

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, PORT ELIZABETH**

**Case no: 2521/2015
Date heard: 9th December 2016
Date delivered: 17th January 2017**

In the matter between:

DEON VAN NIEKERK

Plaintiff

VS

ROAD ACCIDENT FUND

Defendant

JUDGMENT

TSHIKI J:

[1] The plaintiff herein issued summons against the defendant for damages arising from a motor vehicle accident which occurred in a motor vehicle collision in which the plaintiff was seriously injured.

[2] When the matter was called before me, I was advised by the parties that both the merits of the plaintiff's claim and quantum of his damages as well as what follows hereunder:

- (a) the defendant agrees to pay the plaintiff's taxed or agreed party and party costs on the applicable High Court scale subject to the following conditions:
 - (i) the plaintiff shall serve a notice of taxation on the defendant's attorney of record; and

- (ii) the plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs.

[3] The aforementioned offer of costs includes payment of the qualifying fees, if any, of any expert in respect of whom plaintiff has given notice in terms of the provisions of Rule 36(9)(a) and (b).

[4] In the event of this offer being accepted, the plaintiff's attorneys are requested to furnish in their notice of acceptance details of their trust account to enable the defendant to make direct payment of the amount involved.

[5] If the plaintiff has concluded a contingency fee agreement with his attorney, acceptance of this offer of settlement will serve as confirmation that the plaintiff and his attorney have complied with section 4(1) and (2) of the Contingency Fees Act 66 of 1997 through having filed the required affidavits with either the Court, if the matter is before Court, or with the relevant professional controlling body, if the matter is not before Court.

[6] The offer was made subject to it replacing all previous offers made in this matter, which are also hereby withdrawn.

[7] The parties were, however, unable to reach agreement in respect of the costs order to be made. Even in respect of the costs issue the only issue is about the costs of two counsel. For the above reasons, the Court had to listen to counsels' argument in Court regarding the issue of costs.

[8] I have been referred to four judgments of our division meaning the Eastern Cape Division. The first judgment has facts similar to those of the one in issue in ***Gerrit Smit v The Road Accident Fund*** in case no 448/2013 heard on 3rd March 2014 in Port Elizabeth.

[9] In the above judgment, the parties were also unable to reach agreement in respect of the costs order to be made. The defendant has tendered the plaintiff's costs including the qualifying expenses of expert witnesses on a party and party scale. The plaintiff on the other hand sought a further order that the defendant be liable to pay costs of two counsel.

[10] The plaintiff suffered serious injuries as a result of the collision being a head injury with concussion, a traumatic brain injury, a ligament injury to the left foot and a haematoma to her right temporal area. The original particulars of claim included only a nominal estimated amount for loss of earnings and future loss of income or capacity which claim under these heads of damages was substantially increased in April 2015 shortly before the allocated trial date. In order to substantiate the plaintiff's claim founded upon the fact that she had suffered a traumatic brain injury resulting in a loss of earning, the plaintiff qualified nine expert witnesses. One of the expert reports were admitted until a few days before the trial was to commence on the 12th June 2015 for some good reasons though. The matter was ultimately settled.

[11] The order that was granted by consent states as follows:

“[11.1] Defendant is liable for 80% of plaintiff's proven or agreed damages;

[11.2] Defendant is to pay to plaintiff the sum of R3 573 162.58 in full and final settlement of plaintiff's claim for damages;

[11.3] Payment of the aforesaid amount in paragraph [11.2] above shall be made within 14 days from date of this order directly to plaintiff's attorney of record, Morne Struwig Inc., trust account, details of which are as follows:

Name	:	Morne Struwig Inc.
Bank	:	Standard Bank
Branch	:	Pickering Street
Branch code	:	050017
Account Number	:	[0...]

[11.4] Failing payment of the aforesaid amount in paragraph [11.2] above defendant is to pay interest on the aforesaid amount in paragraph [11.2] above from a date 14 days from date of this order to date of payment at the rate of 10.5% per annum;

[11.5] Defendant shall furnish plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund, Act 56 of 1996, for 80% of the costs of future accommodation of plaintiff in a hospital or nursing home, or treatment of or rendering of a service to him or supplying of goods to him, and as further detailed in the reports filed by the parties to date, arising out of the injuries sustained by him in the collision on 24 October 2012, after such costs have been incurred and upon proof thereof;

[11.6] Defendant is to pay plaintiff's costs of suit on the party and party scale up to and including the date on which this judgment is delivered, as taxed or agreed, such costs are to include:

[11.6.1] The costs of the reports and supplementary reports, if any, of:

- [11.6.1.1] Dr J Dippenaar;
- [11.6.1.2] Dr PA Olivier;
- [11.6.1.3] Dr E de Wit;
- [11.6.1.4] Mrs A van Zyl;
- [11.6.1.5] Dr K Piro;
- [11.6.1.6] Munro Forensic Actuaries.

