

## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)

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

CASE NO: 2208/2015

DATE: 25/10/2017

SIGNATURE:

In the matter between:

NGOBENI FLORAH GIRLEY

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

---

**JUDGMENT**


---

**SIKHWARI AJ**

[1] It is common cause that the plaintiff is 45 years of age, having been born on or about the 19 February 1972. The cause of action

arose from a motor vehicle accident that occurred on 52 March 2014 at or near Solomondale crossroads on the R81 road near Polokwane. The plaintiff was a passenger in the insured motor vehicle to wit CCG 082 L which was being driven by Tshepo Douglas.

- [4] It is common cause that the plaintiff sustained injuries which could be described as low back injuries as well as laceration right forearm and hand. The experts agree that the plaintiff sustained bilateral paraspinal tender over the thoracic and lumbar levels. The plaintiff was a domestic worker and she has never been able to return to work after the accident as a result of back pain and right wrist.
- [5] The plaintiff has completed grade 6 at school. She is suitable for sedentary, light and medium / moderate types of work due to impairment to her lifting abilities which has been caused by the accident. Plaintiff will find it difficult to work in her trade as a domestic worker in future due to injuries.

- [6] The plaintiff prays that she be awarded an amount of R26 523.00 (twenty-six thousand five hundred and twenty-three rand) in respect of past loss as well as an amount of R308 637.73 (three hundred and eight thousand six hundred and thirty-seven rand seventy-three cents for future loss of earning). That will make a total of R335 160.73. On the defendant's calculation, the amount will come to R129 674.95 after deduction of the 20% contingency.
- [6] The issue before court for determination of past and future loss of earning and applicable contingencies. The parties are ad idem that 5% contingency should apply to past loss of earning. The court agrees with the parties. For future loss of earning the plaintiff prays for 15% contingency whereas the defendant prays for 20% contingency.
- [7] According to the expert reports, particularly of both industrial psychologists, the parties agree that the plaintiff has suffered loss of earning capacity. I do not agree that the plaintiff has left the job out of her own will. The nature of the pains she is suffering will make it difficult for her to do heavy duties. Domestic services will require her to be on her feet at most time. There is no employer

who will employ her on part-time basis at the area where she operates.

[8] In the case of **Goodall v President Assurance Company 1978 (1) SA 389 (WU)** at pages 392H – 393A, Margo. J stated that “in the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the sort of Science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by modern authors of a certain type of almanac, is not numbered among the qualifications for judicial office.”

[9] Margo J stated further at page 393A–E that “In *Van Rensburg’s* case the plaintiff was 25 years old, and in *De Jongh’s* case, which was a claim by dependents for loss of support, Nicholas J, adopted the figure of 20 per cent for contingencies in relation to the deceased’s earning power, the deceased having been approximately 25 years of age at the time of his death. *Van RD, N.O v Employers’ Liability Assurance Corporation Ltd, 1964 (4) SA 737 (W)*, but reported on this point only in Corbett and Buchanan, Vol. 1 at p.618, in another instance of 20 per cent being allowed for contingencies, the plaintiff in that case being a minor who had not embarked on a firm career. In the well-known case of *Sigourmay v Gilbanks, 1960(2) SA 552 (AD)*, SCHREINER, JA, at p.569, made provision for contingencies in an amount equal to approximately 16 per cent. The plaintiff in that case was 33 years of age, a

fact which appears from the report of the case in the Appellant Division, or in the court of first instance, or Corbett and Buchanan”.

[10] Margo, J, stated further in page 393F – G, Goodall case (supra) that “In the present case, however the plaintiff is 46 years of age, as already noted, so that the period for which contingencies must be taken into account will be much shorter than in the cases cited above. Although his working career has been undistinguished, he has been a pretty steady employee, changing his job only in an endeavor to improve his prospects.

“He has enjoyed good health apart from his injuries and the consequences thereof, and he appears, to judge from his background to be a responsible and reasonable individual. In these circumstances I consider that the allowance for the possibility of yet further promotion to the post of sectional manager, I consider that the provision for contingencies should not exceed 10 percent.”

[11] In my view, the plaintiff has made a case to justify the finding of this court that the circumstances of the plaintiff herein call for a 15% contingency for future loss of earning. In the circumstances, this court will allow the contingency deduction for future loss of income to be at 15 percent as submitted by the plaintiff, taking into

account the plaintiff's age, her relative skill in domestic services and the fact that she has no history of changing work.

[12] In instances where the court granted 20 percent contingencies, the plaintiffs were not yet established in their work careers or were teenagers. These factors distinguished the said cases from the case before this court. There is no evidence that the plaintiff had prior poor health or would not have been employed.

[13] In the circumstances, the plaintiff's claim will succeed. I see no reason why I should deviate from the general rule that costs will follow the event.

[14] Accordingly I make the following order:

1. That the defendant shall pay the plaintiff the sum of R335 160.73 (three hundred and thirty-five thousand one hundred and sixty rand seventy-three cents), made up as follows:

1.1 R26 523.00 for past loss of earning.

1.2 R308 637.73 for future loss of earnings.

2. The draft order marked "X" is made an order of the court.



---

MS SIKHWARI AJ  
ACTING JUDGE OF THE HIGH  
COURT OF SOUTH AFRICA,  
LIMPOPO DIVISION, POLOKWANE

**APPEARANCES**

|                  |   |                      |
|------------------|---|----------------------|
| For Plaintiff    | : | Adv F Baloyi         |
| Instructed by    | : | MG Mabunda Attorneys |
| For Defendant    | : | Adv MC Netshiendeulu |
| Instructed by    | : | Hamman-Moosa Inc     |
| Date of Hearing  | : | 22 August 2017       |
| Date of Judgment | : | 25 October 2017      |