

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 35087/2012

Date: 11 February 2015

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

11/2/2015
DATE

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In the matter between:

SWART MARILIZE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PRETORIUS J.

[1] The plaintiff claims damages from the defendant for injuries sustained in

a motor vehicle collision. This collision occurred on 7 February 2009 whilst the plaintiff was driving a motorcycle at the time. The merits were conceded by the defendant and the liability of the defendant was agreed upon as 90% by the parties.

- [2] This court has to decide the question of quantum only. Agreement was reached between the parties that the defendant would be liable for payment of the amount of R29 700.00 for past medical expenses and an amount of R950 000.00 for general damages. An undertaking was given for future medical treatment. The only issue still in dispute is that of past and future loss of income.
- [3] The report of Dr Marus, the neurosurgeon for the plaintiff, was admitted as evidence, as well as the joint minutes by Dr Marus and Dr Maharaj, the neurosurgeon for the defendant. They agreed that the plaintiff had sustained a mild concussion that was complicated by a secondary brain injury due to a fat embolus. They deferred to the various psychologists to assess the extent of her difficulty in memory and emotional instability.
- [4] The plaintiff suffered two major injuries, a head injury and a fractured left tibia, which was complicated by sepsis. She sustained neck and back injuries as well. The orthopaedic surgeons had prepared a joint minute and noted that the left tibia fracture was knitted but complicated by chronic osteomyelitis, which was still present after 5 years.

- [5] Dr Versfeld, the orthopaedic surgeon for the plaintiff, gave evidence and testified that she still had the chronic infection in her leg, which sometimes still discharges puss and causes pain. If she had sustained only the leg injury Drs Versfeld and Ngobeni noted in the joint minute that:

“her employment will be affected greatly due to the multiple admissions and treatment expected.

She would be better suited to a sedentary type of occupation. In this regard they would defer to the relevant experts.”

- [6] Ms Donaldson, an industrial psychologist, testified on behalf of the plaintiff. Joint minutes by her and the industrial psychologist for the defendant were admitted. Her evidence was that due to the neurophysical, orthopaedic, neuropsychiatric, neuropsychological and associated function limitations and taking into consideration these as a whole would lead to the conclusion by her that the plaintiff is unemployable at any level.

- [7] The plaintiff was in the retail industry, working in several stores of the Foschini group as a store manager. According to Ms Donaldson the realistic expectation was that in the normal course of her employment she would have become an area manager, had the collision not occurred. Ms Donaldson erred on the conservative side when determining the salary scales the plaintiff would have attained by working on the presumption that the plaintiff would only have been a

store manager and not an area manager.

- [8] Mr Ormond – Brown, who is a clinical neuropsychologist, gave evidence that the plaintiff presented with typical features of hypoxic brain injury, including impairment of short-term memory and labile mood. His evidence was that it was probable that she would have recovered from the concussive head injury had she not suffered a fat embolus. The fat embolism caused the hypoxic brain injury, where the supply of oxygen to her brain had been interrupted. This causes her problems with concentration and mood lability. Treatment would not alleviate these problems and lead to the plaintiff functioning better. His evidence was that treatment by a clinical psychologist would merely be to give the plaintiff a sympathetic ear.

- [9] Mr Ormond –Brown's conclusion was:

“Effectively, the combination of her orthopaedic and brain injuries has rendered her unemployable on the open labour market.”

His evidence concluded the evidence for the plaintiff, apart from the actuary's report that was admitted as evidence.

- [10] The defendant did not lead any evidence, although counsel for the defendant had indicated to the court that the defence intended calling two witnesses. The court accepts the evidence of the witnesses of the plaintiff as being honest and correct.

[11] Both the plaintiff and defendant submitted actuarial calculations.

[12] Mr Wessels, counsel for the plaintiff, informed the court that the amount which according to the actuary should be awarded, after the Road Accident Fund Amendment Act Cap and Contingencies had been applied, was R5 667 100, 00. The actuary used the **Sweatmen v Road Accident Fund 17258/2011 WCC3/12/2013** decision and assumed that the limit would remain level as of the date of the accident and applied the limit to each year's loss (after mortality, discount, tax and contingencies had been deducted) from the date of the accident into the future up until the plaintiff's retirement age.

[13] The uncapped amount for loss of income is calculated at R5 809 685.00 and the capped amount is R5 677 100.00. There is no reason not to accept these calculations, although counsel for the defendant argued that a lesser amount should be granted by not using the Sweatman decision as authority and granting approximately R400 000.00 less. I do not agree with this submission as no basis for such an interpretation was laid by the defendant. The full amount is thus R6 654 600.00 when the past medical expenses and the general damages are added, less 10% which amounts to an amount of R 5 991 120.00.

It is ordered that:

1. Defendant shall make payment to Plaintiff in the amount of R5 991 120,00 payable to the plaintiff's attorney's Trust account;

2. Defendant shall furnish Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 limited to 90% in respect of the costs of the future accommodation of Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods as Plaintiff may require as a result of the injuries which the Plaintiff sustained as a result of the motor vehicle collision which occurred on **7 February 2009**;

3. Defendant shall pay Plaintiff's taxed or agreed party and party costs on High Court Scale, including the cost of senior counsel and any costs attendant upon the obtaining of payment of the amount referred to in paragraph 1 above, which costs are to include:

3.1. The costs of procuring the reports of the following experts:

- Dr Marus, Neurosurgeon;
- Dr Versfeld, Orthopaedic surgeon;
- Dr D Shevel, Psychiatrist;
- Mr Ormond-Brown, Clinical Psychologist;
- Ms S Murcott, Occupational Therapist;
- Ms B Donaldson, Industrial Psychologist;
- Mr A Munro, Actuary;

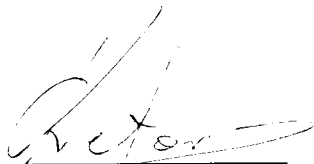
3.2 The preparation and attendance fees for the compiling of the joint expert minute by:

- Dr Marus, Neurosurgeon;

- Dr Versfeld, Orthopaedic surgeon;
- Mr Ormond-Brown, Clinical Psychologist;
- Ms S Murcott, Occupational Therapist;
- Ms B Donaldson, Industrial Psychologist;

3.3 The preparation and attendance fees at trial for the following experts:

- Dr Versfeld, Orthopaedic surgeon;
- Ms B Donaldson, Industrial Psychologist;
- Ms S Murcott, Occupational Therapist;
- Mr Ormond-Brown, Clinical Psychologist



Judge C Pretorius

Case number : 35087/2012

Heard on : 4 February 2015

For the Plaintiff : Adv. JJ Wessels

Instructed by : MUNRO FLOWERS & VERMAAK

For the Respondent : Adv. N Pather

Instructed by : MM INCORPORATED

Date of Judgment : 11 February 2015