[11.7] The reasonable qualifying fees and expenses, if any, of:

- [11.7.1] Dr PA Olivier;
- [11.7.2] Dr E de Wit;
- [11.7.3] Mrs A van Zyl;
- [11.7.4] Dr K Piro;
- [11.7.5] Munro Forensic Actuaries

[11.8] The trial costs.

[11.9] The reasonable costs of consultations of plaintiff's counsel and plaintiff's attorney with plaintiff's experts and lay witnesses in the preparation for the trial.

[11.10] The costs involved in attending a pre-trial inspection *in loco* with counsel.

[11.11] The costs of the employment of two counsel."

[12] In my view, the fact that this Court has also furnished the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Act, Act 56 of 1996, for 80% of the costs of future accommodation of plaintiff in a hospital or nursing home, or treatment of or rendering of a service etc is indicative and proof of the seriousness of the injuries sustained by the plaintiff.

[13] What I have also said above also applies to the necessity for the matter and its litigation to be dealt with by senior counsel to show that the litigation in this matter necessarily merits the appointment of two counsels.

[14] In the result, I make the following order:

- “[1] Defendant is liable for 80% of plaintiff's proven or agreed damages;
- [2] Defendant is to pay to plaintiff the sum of R3 573 162.58 in full and final settlement of plaintiff's claim for damages;
- [3] Payment of the aforesaid amount in paragraph [11.2] above shall be made within 14 days from date of this order directly to plaintiff's attorney of record, Morne Struwig Inc., trust account, details of which are as follows:

Name	:	Morne Struwig Inc.
Bank	:	Standard Bank
Branch	:	Pickering Street
Branch code	:	050017
Account Number	:	[0...]
- [4] Failing payment of the aforesaid amount in paragraph [11.2] above defendant is to pay interest on the aforesaid amount in paragraph [11.2] above from a date 14 days from date of this order to date of payment at the rate of 10.5% per annum;
- [5] Defendant shall furnish plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund, Act 56 of 1996, for 80% of the costs of future accommodation of plaintiff in a hospital or nursing home, or treatment of or rendering of a service to him or supplying of goods to

him, and as further detailed in the reports filed by the parties to date, arising out of the injuries sustained by him in the collision on 24 October 2012, after such costs have been incurred and upon proof thereof;

- [6] Defendant is to pay plaintiff's costs of suit on the party and party scale up to and including 9 December 2016, as taxed or agreed, such costs are to include:

[6.1] The costs of the reports and supplementary reports, if any, of:

[6.1.1] Dr J Dippenaar;

[6.1.2] Dr PA Olivier;

[6.1.3] Dr E de Wit;

[6.1.4] Mrs A van Zyl;

[6.1.5] Dr K Piro;

[6.1.6] Munro Forensic Actuaries.

[6.2] The reasonable qualifying fees and expenses, if any, of:

[6.2.1] Dr PA Olivier;

[6.2.2] Dr E de Wit;

[6.2.3] Mrs A van Zyl;

[6.2.4] Dr K Piro;

[6.2.5] Munro Forensic Actuaries

[6.3] The trial costs.

[6.4] The reasonable costs of consultations of plaintiff's counsel and plaintiff's attorney with plaintiff's experts and lay witnesses in the preparation for the trial.

[6.5] The costs involved in attending a pre-trial inspection *in loco* with counsel.

[6.6] The costs of the employment of two counsel.

[7] Defendant is to pay interest on plaintiff's said taxed or agreed costs at the rate of 10.5% per annum from a date 14 days after *allocatur* or agreement to date of payment."

P.W. TSHIKI
JUDGE OF THE HIGH COURT

For the applicant	:	Adv Frost together with Adv Williams
Instructed by	:	Morne Struwig Inc.
		PORT ELIZABETH
		Ref: Morne Struwig/BJ/VAN142
		Tel: 041 – 379 2736

For the defendant	:	Adv Paterson
Instructed by	:	Friedman Scheckter
		PORT ELIZABETH
		Ref: N America/af/L34900