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IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case number: 3416/2019

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

CIRCULATE TO MAGISTRATES: NO

In the matter between:

MMATHABO MAGGIE NAILE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

CORAM: **M E MAHLANGU, AJ**

JUDGMENT BY: **M E MAHLANGU, AJ**

HEARD ON: **23 AND 24 MAY 2023**

DELIVERED ON: **1 JUNE 2023**

INTRODUCTION

[1] On 2 December 2017 the plaintiff was injured in a motor vehicle accident. As a result of the injuries, the plaintiff claimed damages from the defendant.

[2] The defendant was represented on 23 May 2023 when the matter was stood down till 24 May 2023 for settlement purposes. On 24 May 2023, the defendant was not represented in court. The defendant's representative approached me in chambers to inform me that there would be no representative for the defendant. The defendant's attorney who was handling the matter on 23 May 2023 was engaged in a trial in another court. The matter proceeded on default basis.

[3] At the start of the trial, the plaintiff's representative, made an application to amend the plaintiff's particulars of claim. The amendment was not objected to. The court granted leave to amend. The amendment was not prejudicial to the defendant. It related to the amount of money claimed as per the actuarial calculations. The plaintiff's representative further informed the court that, the only issues to be adjudicated by the court were the merits of the matter, the undertaking by the defendant and the general damages.

Plaintiff's evidence, injuries and sequelae

[4] The plaintiff was 21 year old at the time of the accident. After completing her Grade 12 certificate in 2015, she actively sought the employment without success. In 2017, she enrolled Chemical Engineering with Faveolus Mareka TVET College where she successfully completed her N4 and N5 studies.

[5] She could not proceed with her studies in 2018 as a result of the injuries she sustained and the sequelae thereof. She testified that she experienced severe pains and limitations in her right hand

[6] She testified that she was a passenger in the motor vehicle that was involved in an accident. Following the accident she was transported by ambulance to Pelonomi hospital where she was admitted and discharged on 11 December 2017. She was diagnosed to have sustained a right distal radius intra-articular fracture and

distal ulna dislocation. The right forearm was immobilised in a Plaster of Paris cast. On 18 December 2017, plaintiff presented herself to the hospital for a follow up check-up appointment. During 2019, she underwent an operation on her right arm in which a permanent plate with screws was inserted to support her wrist.

[7] The plaintiff testified that she is a right handed person. She testified that she is still experiencing daily pain on her right hand as a result of the accident. She struggles to do her daily duties like making her own bed and dressing herself. Her family is assisting her with most of her household chores. She still wears a wrist brace and she cannot use her hand even to write at school. She testified that her arm becomes very painful during the cold weather. During the hot weather her fingers become swollen. Her right hand always requires support and she is always carrying it on her stomach.

[8] The plaintiff was wearing a wrist brace whilst testifying in court and she could not freely move her right hand as she could do with her left hand side as she was demonstrating in court.

Expert witnesses' evidence

[9] I do not intend dealing with the detail of the plaintiff's expert reports. The following expert reports were admitted by the court as evidence:

1. Dr. JP Marin -Orthopaedic Surgeon;
2. Ms Karla van den Bergh-Occupational Therapist;
3. Mr Ben Moodie-Industrial Psychologist.
4. Johan Sauer-Actuary

[10] I have considered the contents of the said reports, in conjunction with the respective heads of arguments filed on behalf of the plaintiff.

Merits and an undertaking

[11] As mentioned above, the plaintiff testified that she was a passenger in a motor vehicle that was involved in an accident. That warrants the court to grant her 100% claim against the defendant.

[12] I am also of a view that the defendant should furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the plaintiff arising out of the injuries sustained in the collision which occurred on 2 December 2017.

General damages

[13] With regard to general damages, the plaintiff had claimed in her amended particulars of claim an amount of R803,000.00.

