IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE N0:76324/2014

DATE: 11/4/2017

In the matter between:

D. D. J. obo L. L. S. **PLAINTIFF**

and

THE ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

RANCHODJ:

[1] The plaintiff sues the defendant in her personal capacity and also in her representative capacity as the mother and natural guardian of Mr L. L. S. for damages as a result of injuries sustained by Mr S. in a motor vehicle accident on 6 February 2010 in Parow in the Cape. Mr S. was a passenger in the insured vehicle, a Volkswagen Cambi bearing registration letters and numbers [C...] which was driven at the time by one H.L Hector who lost control of the vehicle after one or more of its tyres became deflated. It was alleged that the insured driver's negligence caused the accident.

[2] I will not deal with the issue of liability any further as I was informed at the commencement of the trial that the defendant conceded 100% liability and only quantum was in dispute, more specifically the seriousness of the injuries sustained by Mr S..

[3] The trial then proceeded on that basis. None of the defendant's experts were called to testify. Only the relevant plaintiff's experts, namely, the occupational therapist, a clinical

psychologist, an industrial psychologist and an actuary testified.

[4] Joint minutes prepared by the plaintiff's and defendant's occupational therapists and the industrial psychologists respectively were handed up.

[5] The issue for determination as far as quantum is concerned is the severity of the injuries and their impact on quantum.

Plaintiffs expert reports

[6] The defendant conceded the expertise of all the plaintiffs expert witnesses and did not dispute the medico-legal report of plaintiff's orthopaedic expert, Dr J Sagar.

[7] Dr Sagar assessed S. on 17 July 2012 and compiled a medico legal report dated 22 August 2012. S.'s injuries are noted as follows in the report:

7.1 Abrasions and lacerations of the scalp.

7.2 Severe left lower leg injury, resulting in traumatic amputation.

7.3 Grade 3B compound fracture right tibia and fibula. There was an associated severe de-gloving injury.

7.4 Soft tissue injuries to the upper limbs.

[8] Dr Sagor summarises the injuries sustained by S. and their sequelae as follows:

'In summary the claimant suffered from polytrauma.

Soft tissue injuries were suffered to his upper limbs, face and scalp. He needs to be assessed by a plastic surgeon with regard to the appearance of the scars and possible improvement, which can be offered. Provision for this should be made. A significant injury was suffered to the left lower limb resulting in an above knee amputation. The amputation stump has healed and is healthy. He needs to be assessed by a prosthetist with regard to future needs. Provision for this needs to be made. A severe compound fracture was suffered to the right tibia and fibula with associated soft tissue loss. The soft tissues have healed with significant cosmetic deformity. There is non / mal union of the distal half of the tibia on the right side,

which may require corrective surgery in future. Provision for this should be made. As mentioned in view of the injuries sustained in the past, corrective surgery could be risky in all avenues. Before embarking on such a procedure, he should be investigated and monitored. There is probably a 50% chance that the claimant would require and accept corrective surgical treatment. The claimant has permanently lost numerous amenities of life following the accident event. He is functionally limited with regard to mobility and agility. He may require the use of crutches indefinitely and a wheel chair will also be required in future. Provision of his needs should be taken into account when considering compensation. An occupational therapist should assess him. The claimant has been affected psychologically by the injuries suffered. A psychological/psychiatric assessment should be offered and treatment provided, if needed. With regard to employment, the claimant permanently cannot do any activity other than sedentary work. He is compromised with regard to finding employment in the open labour market as a result of his limited mobility and difficulty to commute to and from work. Should he obtain reasonable/appropriate employment, he can work until retirement age. He should be assessed by an occupational therapist with regard to future employment options he could follow. Longevity will not be affected by the injuries suffered.'

[9] Ms M Le Roux is an occupational therapist. She testified at the trial and referred to the joint minute prepared by her and the defendant's occupational therapist, Ms G. Mathala. They agreed that due to his injuries:

- Mr S.'s work functioning has been significantly compromised.
- He is permanently restricted to sedentary to semi-sedentary type work where prolonged standing and walking, balance, mobility and agility is not required of him and where lifting demands are restricted to occasional handling of sedentary to light weights (even with a suitable prosthetic leg).

