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IN THE NORTH GAUTENG HIGH COURT
PRETORIA (REPUBLIC OF SOUTH AFRICA)

Case No: 24645/2009

DATE: 28/10/2010

in the matter between:

CS MLANGENI

vs

ROAD ACCIDENT FUND

JUDGEMENT

SAPIRE, A J:

The Plaintiff, a thirty year old man, was injured in a road accident on 28th April 2007.

The Defendant has accepted 100 percent liability for to compensate him for the damages sustained by him through bodily injury. In issue only, are the amounts to be awarded for general damage, and in respect of his alleged loss of earning capacity or of earning capacity or estimated loss of earnings in the future. The defendant agrees to furnish the plaintiff with a statutory undertaking in terms of Section 17(4) (a) of the Road Accident Fund to provide for future hospital and is injuries sustained in the accident. At the commencement of the trial Plaintiff handed up a bundle (paginated indexed and bound), of expert reports which he informed me, the parties had so agreed, was to be regarded as uncontested evidence upon which the parties were agreed I was to make

an award comprising compensation for loss of earning capacity, and general damages.. Both the opinions of the experts and the facts on which they were based were common cause.

The matter was complicated when at the commencement of the hearing plaintiffs counsel called plaintiff to testify to new matter upon which the Plaintiff was later, to make an increased claim. Plaintiff testified that although he was presently in employment his contract the period of which was for one year was not to be renewed. Plaintiff inferred that the reason was that because of his injuries he could not perform his tasks to the satisfaction of his employer. On the basis of this Plaintiffs counsel advanced the argument that Plaintiff was permanently disabled from doing the only work he knew and that his loss of earning capacity should be calculated on this basis. Such a calculation would bring the amount claimed far excess of that specified in the amended particulars of claim. Plaintiff therefore proposed an amendment to the pleadings to increase the amount of damages claimed. Defendant strenuously opposed the granting of an amendment and indicated that, because the basis of the amendment ran contrary to what had until then been an agreed factual basis on which damages were to be assessed and calculated, if the amendment were granted, it would necessitate a postponement. The plaintiffs counsel then indicated that the plaintiffs instructions to him were that the trial was to be concluded that day and if the amendment would result in a postponement, he did not wish to proceed with the proposed amendment. This being so, plaintiffs counsel abandoned the application for amendment and rightly conceded that the court should make its award on the basis of the pleadings and the claims as they stood.

Of crucial importance in examining Plaintiffs claim for loss of earning capacity or loss of

future earnings as it is sometimes expressed, is the report of Dr P Engelbrecht an orthopaedic surgeon. His report is dated 13th August 2010. His examination of the Plaintiff would have been shortly before this date. His opinion is therefore, up to date to all intents and purposes. On the issue to be determined in these proceedings the doctor has this to say after a careful and thorough examination of the plaintiff "Work Capacity (a) Pas:

The period of sick leave granted to this patient was necessary.

(b) Present and Future

The patient is employed as a heavy machine operator. With further medical treatment I do not foresee early retirement nor a permanent loss of work capacity due to the accident and the sequelae thereof."

No reason was given why the further medical treatment envisaged by the doctor, had not been undertaken hitherto. As plaintiff is to receive a certificate to cover hospitalization and medical expenses there seem to be no reason for not undergoing the treatment forthwith. There is nothing to controvert the opinion expressed by the doctor, which I am to treat as accepted both by plaintiff and defendant. The opinions of other experts on the subject of the plaintiff's loss of earning capacity cannot detract from the unequivocal prognosis expressed by the orthopaedic surgeon.

That being so, there is no basis for an award in respect of future loss of earnings or loss of earning capacity.

In respect of general damage, the amount, R120, 000 I award is in accordance with awards made in similar circumstances.

I grant judgment to the plaintiff in terms of a draft order submitted by the parties as follows.

1. Judgement in plaintiffs favour for R 120 000,00.

2. The defendant will furnish the plaintiff with a statutory undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, 1996 (Act 56 of 1996) to compensate the claimant for loss of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the claimant after the costs have been incurred and on proof thereof, arising out of the injuries sustained by him in a motor vehicle collision on 28/4/07.

3. The total amount in 1 above is payable on or before 2/11/10 into the bank account of P A S ATTORNEYS with banking details as follow

FNB, ERMELO

ACCOUNT:

CODE:

REF: Mr Stoffberg

4. The defendant will not be liable for any interest on the instalment payment if payment is made as stipulated in 2 above. If no payment is received on or before 28/11/10 interest shall be calculated at 15.5 percent from date of court order up until date of full and final payment.

5. The defendant will pay the plaintiffs taxed or agreed party and party cost on the applicable high court scale subject to the following conditions:

(a) The plaintiff shall in the event that the cost are not agreed serve a notice of taxation on the defendant's attorneys of record; and

(b) The plaintiff shall allow the defendant 7 court days to make payment of the taxed or agreed cost;

The cost shall include the cost to the date of this order, which cost shall further include the necessary travelling costs and expenses, the reasonable cost on consulting with plaintiff to consider this offer, the cost incurred to accept this offer, and make the offer an order of court. The cost shall also further include:

5.1 The cost of all medical legal reports of the experts and actuarial reports which were filed.

5.2 Travelling cost and expenses for plaintiff to attend all the medical legal specialist appointments.

5.3 Travelling cost and expenses for plaintiff to attend court as necessary witness on 6/10/10 and 18/10/10.

5.4 The cost shall also include cost of counsel Mr D J Marx which includes his day fee for 6/10/10 and 18/10/10.

5.5 The cost shall also include the interpreter's fee for 18/10/10.

SAPIRE, A J

NORTH GAUTENG HIGH COURT

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