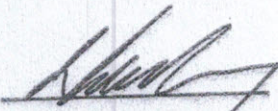


**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

Case Number: 88133/2016

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO



12 JULY 2019.

In the matter between:

**MARIA RAISIBE KOPA**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

---

**JUDGMENT**

---

**DU PREEZ, AJ:**

**INTRODUCTION:**

1. The plaintiff instituted action against the defendant for damages pursuant to a motor vehicle collision on the Moloto Road between Hammanskraal and Kwa

Mahlanga on 1 May 2015, during which she sustained the following bodily injuries:<sup>1</sup>

- 1.1 A neck injury with a C2 vertebral body fracture without any neurological fallout;
  - 1.2 A back injury without any neurological fallout; and
  - 1.3 A fracture of the left acetabulum.
2. The defendant conceded merits and by agreement, the parties proceeded with the *quantum* claim without leading oral evidence, but by arguing same by reference to the expert reports.

#### **THE PLAINTIFF'S CASE:**

3. The plaintiff's case may be summarised as follows:
- 3.1 The plaintiff, who is 37 years old, obtained Grade 11 and was prior to the accident employed:
    - 3.1.1 As a chef and a cook for five years;
    - 3.1.2 In the construction industry for a year; and
    - 3.1.3 As a domestic worker for a year.

---

<sup>1</sup> Medico-Legal Report by Dr JH Heymans dated 14 October 2016.

- 3.2 She was unemployed from 2012 until the date of the accident and remained so thereafter.
- 3.3 She procured employment as a domestic worker during January 2017, but was obliged to resign due to the difficulties she experienced in performing her duties resultant her said injuries.
- 3.4 According to a report by an occupational therapist, Mariska du Plooy, dated 5 May 2017:
- 3.4.1 The plaintiff's physical capacity will not improve to pre-accident levels and her future employment should be limited to sedentary to occasional light work;
- 3.4.2 The plaintiff's ability to compete with uninjured peers in the open labour market has been significantly restricted, considering her education and predominant work experience;
- 3.4.3 The plaintiff reported experiencing increased fearfulness following the accident, she is afraid to travel and is hyper vigilant when she does.
4. The industrial psychologist, Dr WL Pretorius, reported that the plaintiff is a vulnerable employee because she suffers from post-traumatic stress disorder, major depression and of extremely elevated levels of anxiety.

5. Although the plaintiff was unemployed at the date of the accident, she was in the process of finding suitable employment.
6. After the accident, the plaintiff is:
  - 6.1 Unable to do work similar to that that she was employed in prior to the accident;
  - 6.2 Only suited for sedentary to light nature work;
  - 6.3 Dependant on an accommodating and sympathetic employer, as she will have to alternate between sitting and standing;
  - 6.4 A significantly vulnerable individual in the open labour market;
  - 6.5 Limited in her work and earning capacity;
  - 6.6 On a very optimistic postulation, able to earn between R14,350.00 and R20,600.00 per annum.
7. The actuaries at Munro forensic actuaries, Charl du Plessis and Willem Boshoff, calculated the plaintiff's past and future loss of earnings on two bases, to wit a scenario where the plaintiff is expected not to reach the suggested pre-accident career potential and another scenario where the plaintiff is unemployable in future.
8. In both scenarios, the plaintiff suffered past and future loss of uninjured earnings in the respective amounts of R216,500.00 and R1,643,700.00.

9. In the first scenario, provision is also made for injured earnings in future in the amount of R738,900.00.
10. In none of the instances, any contingencies were applied.
11. Counsel for the plaintiff argued that:
  - 11.1 Further high post-accident contingencies for the increase risk of earning less than postulated, should be applied;
  - 11.2 The plaintiff's general damage amount to R515,205.00;<sup>2</sup>
  - 11.3 In respect of both scenarios, contingencies of 5% and 15% should respectively be applied in respect of the past and future loss of earnings;
  - 11.4 To determine the plaintiff's past and future loss of earnings, it is reasonable to calculate the average between the two scenarios once the contingencies have been applied;
  - 11.5 If the contingencies proposed by the plaintiff are applied, this calculation amounts to an amount of R1,288,787.50.

---

<sup>2</sup> With reference to *M v Road Accident Fund* (2017) ZAGPPHE 77 and *M v Ratjuli* (19931/2006) [2017] ZAGPPHC 61. In both these cases, the Court awarded general damage for a C2 fracture in the amount of R450,000.00 in 2017, which equates to a current value of R515,000.00.

## THE DEFENDANT'S CASE:

12. The defendant's counsel, relying on the plaintiff's expert reports, argued that:
  - 12.1 The plaintiff is employable and that only the first scenario (plaintiff is not expected to reach her pre-accident career potential) has to be considered as to be considered regarding her past and future loss of earnings;
  - 12.2 A 30% contingency be applied in respect of her pre-accident future loss of earnings and a 25% contingency in respect of her post accident loss of future earnings;
  - 12.3 The higher contingencies find application, among others, because:
    - 12.3.1 The plaintiff was unemployed for almost three years when the accident occurred;
    - 12.3.2 According to the said occupational therapist's report, the plaintiff's physical capacity and pain are expected to improve with successful rehabilitation;
    - 12.3.3 The said industrial psychologist's report indicated that:
      - 12.3.3.1 The plaintiff did not suffer any past loss of earnings;<sup>3</sup>

---

<sup>3</sup> First Addendum, para 10.1.1, p 68.

