



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 1472/2017

In the matter between:

LOUIS LE ROUX POHL S.C N.O obo
M[....] R[....] P[....]
C[....] P[....]

First Plaintiff

Second Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: C L PAGE AJ

HEARD ON: 20 October 2021.

DELIVERED ON: 20 January 2022

- [1] These are action proceedings instituted against the Road Accident Fund for damages arising from bodily injuries sustained by a minor arising from a motor vehicle accident which occurred on 21 June 2011 within the jurisdiction of this court.

- [2] The Second Plaintiff, a minor is represented by the First Plaintiff in his capacity as curator ad litem.
- [3] The findings of all experts as per the expert bundle are admitted by the Defendant.
- [4] It is common cause that the Second Plaintiff was a 5-year-old boy at the time of the motor vehicle accident. He sustained a head injury, right hip injury and psychological trauma.
- [5] The merits in the matter are admitted by the Defendant and the only issues for adjudication are the determination of general damages and future loss of income in respect of the Second Plaintiff.

General Damages:

- [6] In determining general damages it is trite that the nature, severity and permanency of the injuries sustained, as well as the pain and suffering, disfigurement, permanent disability and the effect of these factors on the person's lifestyle should be regarded.
- [7] Dr van Aswegen, a neurosurgeon, describes the injuries of the Second Defendant as a mild traumatic injury.
- [8] Dr Oelofse, an orthopaedic surgeon, diagnosed the Second Plaintiff with " Final Stage Necrosis of the right Femur with advanced hip joint damage secondary to a Salter Harris fracture of the femoral head". The condition is described to be "cellular death (necrosis) of bone components due to interruption of blood supply". The expert opines that this disease is at an advanced stage. It is recommended by the expert that a total hip replacement be done when the symptoms reach a level where the quality of life is affected. The condition is described as painful and could lead to arthritis. The expert further found that the right leg of the Second

Plaintiff was about ½ cm shorter than the left leg. Dr Oelofse examined the Second Plaintiff again in 2018 and confirms the same diagnosis. He noted that the Second Plaintiff's right leg is now noticeably shorter by 2 cm.

- [9] Counsel has referred to various comparable caselaw in their heads of argument and oral arguments. I have considered these cases in my determination of general damages.

Loss of Future Earnings:

- [10] The expert evidence by the relevant experts stands uncontested and includes a final evaluation by Ms E Prinsloo, a psychologist, that the Second Plaintiff will only succeed to level 4 in a special school which would best allow the Plaintiff to do physical work which he is quite clearly not able to do in the light of his serious orthopaedic injuries and the consequences of his head injury.
- [11] The industrial psychologist, Dr Jacobs opined that the Second Plaintiff will in all likelihood remain unemployed, due to the findings by the experts that a consequence of the head injury is diminished cognitive ability which will not allow him to do sedentary work, which is the only possible work he may have qualified for had he not sustained the serious orthopaedic injuries.
- [12] The contingency percentage deduction which needs to be deducted from the Second Plaintiff's uninjured income projection stands to be decided. It is suggested that a 22.5% contingency deduction be implemented by the Second Plaintiff's legal representative. This is the deduction implemented by the actuarial expert report which stands uncontested.
- [13] In *Road Accident Fund v Guedes* 2006(5) SA (SCA) ON P 586 PARA(8), the court held as follows:

“ It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another'

negligence. Such damages include loss of future earning capacity...The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative, and a court can therefor only make an estimate of the present value of the loss that is a very rough estimate...The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just..”

[14] Per Henochsberg J in *Gillbanks v Sigourney* 1959 (2) SA 11 (N) 14H:

“ ... any enquiries into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try and make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course on the soundness of the assumptions, and these may vary from the strongly probable to the speculative...either approach involves guesswork to a greater or lesser extent. But the court cannot for this reason adopt a non-possumus attitude and make no reward...in cases where the court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of actuarial computations may be no more than “informed guess” it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial judge’s “gut feeling” as to what is fair and reasonable is nothing more than a blind guess...Nevertheless, I do not think that even in such a case it is wrong in principle to make an assessment on the basis of actuarial calculations.”

[15] Per Nicholas JA in *Southern Insurance Association LTD v Baily* NO 1984 (1) SA 98 at 113 G-114 E, the following was said:

“The trial judge retains nonetheless a large discretion to award under the circumstances he considers right. He may be guided but is certainly not tied down by exorable actuarial calculations.”

[16] Having evaluated the evidence and having heard arguments from both parties, I make the following order:

1. Payment by the Defendant to the Plaintiff in the sum of R 3 293 120.00 which amount is calculated as follows:

1.1 Future Loss of Income: R 2 443 120.00

1.2 General Damages: R 850 000.00

2. Payment of the total amount under 1. is ordered to be made within 180 days from the date on which this order is made, failure of which, the Defendant will be liable for payment of interest at the prescribed rate compounded and calculated as from 14 days from the date of this order.

3. The Defendant is ordered to pay the party and party costs of the Second Plaintiff as determined on the High Court Scale.

4. The Defendant is ordered to pay, subject to the discretion of the taxing master, the reasonable and qualifying fees of the following experts:

4.1 Dr A van Aswegen

4.2 Dr JJ Schutte

4.3 Dr LF Oelofse

4.4 Drs van Dyk and Partners

4.5 Mrs A Jansen

4.6 Mrs R du Plesis

4.7 Mrs E Prinsloo

4.8 Dr EJ Jacobs

4.9 Munro Forensic Actuaries.

5. After receipt by Plaintiff's attorneys of the capital amount, payment of such capital amount minus the taxed costs as per 3. of this order, is ordered to be paid by Second Plaintiff's legal representatives into the trust known as " M[....] R[....] P[....] Trust" established by means of the court order by Jordaan J dated 2 July 2020.
6. The curator ad litem, Advocate Le Roux Pohl SC's action is ratified and he is discharged from office.
7. The cost of the appointment of the curator ad litem as well as the costs of his report is ordered to be paid by the Defendant.

Per: _____
C L PAGE AJ

ON BEHALF OF SECOND PLAINTIFF:

Counsel: H E De La Rey
Instructed by: HONEY ATTORNEYS
HONEY CHAMBERS
NORTHRIDGE MALL
KENNETH KAUNDA ROAD
BLOEMFONTEIN

ON BEHALF OF DEFENDANT:

State Attorneys, Bloemfontein
11th Floor, Fedsure Building
49 C[....] Mxexe Street