



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
 (3) REVISED

DATE: 21 FEBRUARY 2020

SIGNATURE:

Case No. 9711/2016

In the matter between:

LUCIA DANASILE TSHABALALA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MILLAR, A J

1. The plaintiff, a passenger, was injured in a multiple motor vehicle collision that occurred on 10 March 2015. The trial was set down for hearing on 18 February 2020.
2. Notwithstanding the service of summons on 9 February 2016 on the defendant, and it had elected to defend the case, when the matter was called the defendant had failed in its preparations to arrange for the plaintiff to be examined by any medical experts. Furthermore, although the plaintiff was injured as a passenger in a multiple vehicle collision, liability was only conceded shortly before the trial commenced.
3. By agreement between the parties the reports filed by the plaintiff, from an orthopaedic surgeon, a psychiatrist, an occupational therapist, an industrial psychologist and an actuary were admitted into evidence as being common cause as to the facts and opinions contained in those reports.
4. It was argued by counsel for the defendant that the plaintiff ought to have obtained a report from a clinical psychologist to express an opinion on her travel related anxiety disorder and depression. These had been diagnosed by the psychiatrist and he was not qualified to express an opinion on these aspects. This argument is without any merit.
5. It was further agreed between the parties that the outstanding issues between them relating to the quantum of damages be argued from those reports and that no evidence would be led by either party. An undertaking in terms of section 17(4)(a) of

the Road Accident Fund Act 56 of 1996 was tendered and accepted, in settlement of the plaintiff's claim for future medical, hospital and associated expenses.

6. The issues left to be determined and which were argued were in regard to the claims for loss of income and for general damages.
7. The plaintiff is a 45-year-old woman who has a grade 11 level of education. At the time of the collision she was working for an automobile sales company as a cleaner and polisher of vehicles as well as general cleaning work in the office of the business. The work was mainly physical in nature and she was earning R4 040.00 per month. After injury she returned to work for a short while but was unable to cope and off often. Her employer was sympathetic and accommodated these absences.
8. The business closed down at the end of 2016 and besides a month working as a nanny, the plaintiff has never worked again. The plaintiff was unable to continue with the work as a nanny as she was tasked with looking after a 3-month-old baby and due to her injuries was unable to cope with the picking up and holding of the baby.
9. The medical experts are all agreed that the combination of her circumstances and the injuries that she sustained have rendered the plaintiff unemployable on the open labour market.
10. The actuary has calculated the plaintiff's loss based on her earnings at the time of the collision. The calculated past loss was in the sum of R209 305.00 and the future loss R906 851.00 No contingencies were deducted.
11. Counsel for the defendant argued that the past loss was not correctly calculated because the defendant could not be held liable for the fact that the plaintiff's

employer had closed down in 2016. He argued that the plaintiff would otherwise have continued in sympathetic employment. The fact that the plaintiff was rendered unemployable as a result of the injuries sustained in the collision is to my mind dispositive of the argument. The employer honored the employment contract for so long as the business operated and if the employment post-accident was truly sympathetic then in any event the defendant is not entitled to the benefit of a third party's generosity to the plaintiff. The law on this is well established.

12. Counsel for the plaintiff argued that in respect of the contingencies to be deducted, a 5% deduction should be made from the past loss of income. Counsel for the defendant argued that given the closure of the business, 10% was more appropriate. For the reasons I have set out above, I am of the view that the closure of the business does not militate the deduction of a contingency in excess of that argued by the plaintiff.
13. In regard to future loss of income, counsel for the plaintiff argued for a 10% contingency deduction. This was predicated on $\frac{1}{2}$ % per year for 20 years to retirement at age 65. The defendant argued for 15% but could offer no basis other than to argue that 10% was too modest. I find that 10% is the appropriate deduction to be made from the future loss of earnings.
14. The total of the past loss of earnings is R209 305.00 less 5% = R198 839. 00. The total of the future loss of earnings is R906 85.00 less 10% = R816 165.00. The total combined loss of earnings is the total of the two added together in the sum of R1 105 004. 00. This is the amount I intend to award for this head of damages.

15. In regard to general damages, having regard to the totality of the injuries suffered by the plaintiff and their sequelae, counsel for the plaintiff argued that an award of R850 000.00 was appropriate. I was referred to various unreported decisions in this regard. Counsel for the defendant for his part was able to distinguish the cases that we referred to from the facts in the present case. He argued that an award of between R400 000.00 and R500 000.00 was more appropriate.
16. The plaintiff suffered a back injury, an abdominal injury and besides ongoing physical sequelae for these physical injuries suffers from psychiatric sequelae in the form of depression, and an accident-travel -related anxiety disorder. It is trite that the award of general damages a matter falling within the discretion of the trial court and that award in other similar cases merely provide guidance. On a consideration of all the injuries and their sequelae and the arguments advanced by counsel I am of the view that an award of R450 000.00 is appropriate and this is the amount I intend to award.
17. The parties handed up a draft order in which they set out their agreement in respect of costs. Furthermore, provision has been made for the creation of an *inter vivos* trust to protect the plaintiff's award. The plaintiff confirmed that the establishing of the trust had been discussed with her and that she agreed thereto.
18. In the circumstances I make the draft, into which I have inserted the amounts I intend awarding for loss of income and general damages, that is attached hereto marked "XYZ" an order of court.
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A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 18 FEBRUARY 220

JUDGMENT DELIVERED ON: 21 FEBRUARY 2020

COUNSEL FOR THE PLAINTIFF: ADV S GULDENPFENNIG SC

INSTRUCTED BY: MAREE & BRAND ATTORNEYS

REFERENCE: MR MAREE

COUNSEL FOR THE DEFENDANT: ADV N MHLONGO

INSTRUCTED BY: RAMBEVHA MOROBANE ATTORNEYS

REFERENCE: MR T KGOMOMMU