12.3.3.2 Appropriate and not higher contingencies should be applied;<sup>4</sup>

12.3.3.3 During 2012, the plaintiff was diagnosed with tuberculosis and did not return to the labour market after treatment;<sup>5</sup>

12.3.3.4 At the time of the accident, she also suffered from hypertension and deep vein thrombosis.<sup>6</sup>

12.3.4 Based on certain case law, the plaintiff's general damage should be limited to between R350,000.00 and R450,000.00.

#### **DISCUSSION:**

13. The statement by the occupational therapist relied upon by the plaintiff that with successful rehabilitation, the plaintiff's physical capability and pain are expected to improve, is qualified, as the occupational therapist pertinently states that *"in light of her current functional limitations and the sclerosis of the SI joints, despite surgical and rehabilitative intervention, I would not expect her physical capacity to improve to pre-accident levels."*

---

<sup>4</sup> Second Addendum, first bullet point, p 93 & p 96.

<sup>5</sup> First Addendum, para 3, p 74.

<sup>6</sup> Ibid.

14. Furthermore, the experts were aware that the plaintiff was diagnosed with tuberculosis and suffered from hypertension and deep vein thrombosis, but nevertheless reported that the plaintiff had suffered a loss in past and future earnings.
15. It is unnecessary to cite to the relevant case law and legal principles pertaining to the quantification of the plaintiff's claim, save to state that:
- 15.1 In computing general damage, a number of factors play a role, among others, the extent of the harm (which is usually a function of the nature, intensity and duration of the harm), the specific purpose of the award, general considerations of equity and parity with previous awards.<sup>7</sup>
- 15.2 Whether contingencies should be applied, and in what percentage, is directly linked with the amount the Court considers just in respect of compensation.<sup>8</sup>
- 15.3 The amount to be awarded as compensation, can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case.<sup>9</sup>

---

<sup>7</sup> Du Bois (et al), *Wille's Principles of South African Law*, 9<sup>th</sup> Ed, p 1164; Neethling (et al), *Delict*, 5<sup>th</sup> Ed, pp 230 – 232.

<sup>8</sup> *Van Ghent v Road Accident Fund* [2017 ZAFSHC 187.

<sup>9</sup> *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 199.

15.4 The Court has a large discretion to award what the Court considers right.<sup>10</sup>

15.5 The rate of the discount cannot be assessed on any logical basis and is largely arbitrary and depends upon the trial judge's impression of the case.<sup>11</sup>

16. After having read the papers, listened to the submissions of both parties' counsel, considered the relevant facts of the case (such as the plaintiff's age, her qualifications, employment history, the injuries sustained and the prognosis in respect thereof, her past and future earning capacity and the opinions of the expert witnesses) and the applicable legal principles and case law, this Court opines that:

16.1 The plaintiff's reasonable general damage amounts to R450,000.00;

16.2 It is not prudent to accept that the plaintiff will be unemployable in future, as she has presented with the residual physical capacity to perform sedentary to occasional light work (although she will not be able to meet the demands of any of her previous work as a cook, chef, general worker in the construction industry or as a domestic worker);

---

<sup>10</sup> *Legal Assurance Co Ltd v Botes* 1963 (1) SA 608 (A) 614F

<sup>11</sup> *Van der Plaats v SA Mutual Fire & General Assurance Co Ltd* 1980 (3) SA 105 (A) 114 – 115.

16.3 Scenario 1 should therefore apply with a 5% contingency in respect of the plaintiff's past (pre-accident) past loss and 15% in respect of both her pre- and past accident future loss of earnings;

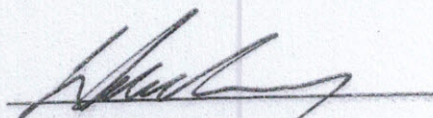
16.4 The plaintiff's loss in earnings amounts to R974,755.00, based on the actuaries' calculation of the capital value of the plaintiff's loss of earnings and applying the said contingencies, and comprised as follows:

|                                     |                  |   |             |
|-------------------------------------|------------------|---|-------------|
| Past pre-accident earnings:         | R 216,500 – 0,5% | = | R 205,675   |
| Plus Future pre-accident earnings:  | R1,643,700 – 15% | = | R 1,397,145 |
| Less Future post-accident earnings: | R 738,900 – 15%  | = | R 628,065   |
|                                     |                  |   | <hr/>       |
|                                     |                  |   | R 974,755   |

17. The plaintiff's damage amount thus to R1,424,755.00 (R450,000.00 general damages + R974,755.00 loss of earnings = R1,424,755.00).

**ORDER:**

18. The Court consequently grants an order in terms of the draft order (as amended to include the said damage amount of R1,424,755.00) marked "X".



**DB DU PREEZ**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**12 JULY 2019**

Counsel for the plaintiff: ADV CPJ STRYDOM

Instructed by: BOOYENS ATTORNEYS

Counsel for the defendant: ADV MAGAGANE

Instructed by: MORARE THOBEJANE INC