IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

24/2/15

CASE NUMBER: 26808/2011

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

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In the matter between:

THELMA NWABISA SIPHOKAZI GIJA **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MOSEAMO AJ

[1] This is an action for damages resulting from bodily injuries sustained by the Plaintiff in a motor vehicle accident on the 16th March 2008.

[2] At the commencement of the trial the issue of liability had already been settled between the parties. The defendant conceded the merits 100%. It was also agreed that the defendant would furnish the plaintiff with an undertaking in respect future accomodation, hospital and medical expenses in terms of section 17(4)(a) of the Road Accident Fund 56 of 1996.

[3] The following aspects of the plaintiff's claim have also become settled:

(a) Past Medical Expected R15 909.25

(b) General Damages R150 000.00

[4] The only issues for determination in this trial were the plaintiff's damages for past and future loss of earnings. The parties agreed that no oral evidence was to be led and that the issues in dispute were to be determined on the contents of various experts' reports and joint minutes based on such reports.

[5] The Plaintiff sustained the following injuries as a result of the collision: (a) a head injury with loss of consciousness for an unknown period; (b) a soft tissue injury to her back; (c) two fractured ribs: (d) an abrasion on her forehead.

[6] Dr Hans B Enslin, an orthopaedic surgeon interviewed the plaintiff on the 16th July 2010 and filed a report on her behalf. According to his report plaintiff was initially unconcious but woke up at the scene. She was transported to Muelmed Hospital where X-rays of her chest, cervical spine, thoracic spine, lumber spine and skull were processed and she was admitted for two days. She was fitted with a cervical

collar. She attended physiotherapy and had consulted various doctors for her neck, back and chest. She also consulted a Clinical Psychologist and was referred to a Psychiatrist. Dr Enslin also recorded that plaintiff is depressed, anxious and tires easily.

[7] It is common cause that at the time of the accident plaintiff was 38 years old. She was taking medication for depression and had a pre-disposition to Bipolar Mood Disorder.

[8] In a joint minutes of a meeting between occupational therapists Ms Kgatla and Ms Putter it was noted Plaintiff's educational qualifications and employment history as follows: Plaintiff's highest level of education is grade 12. She obtained a one year Diploma in Commercial Studies. She worked as a fitting room attendant and cashier from 1988 to 1996. She then had her own catering business from 1996 to 1999. She worked as a call centre agent from 1999 until 2001. She then worked as broker at ABSA for three years. She started working as a call centre agent at the Road Accident Fund in 2003. She was reportedly dismissed due to ill mental health on 24th August 2011. She was unemployed until May 2013 when she became a self employed mobile spa owner in June 2013.

[9] Plaintiff is currently self-employed as a mobile spa owner. She does Swedish massages and Thai Reflexology for clients at their houses, offices or hotels.

[10] The experts agreed with the psychiatrist, Dr Shevel, that:

(a) Plaintiff will always be a vulnerable employee and will have a disadvantage compared to her healthy counterparts when seeking employment or maintaining current and future clients in her self-employed capacity;

(b) It is probably not feasible for growing her business or working for someone else;

(c) Her fear of driving, pain experiences and emotional problems will most probably curb her enthusiasm to seek more clients at her current self-employed business;

(d) Her limited motivation will furthermore negate her chances of securing suitable alternative employment, should she change careers;

(e) She would probably need a sympathetic employer seeing that she is no longer an equal competitor.

[11] At the beginning of the hearing, Plaintiff placed the following on record:

Plaintiff was employed by respondent as a claims handler prior to the accident. She was diagnosed with Bipolar Mood Disorder after the accident. She took several sick leave days and was subsequently dismissed as a result of ill health. The plaintiff referred the issue of dismissal and the matter was settled between the parties in the sum of R44 266.05. It was also placed on record that plaintiff was involved in two previous accidents, in 2004 and 2005 respectively. It was stated by plaintiff's counsel that although plaintiff had a history of depression and was pre-disposed to developing Bipolar Mood Disorders, the accident precipitated the Bipolar Mood Disorder as per Dr D. A. Shevel, psychiatrist.

[12] It was contended on behalf of the plaintiff that prior to the accident the plaintiff functioned very well and even got a promotion to the position of a claims handler prior to the accident.

[13] Defendant's contention is that although plaintiff is entitled to loss of earnings, it should be reasonable. The Defendant's counsel stated that plaintiff's pre-disposition to bipolar complicates matter. According to the defendant the fact that plaintiff suffered from mental illness and was on treatment, she should have mitigated her condition. Defendant's counsel contended that plaintiff should have seen to it that she got the required treatment an she could afford the medication from the money she was making as a masseuse.

[14] Defendant's counsel referred the court to Dr Shevel's 's report which states that Bipolar Mood Disorder was not caused by the physical trauma suffered by the plaintiff. However it is admitted that the accident triggered Bipolar Mood Disorder.

[15] It is contended on behalf of the defendant that the defendant should not be held liable for a lifetime loss of earnings as Bipolar Mood Disorder can be treated.

[16] Defendant's counsel referred the court to Dr David A Shevel's report and emphasized or highlighted the following: (a) physical trauma would not cause a condition such as Bipolar Mood Disorder; (b) the injuries sustained in the accident in March 2008 would not account Plaintiff's ongoing symptoms of Bipolar Mood Disorder; (c) a significant head injury could be a perpetuating factor but plaintiff appears to have sustained only a mild concussive head injury; (d) the injuries sustained would not be considered as a long term perpetuating factor; (e) the injuries sustained could account for the ongoing depression for an additional period of 2-3 years to but that they are very unlikely to be considered long term perpetuating factor.

