following order:

1. **The defendant will provide the plaintiff with an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.**

2. **Defendant is ordered to make payment of the amount of R1 257 351-30 to plaintiff.**

3. **Interest at a rate of 15.5% calculated 14 days from date of judgment to date of payment is awarded.**

4. The defendant is ordered to pay the costs.

R G TOLMAY
JUDGE OF THE HIGH

P J RABE

Vs

RAF

CASE NO: 18422/08

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DATE OF HEARING:

4 FEBRUARY 2010

DATE OF JUDGMENT:

17 FEBRUARY 2010

JUDGE: TOLMAY, J