

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

CASE NO. 8336/2021

(1) REPORTABLE: YES/NO

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

(3) REVISED: YES/NO

DATE: 31/3/23

SIGNATURE:

In the matter between:

BOIKETLO PRUDENCE ESITANG

APPLICANT

AND

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

MAKHOB A J

- 1) The plaintiff instituted an action against the defendant for damages suffered as the result of injuries sustained in a motor vehicle collision that occurred on the 16th December 2018.
- 2) The merits of the matter have been settled between the parties 100% plus section 17 (4) (a) undertaking. The only issue raised by the plaintiff is general damages, past and future loss of income.

- 3) On the date of the trial, the defendant was not represented and the attempt to settle the matter did not yield any results except a concession on the merits and section 17(4)(a) undertaking.
- 4) The plaintiff testified that she was 21 years old at the time of the accident and was currently 25 years old. She is currently studying at the Cape Peninsula University of Technology for a diploma in journalism. At the time of the accident, she was a student at UNISA studying for a two-year higher certificate.
- 5) In March 2018 she started a nail technician business after the accident she could not work in her business for three months. She returned to work in April 2019 but closed her business in July 2019 as the physical demands of her work were too much due to the injuries she sustained.
- 6) After the oral evidence by the plaintiff counsel addressed the court and asked for default judgement on the following:

Past loss of income	R1562.75
Future loss of Income	<u>R1661 656 80</u>
Total loss	R1663219.55
General damages	<u>R700 000</u>
Total	R2 363 219.55

- 7) The orthopaedic surgeon Dr DA Birrell records the following injuries sustained by the plaintiff (case-lines 007-13)

7.1 Fracture of the right clavicle

7.2 Fracture of the left hip

She was discharged on the 28th December 2018. 29 January 2019 she was discharged from treatment.

- 8) Dr Birrel says in his conclusion that because of the hip injury she might have to retire at the age of 60 years.
- 9) The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.
- 10) It is indeed so that even though defendant is not represented in the proceedings the court cannot simply grant the order as requested, the court must see to it that the requested order is in accordance with justice.
- 11) It is trite law that the amount to be awarded in respect of general damages are within the courts discretion however the court is not bound but is guided by past awards in other similar matters.
- 12) Taking into account the cases referred to by counsel for the

Plaintiff in paragraph 10.6 of the heads of argument, I am of the view that the appropriate amount to be awarded to the plaintiff for general damages is an amount of R600 000.00 (six hundred thousand rands only)

- 13) The evaluation of the amount to be awarded for loss does not involve proof on a balance of probabilities. Where a court is dealing with damages which are depended upon uncertain future event, which is generally the case in claims for loss of earning capacity, the plaintiff does not have to provide proof on a balance of probabilities.
- 14) The parties routinely seek to assist the court in assessment of the amount payable and resort to the expertise of an actuary. This is not an obligatory approach to the quantification of damages and a court should be careful not to treat these reports as if they are scientific data.
- 15) It is trite that the onus rests on the plaintiff to prove her case on the balance of probabilities see Pillay V Krishna, 1946 SA 946. Thus the duty is on the plaintiff

to produce evidence that because of the injury, she has suffered loss of income.

- 16) I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability.
- 17) I am of the view that the plaintiff failed to prove in this court that she had a business and she was earning a salary or income in her modelling career. I say this for the following reasons.

Nail/Manicure business

She only refers to photos of nail products and a bank statements of one or two amounts. There is no income and expenditure statement or tangible proof of income. There are no receipts as proof of paying for the products or receipt of monies from clients (See 005-14,12,13 on case-lines)

Modelling business

There is no proof of what she earned under this heading only an enrolment form with the SNYC Model management (See 005-11 on case-lines)

- 18) Thus therefore in my view the plaintiff failed in her duty to satisfy the court that she has lost any past or future loss of earnings as per the submissions of her counsel in the heads of argument.
- 19) However she is currently studying (See 005-9 on case-lines). The orthopaedic surgeon says she might have to retire at the age of 60 years. There is no exact calculation of what the future loss may be if she does obtain the certificate and she is employed. In my opinion the rough estimate for future loss of income is R900 000.00 (nine hundred thousand rands only)

- 20) I make the following order

- 20.1) The defendant is liable for 100% of the plaintiffs proven liability
- 20.2) The defendant shall pay the plaintiff an amount of R600 000(six hundred thousand rands only) for general damages.
- 20.3) Future medical expenses: undertaking section 17 (4)(9)
- 20.4) The defendant shall pay the plaintiff an amount of R900 000.00 (nine hundred thousand rand only) for future loss of income
- 20.5) The plaintiffs past loss of income is dismissed
- 20.6) Costs of suit

D. MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiff: Adv Maryke van Rooyen

Instructed by Savage Jooste & Adams

For the Defendant: Adv

**Instructed by: State Attorney
Pheena Brenda Rangata**

Date heard: 20/02/2023

Date delivered: 31/3/2023