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. 47979/2018

In the matter between:

Q[….] M[….] obo N[….] **PLAINTIFF**

And

THE ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MILLAR, A J

1. The plaintiff is the guardian of her minor child who at the age of 10 suffered injuries in a passenger motor vehicle collision. I was informed by counsel for the parties that the liability has been conceded and also that the claim for both future medical expenses has been settled. The claim for general damages is not before the court.

2. The only issue for determination between the parties is the quantum of the minor's future loss of income. No evidence was led by either party. The argument in respect of the two issues was made with reference to the reports filed and the agreements reached by the experts.

3. It was common cause between the educational and industrial psychologists who examined the minor, prepared reports and then met that:

   3.1 the minor was still at school when the collision occurred;

   3.2 the minor would but for the collision have attained a grade 12 with a further 3 to 4-year degree qualification;

   3.3 pre-collision the minor would have completed her studies and started working earning R267 000 per annum which would have increased uniformly to R889

092 over a 20-year period and thereafter remained constant apart from inflationary increases until retirement at age 62,5.

3.4 post-collision the minor having only obtained a grade 12 with a diploma start earning R144 617 per annum which will increase uniformly to R257 663 per annum at age 45 and thereafter remain constant apart from inflationary increases until retirement at age 62,5.

4. The first issue between the parties relates to whether the minor would in the post-accident scenario, notwithstanding the agreement of the experts have only reached an income ceiling of R257 663 and secondly how contingencies are to be applied.

5. The plaintiff argued that the pre and post morbid scenarios agreed by the expert who examined the minor should guide the court in the determination of the loss of income. The defendant argued that because certain experts did not have all the school reports of the minor child, it was not possible for them to have properly assessed the minor and come to the agreement that they did as set out in paragraph 3 above.

6. I was referred to the decision of the Supreme Court of Appeal in the case of Road Accident Fund v SM[1] as authority for the proposition that I ought not to rely on the reports of the experts who did not have all the school reports. This argument was directed at the reports of both the educational and industrial psychologists instructed by the defendant.

7. Save for the above no basis was laid for the impeachment or for that matter the repudiation of the findings and opinions of the particular experts. The present matter is distinguishable from Road Accident Fund v SM in that in the present case by agreement

[1] (1270/2018) [2019] ZASCA 103 (22 August 2019)

no evidence was led and I am not in a position to express any view on the opinions of the experts save to say that they did conduct interviews with the minor, examine her and prepare reports. The reports express similar views to those of the experts who did have access to the school records and so I must accept that their independent testing was accurate at least insofar as the identification of the sequelae to head injury and its financial consequences.

8. The second issue between the parties was the manner in which the contingencies were to be applied. The plaintiff argued, given the minor child's age that an appropriate contingency deduction in the pre-collision scenario was 30% and that in the post-collision scenario was 35%. The defendant argued that a contingency allowance of 10% should be allowed from the pre-collision earnings to accommodate this head of damages.

9. It is trite that the determination of contingencies is a matter for the trial court and that such contingencies may be either negative and applied by way of a deduction or positive, applied by way of an addition to the actuarial calculations.

10. In the present matter I am of the view that the damages should be calculated based on the pre and post collision scenarios agreed by the experts. In regard to contingencies however, given that the child has only suffered a loss of capacity, it seems to me that given her young age, the deduction for a contingency for the general hazards of life will be the same in respect of both scenarios. The true loss is the difference between the scenarios.

11. I am of the view that a 30% deduction in respect of both scenarios is appropriate.

12. The pre-collision earnings were calculated at R10 329 666 and less 30% is R7 230 766. The post-collision earnings were calculated at R3 365 397 and less 30% is R2 355 777.

The difference between the aforementioned figures is R4 874 989 and this is the amount I intend to award.

13. The parties handed up a draft in which their agreement in regard to costs was set out. Provision was also made for the establishment of an inter vivos trust to protect the minor's award. The plaintiff was in court and confirmed that she agreed to the establishment odf such trust.

14. In the circumstances, I make the draft order marked "XYZ" an order of court.

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A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	19 FEBRUARY 220
JUDGMENT DELIVERED ON:	21 FEBRUARY 2020
COUNSEL FOR THE PLAINTIFF:	ADV DP MOGAGABE
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REFERENCE:	MS J NYATHI