[14] In the matter of **AA Mutual Insurance v Maqula 1978(1) SA 805** at paragraphs 809A-B, the then Appellate Division held that it is settled law that a trial court has a wide discretion to award what it in the particular circumstances considers to be fair and adequate compensation to the injured party for his bodily injuries and their sequelae.

[15] Mr B Moodie, the plaintiff's industrial psychologist, stated in his report that the plaintiff will likely not be able to complete her diploma successfully considering the injury and the sequelae thereof. He further stated in her report that, the plaintiff is unlikely to reach her pre-morbid career path in chemical engineering.

[16] Dr Marin, the plaintiff's orthopaedic surgeon, stated in his report that, the long term prognosis of the plaintiff's wrist is compromised. He further mentioned that, the plaintiff has developed osteoarthritis in her right wrist and it will progress in the future.

[17] The plaintiff was 21 years of age at the time of the accident and was 27 years of age at the time of the hearing of this matter. Both Mr Marin and Mr Moodie are of a view that the injury sustained by the plaintiff would not have detrimental effect to her life expectancy. Counsel for the plaintiff have referred me to previous comparable cases as is the norm. I do not intend to deal with each case specifically save to state that they are mainly distinguishable from the present because the injuries and consequences in those cases were either more severe or less so. So too do the personal circumstances of the plaintiffs in those cases differ from that of the plaintiff. However they do serve as a helpful guideline.

[18] I have given all the above factors due consideration and have concluded that an award of R803 000.00 would reflect as a fair compensation for general damages to the plaintiff.

Conclusion

[19] I am of a view that, the defendant is liable to compensate plaintiff for 100% of her proven damages.

[20] The defendant to furnish the plaintiff with an undertaking in terms of section 174(4)(a) of Act 56 of 1996.

[21] I have also concluded that an amount of R803 000.00 would be a reasonable and a fair amount to the plaintiff's general damages.

Order

[22] Therefore the following orders are made:

The draft order marked "X" is made an order of this court.

MAHLANGU AJ

REPRESENTATIVE

The defendant is liable to compensate the plaintiff for 100% (One Hundred Percent) of her proven or agreed damages.

2.

2.1. The plaintiff is granted leave to amend her particulars of claim, which is amended as follows:

2.1.1. Paragraph 7.5 is amended by replacing--the- amount R 703 000,00 with the amount R 803 000,00.

2.1.2. The amount of R 11,869,539 as per-paragraph a) of the prayers to the particulars of claim is replaced with the amount R 11 922 539,00.

3.

4.1. The defendant shall pay the plaintiff the sum of **R 803 000,00 (EIGHT HUNDRED AND THREE THOUSAND RAND}** in respect of general damages.

4.2. The defendant shall pay the abovementioned amount into the plaintiffs Attorney's trust account

The Plaintiffs Attorney's trust account details are as follows:

ACCOUNT HOLDER: VZLR INC

BRANCH: ABSA BUSINESS BANK HILLCREST

BRANCH CODE: 632005

TYPE OF ACCOUNT: TRUST ACCOUNT

ACCOUNT NUMBER: 3[...]

REFERENCE: M[...]

4.3. In the event that the defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the defendant will be liable for payment of interest on such amount at 11,25% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.

5.

5.1 The defendant shall furnish the plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **2 December 2017**.

5.2 Counsel Fees.

6.

6.1 The defendant to pay the plaintiff's taxed or agreed party and party cost, up to and including the trial dates of 23, 24 & 26 May 2023, and the date when this order is made an order of court, including but not limited to the costs set out in paragraph

6.2 The reasonable taxable reservation fees and qualifying fees of the following experts:

6.2.1 Dr JP Marin - Orthopaedic Surgeon

6.2.2 Ms Karla van den Bergh - Rita van Biljon Occupational Therapists

6.2.3 Mr Ben Moodie - Industrial Psychologist

6.2.4 Mr Johan Sauer – Actuary

7.

In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory more rate on the date of taxation / settlement of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

By Order of the Court

Mahlangu AJ