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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 number: 2454/2017

In the matter between:

MATSHIDISO MARIE MOREKI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 19 & 20 MARCH 2019

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 18 JUNE 2019

- [1] At the commencement of this trial the parties handed in a draft order in the following terms:-

“BY AGREEMENT BETWEEN THE PARTIES, IT IS ORDERED THAT:

1.

- 1.1 The Defendant is liable to pay 90% (Ninety percent) of the Plaintiff's proven or agreed damages;**
- 1.2 The Defendant is to pay the Plaintiff's attorneys the sum of R366 000.00 (Three hundred and sixty thousand rands) after apportionment;**

The Plaintiff's Attorney's trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	[...]

- 1.3 In the event of default on the above payment, interest shall accrue on such outstanding amount at 10% (at the mora rate of 3.5% above the repo rate on the date on this order, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended) per annum calculated from due date, as per the Road Accident Fund Act, until the date of payment.**

2.

The Defendant to pay the Plaintiff's taxed or agreed party and party costs, in the above mentioned account, for the instructing- and correspondent attorneys, which costs shall include, but not be limited to the following:

- 2.1 The fees of Senior Junior Counsel;
- 2.2 The costs of obtaining all expert medico legal-, actuarial, and any other reports of an expert nature which were furnished to the Defendant and/or it's experts;
- 2.3 The costs of obtaining documentation / evidence, scans, considered by the expert(s) to finalise their reports;
- 2.4 The reasonable taxable qualifying, preparation, reservation and attendance fees of all experts, including the costs of consultation fees with the legal teams, if any;
- 2.5 The reasonable traveling- and accommodation costs, if any, incurred in transporting the Plaintiff to all medico-legal appointments;
- 2.6 The reasonable costs for an interpreter's attendance at court and at the medico legal appointments for translation of information, if any;
- 2.7 The above-mentioned payment with regard to costs shall be subject to the following conditions:
 - 2.7.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and
 - 2.7.2 The Plaintiff shall allow the Defendant 14 (fourteen) calendar days to make payment of the taxed costs;
 - 2.7.3 In the event of default on the above payment, interest shall accrue on such outstanding amount at the prescribed mora rate on the date of taxation / settlement of the bill of cost, as per the Prescribed

Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

I made it an order of Court.

- [2] The only issue before for the determination is the past and future loss of earnings. The plaintiff was represented by Ms. K Peterson and Mr. S Motloung appeared on behalf of the defendant.
- [3] The joint minutes between Drs. Oelofse and Bogatsu were handed in and marked Exhibit "A". Both experts who are Orthopaedic Surgeons agreed on the nature of the plaintiff's injury and provisions to be made for treatment. They also agreed that the injury had resulted in profound impact on the plaintiff's amenities of life and will continue to do so in the future. Of importance they concluded that she must be accommodated in a light sedentary working environment as she will never be able to do physical labour anymore. In fact they hold the view that given her expertise, level of education and the injury, she will most probably never work again.
- [4] The Occupational Therapists Mesdames Jansen and Moagi also compiled the joint minutes which were handed in as Exhibit "B". Their conclusion as per their findings is recorded on page 3 paragraph 7 as follows:-

"7.1. The plaintiff lacks the physical capacity to meet the full range physical demands of light, medium, heavy and very heavy category work because of her walking, standing, forward

bending and crouching limitations which in turn restricts frequent weight and handling.

- 7.2. Considering the physical demands of her pre-accident vocation/educational abilities, we conclude that the plaintiff lacks the physical capacity to function in this capacity at the same pre-accident level.
- 7.3. We agreed that Ms. Moreki's physical capacity would meet the physical requirements for occupations that fall with in sedentary to static light / light types of work category with minimal mobility and dynamic working posterior real patents demands.
- 7.4. Deference is made to the Industrial Psychologist command on loss of earning incurred by the plaintiff since the accident and future loss of earnings with early retirement foreseen."

[5] The plaintiff was assessed inter alia by Industrial Psychologist namely Mr. Ben Moodie and Ms. Moipone Kheswa respectively. They too compiled the joint minutes handed in and marked Exhibit "C". Based on their findings they agreed that:-

- "7.1. The plaintiff lacks the physical capacity to meet the full range physical demands of light, medium, heavy and very heavy category work because of her walking, standing, forward bending and crouching limitations which in turn restricts frequent weight and handling.
- 7.2. Considering the physical demands of her pre-accident vocation/educational abilities, we conclude that the plaintiff lacks the physical capacity to function in this capacity at the same pre-accident level.
- 7.3. We agreed that Ms. Moreki's physical capacity would meet the physical requirements for occupations that fall with in sedentary to static light / light types of work category with

minimal mobility and dynamic working posterior real patents demands.”

[6] Exhibit “D” is the Actuarial Certificate and Report by an Actuary Johan Sauer. According to the Actuarial Certificate calculated taking into consideration 20% contingency differential, the total loss of earnings is R 124 758.00. It is this amount that counsel for the plaintiff urged me to award taking into consideration 10% apportionment. In his submission counsel for the defendant argued that there was no evidence placed before me for contingencies. This submission is unsound. The reports and joint minutes handed in per agreement between the parties makes provision for the application of contingencies. This is an aspect that I must make a ruling on it.

[7] The quantification of the loss of income is a complicated task. The courts have accepted that the most reliable manner is to use mathematical calculations grounded in evidence based assumptions. This is essentially how the actuaries do their calculations which is better than any guesswork. The approach of the actuary clearly explained that he applied the value of the defendant’s cap published before the date of the accident. This was done without inflationary increases to the annualized loss of income in each year of the general contingencies deductions.¹ I have no reason(s) to reject the calculations of the actuary. I accept them.

[8] I make the following order:-

8.1. The defendant must pay the plaintiff the sum of R 112 282.00.

¹ Road Accident Fund v Sweatman (162/2014) [2015] ZASCA 22; [2015] 2 All SA 679 (SCA)

- 8.2. Interest at the rate of 10.25 % calculated from fourteen (14) days of the date of this order.
- 8.3. Defendant to pay the taxed or agreed party and party costs.

M. A. MATHEBULA, J

On behalf of Plaintiff:

Instructed by:

Adv. K. Peterson

VZLR Inc.

c/o Du Plooy Attorneys

Bloemfontein

On behalf of Defendant:

Instructed by:

Adv. J. S. Motloun

Maduba Attorneys

Bloemfontein