• Should the right leg also be amputated (the possibility has been raised by Dr Sagor) he would be restricted to sedentary work only.

• Any position be obtains in the future, provisionally should be wheelchair accessible and he would require an empathetic work environment.

• His future job options have been severely restricted.

• He is no longer competitive in the open labour market.

• He is compromised with regards to his ability to perform manual or unskilled work.

• His ability to procure and sustain employment in the open labour market has been significantly compromised.

Accommodation

They agreed that it is essential that Mr S.'s accommodation should be wheelchair accessible in order to improve quality of life and should also provide for-

• Electricity.

• Hot running water inside the house.

• Paved/cemented perimeter.

• A sheltered/covered area for vehicle transfers and paved access to an entrance.

• A covered entrance to the house.

• Wide enough passages, doors, turning spaces.

• Suitable accessible kitchen to allow wheelchair manoeuvrability.

• Wheelchair accessible bathroom with ride in shower, hand basin and toilet.

• Increased rates (e.g. electricity) due to the larger house if applicable.

• Private bedroom for Mr S.; large enough to allow a double bed and wheelchair manoeuvrability.

• Adequate security devices/measures.

• Storage space for wheelchairs etc.

At some point in time placement in an old age facility may become necessary, especially should his right leg also be amputated.

[10] A claim for domestic assistance and garden and home maintenance was abandoned during the course of the trial.

[11] The only other joint minute was that of plaintiff's and defendant's industrial psychologists. They noted that Mr S. would probably have attained a Grade 12, thereafter a Bachelor's degree and thereafter have entered the open labour market earning an income in line with Paterson Grade B4/B5/C1. He could have thereafter progressed to an income in line with Paterson Grade 01/02. Mr S. would likely have worked until normal retirement age of 65.

[12] The occupational therapists agreed that post-accident Mr S. would probably attain Patterson B1/B2 (median) progressing to C2 (median).

[13] Ms Kotze (plaintiff's industrial psychologist) was of the view that a higher post-accident contingency deduction should be applied due to Mr S.'s lack of competiveness and 'vulnerability in sedentary to semi sedentary work roles'. Both Ms Kotze; and Ms C Du Toit and Andri van Der Westhuizen for the defendant agreed that total packages post-morbidly will not be guaranteed and will be dependent on workplace terms and conditions as well as opportunities. Ms Du Toit and Mr van Der Westhuizen opined that 'limited mobility requirements for treatment, reduced opportunities for promotion and emotional vulnerability are also acknowledged; an applicable post-accident contingency is recommended.'

[14] There is no doubt that Mr S. has suffered severe injuries in the accident. At the end of the day the only real issue in dispute was the contingencies to be applied.

[15] The evidence of the several expert witnesses who testified for the plaintiff remained largely, if at all, uncontested.

[16] I was informed that the parties agreed on past hospital expenses of R263 144 and

general damages of R850 000. An undertaking for future medical expenses is to be provided by the defendant in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[17] I have considered the various medico-legal reports and the two joint minutes. I am of the view that as far as loss of income is concerned the basis for the calculations made by the plaintiff's actuary are sound and the only issue is the question of contingencies to be applied which is within the prerogative of the court. Having carefully considered all the relevant factors I am of the view that a contingency deduction for future loss of income (there is no past loss) pre-morbid should be 25% and for post-morbid 40%. The result would be as follows:

Uninjured income (future)	R11 605 200	
Less 25% contingencies	R 2 901 300	R8 703 900
Injured income (future)	R5 773 300	
Less 40% contingencies	R2 309 320	R3 463 980
NET Loss of future income		R5 239 920
Add		
Past hospital expenses		R263144
General damages		R850 000
Total		R6 353 064

(Six million three hundred and fifty three thousand and sixty four Rands.)

[18] In the result the draft order which was handed up - save for the calculation of the capital amount - is marked 'X' and made an order of court. It provides for the plaintiff's costs of the action as well.

RANCHOD J

JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Plaintiff	: Adv P.C Eia
Instructed by	: Adendorff Attorneys
Counsel on behalf of Defendant	: Adv Mafofo
Instructed by	: Mayat Nurick Langa Inc.
Date heard	: 25 October 2016
Date delivered	: 11 April 2017