[17] It was contended that although the accident triggered Bipolar Mood Disorder, it can be treated. Defendant's counsel referred me to page 13 of Dr David A Shevel's report where he states that the Bipolar Mood Disorder can be brought under control, and that any ongoing occupational dysfunction is unlikely to be as a result of the accident.

[18] Defendant's counsel submitted that the Defendant should not be held accountable for a lifetime loss of income.

[19] He contended that plaintiff should only be awarded past loss of earnings in the sum of R381 853. He also provided that if the court determines that plaintiff should be compensated for future loss of income then plaintiff be awarded future loss of income for the period of 3-4 years while she is undergoing treatment for Bipolar Mood Disorder. He stated that normal contingencies should apply.

[20] It is clear that the plaintiff although having a history of depression since 2000 she was employed and even got a promotion to a position of claims assistant by the defendant. According to the joint minute of the Industrial psychologists, she earned a monthly basic salary of R7 816.46 per month making her annual salary R125 169.31. Her guaranteed income was R138 887 per annum (excluding the employer's contribution towards her Medical Aid).

[21] The psychologists agree that she may have reached her hierarchical career ceiling. They also agree that they cannot rule out the possibility that she may have progressed to call centre supervisor or team leader at approximately age 45. The retirement age at RAF for all employees is 60.

[22] The psychologists agree that the plaintiff earns an average income of R6 120 per month. They agree that plaintiff will in all probability be able to continue working in her current self-employed capacity.

[23] Defendant submitted that a fair award would be to award past loss of earnings in the sum of R381 853. The defendant offered to pay for the Mood Bipolar Disorder medication for the 2 years period. Defendant's counsel conceded that the undated report referred to 3-4 years.

[24] Defendant submitted that the plaintiff can be compensated for the 3-4 years that she will be receiving treatment, further that normal contingencies of 10% pre-morbid and 20% post-morbid should apply.

[25] It is common cause that plaintiff suffered from depression prior to the collision and that she had a pre-disposition to bipolar. She had been involved in 2 previous accident which are not relevant for purposes of this matter. The accident relating to this matter triggered Bipolar Mood Disorder which ultimately led to her dismissal at work. It is also common cause that plaintiff's dysfunction since the time of the accident is as a direct result of the Bipolar Mood Disorder.

[26] I have noted that the in the joint minutes of Ms Kgatla and Ms Putter that they agree with Dr Shevel that plaintiff will always be a vulnerable employee and will have a disadvantage compared to her healthy counterparts when seeking employment or maintaining current and future clients in her self-employed capacity.

[27] Plaintiff's counsel proposed a contigency deduction of 25% on pre-morbid income and 50% on post-morbid income while defendant contended that the plaintiff is not entitled to future loss of earnings alternatively that plaintiff be compensated for 3 to 4 years that plaitiff will be receiving treatment for Bipolar Mood Disorder and that normal contigencies should apply.

[28] Both parties agree that (a) plaintiff had a predisposition to Bipolar Mood Disorder; (b) the accident did not cause the Bipolar Mood Disorder but precipitated it; (c) plaintiff was dismissed as a result of Bipolar Mood Disorder; (d) the plaintiff is now a vulnerable employee and will have difficulty in re-entering the open labour market even after obtaining treatment for Bipolar Mood Disorder.

[29] I accept that plaintiff coped very well in her career and even got promoted despite the fact that she was suffering from depression. In my view the fact that the accident precipitated the Bipolar Mood Disorder and she was dismissed as a result of the Bipolar Mood Disorder.

[30] The contention made on behalf of the defendant that the plaintiff should only be compensated for the period that he is receiving treatment for the Bipolar Mood Disorder does not address the fact that the plaintiff is, as a result of the accident, now a vulnerable employee and that she will have difficulty in re-entering the open labour market even after obtaining treatment for Bipolar Mood Disorder.

[31] In calculating loss of income the plaintiff's counsel relied on the actuarial report prepared by Van Der Linde Actuaries. The method of calculation was not disputed on behalf of the defendant.

[32] I am of the view that plaintiff should be compensated for future loss of income and a contigency factor of 25% should be allowed on the pre-morbid scenario of R2 942 030 resulting in a pre-morbid income of R2 206 522. On post-morbid income a contigency factor of 50% should be allowed on the income of R1 750 220 resulting in the post morbid income of R 875 110. The plaintiff is therefore entitled to an award of damages for loss of in the sum of R1 331 412.

[31] The full award is therefore as follows:

Past medical expenses	R 15 909.25
Loss of earnings	R1 331 412.00
General damages	R 150 000.00
Total	R1 497 325.25

In the result I make the following order:

1. The defendant is ordered to pay to the plaintiff the sum of R1 497 325.25 together with interest thereon at a legal rate calculated from 14 days of this judgment to date of payment;
2. The defendant is directed to furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act to cover future hospital and medical expenses which plaintiff may incur resulting from the collision.
3. The defendant is ordered to pay the plaintiff's costs of suit.

P D MOSEAMO

ACTING JUDGE OF THE HIGH COURT