

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

CASE NO: 54034/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 26 March 2024

In the matter between:

MT obo PM

APPLICANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

DE VOS AJ

- [1] The plaintiff claimed just shy of R 9 million for future loss of earnings. The plaintiff was a child at the time of the accident and suffered significant and unsightly scarring to his face. The impact of these scars has, according to the experts left him incapable of achieving the potential he had, prior to the accident.
- [2] The Court requested a recalculation of the quantum. The Educational Psychologist had provided two conflicting reports. The first was for an estimated career ceiling of

NQF6 post injury and the second estimation was a NQF5 qualification. For reasons set out in my judgment of 22 February 2024, the second report was preferred. I therefore requested a recalculation premised on the estimation in the first report. The plaintiff provided the recalculation on 5 March 2024. All that remains is the application of contingencies to the quantum as recalculated.

[3] At the hearing of the matter, I had provided the plaintiff with an opportunity to file further submissions and make oral submissions on two occasions. The order of February 2024 also permitted the plaintiff to make further submission within five days of providing the court with the recalculations. The order provided that if no submissions were received the Court would make a determination without such submissions. These submissions were not received. The Court requested the registrar on 13 March 2024 to reach out to the plaintiff and make sure it did not wish to make any further written submissions. Such a further invitation was extended on 14 March 2024. The invitation was not accepted.

[4] The Court will therefore turn to the case law as guideline for the calculation of contingencies. The contingencies (for future uninjured) has as a guideline Koch's sliding scale. The sliding scale provides for 0.5% per year until retirement. The contingency, premised solely on the Koch sliding scale should be at least 30%. However, the expert evidence before the Court indicates that there is an even higher degree of uncertainty in relation to young Mr PM.

[5] Ms Masipa, the Educational Psychologist, postulates that Mr PM would have studied towards a NQF 7 (matric, plus a degree). The EP notes that there is a high degree of uncertainty in this regard as Mr PM –

“attended creche for a few months in 2011 and he was withdrawn because his parents were not satisfied with the care. He was therefore, cared for at home until the time of the accident. Therefore, there is no reliable evidence of his learning ability.”¹

¹ CL 2-8

[6] The additional difficulty, as acknowledged by the EP, is that the immediate circumstances of the child creates further uncertainty. In this case, those are that his mother obtained a nursing certificate post matric and that his father completed matric, whilst his sole sibling, an older sister, had not passed matric. The uncertainties in relation to young Mr PM's ability to reach the NQF 7 as postulated by the EP would require a higher contingency than the usual contingency to be applied. For this reason, the Court applies a 40% contingency for future uninjured loss resulting in a loss of R 8 075 040.

[7] As for future uninjured loss the Court has used a 40% contingency as well, as there are none of the usual factors present to increase this contingency further. It weighs with the Court that young Mr PM is doing exceptionally well at school for many years since the accident. The Educational Psychologist notes that according to "his school progress reports of grade R to grade 4, his performance has been ranging between meritorious and outstanding achievement."² In addition according to the child's parents "they have not received any complaint with regard to his learning or behaviour from school".³ His score card shows that of English and Life Skills he achieved 85 and 93% respectively. He also sustains an A+ in maths.⁴ The results of his cognitive and intellectual assessment indicates that he is above average in non-verbal tests and average on a verbal scale. Post -accident he will be able to reach matric "with ease".⁵ The IP's report indicates that the child reached his normal developmental milestones. He has subsequent to the accident attended school and has to date not failed or repeated any grade.

[8] The calculation of 40% contingencies on future injured (premised on a NQF6) has been calculated by the actuary to be R 5 172 360. The difference between the uninjured and injured calculations are R 2 902 680.

Order:

[9] The Court orders:

² CL 2-77

³ Id

⁴ CL 2-78

⁵ CL 2-86

1. The defendant shall pay 100% of the plaintiff's damages.
2. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the road Accident Fund Act 56 of 1996.
3. The defendant shall pay the plaintiff an amount of R 2,902 680 for future loss of earnings.
4. The issue of general damages is postponed sine die.
5. The defendant is to pay the plaintiff's costs.
6. The quantum and taxed or agreed costs as referred to in to above shall be paid into the trust account of the Plaintiff's Attorney MOLEFE MACHAKA ATTORNEYS INC. which is as follows:

ACCOUNT HOLDER : MOLEFE MACHAKA ATTORNEYS INC.

ACCOUNT TYPE : TRUST

ACCOUNT NUMBER : 4[...]

NAME OF BANK : A[...]

BRANCH : 6[...]

CODE REFERENCE NO : M[...]

7. There is no valid contingency fee agreement.

I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the plaintiff:	M MASHAU
Instructed by:	Molefe Machaka Attorneys
Date of receiving calculations:	5 March 2024
Date of judgment:	26 March 2024