

IN THE GAUTENG DIVISION, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 24246/13

DATE: 11 MARCH 2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

L P MOTEBEJANE

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MSIMEKI J:

INTRODUCTION

[1] The plaintiff instituted an action against the defendant for damages which he allegedly suffered arising from the injuries that he sustained when the insured motor vehicle bearing registration number D[...], he was travelling in, overturned. S Mathebula was the insured driver.

[2] Advocate C M Dredge (Mr Dredge) and Advocate L G P Ledwaba (Mr Ledwaba), respectively, represented the plaintiff and the defendant.

THE ISSUE

[3] From the submissions of both counsel, the issue to be resolved appears to be whether the plaintiff was employed prior to and at the time of the accident and thereafter.

[4] Indeed, the court was called upon to determine the issue of employment and salary. The parties referred to no other issue, but this. The issue in my view, is crisp and narrow.

[5] The plaintiff, to support his case, testified. The plaintiff was armed with expert reports which the defendant did not have. Mr Ledwaba was constrained to admit the plaintiffs expert reports.

[6] The plaintiff testified and closed his case. The defendant, in the absence of the expert reports and witnesses, was also bound to close its case. Mr Ledwaba intimated that he would only test the plaintiffs evidence by using the plaintiffs reports.

[7] The plaintiff testified that he passed grade 12. He received training in basic ambulance assistance. He further received training which would enable him to work for KFC. He worked as a hairdresser with one Charlie Seakamela who was his partner.

[8] He was involved in an accident and this caused their salon to suffer. He had an added problem when Charlie went to his home in Limpopo leaving the business unattended. The plaintiff testified that their business, had he not been involved in the accident, would still be thriving. The plaintiff testified that while working at the salon his salary would either be R4 000-00 or R4 500-00. He could only do piece jobs after the accident and he brought in approximately R1500-00 per month. This evidence, which I accept, has not been challenged.

[9] The plaintiffs evidence, in the main, was unchallenged except for minor differences in his testimony which, in my view, were immaterial. The plaintiff acquitted himself very well when he testified. His evidence was not only plausible it was also simple, straight forward and reliable. As I alluded to above, the defendant had no evidence to controvert the plaintiffs evidence. There was virtually no version which Mr Ledwaba could put to the plaintiff. The plaintiffs expert reports could not be challenged. The plaintiffs evidence, in the main, is in line with the reports of his experts.

[10] Dr A C Strydom, the industrial psychologist, supports the plaintiffs evidence.

The plaintiff, according to her, “was able to earn between R29 000.00 and R8 8750.00 per annum. Had he been able to work as an ambulance assistance, his earnings would have ranged between R60 000.00 and R90 000.00 per annum”. Page 123 of the papers demonstrates this.

[11] Rita Van Biljon, the occupational therapist, reveals that the plaintiff, during the accident, vomited blood,

his Glasgow coma score was 15/15. He had general body pain, tenderness over his cervical spine, bruises on his chest, tenderness over his left hip and left femur injury. He presented with swelling of his forehead and left shoulder injury and lost one tooth. The plaintiff also had the following injuries: a soft tissue injury to his neck, a soft tissue injury to his left thigh and a concussive head injury.

[12] Dr Hans B Enslin, the orthopaedic surgeon, concluded that the plaintiff has symptoms of post traumatic stress disorder, a whiplash injury to his neck, impingement syndrome of his left shoulder and chondromalacia behind his left patella.

[13] Rita Van Biljan reports that the plaintiff experiences difficulties sleeping at night. He further experiences occasional pain when performing his personal care. He has problems transferring in and out of the bathtub.

[14] According to Dr Enslin, the plaintiff “has not reached the 30% or more whole person impairment but would qualify to be awarded general damages on the grounds of serious long term impairment and/or loss of function.” He, according to Dr Enslin, “has reached MM1 but the effect of his injuries will be felt for years to come.”

[15] Rita Van Biljon is of the opinion that the plaintiff “will be able to meet the weight handling requirement of sedentary and light work.” She, however, holds the view that he will experience difficulty meeting the mobility requirements of light and therefore a sedentary environment is recommended.”

[16] According to Dr Strydom, the plaintiff was employed as a hairdresser at the time of the accident. He is now working as a self-employed general worker. He enjoyed “good health prior to the accident and he probably had the capacity to have continued working until the usual retirement age of 65.”

[17] The plaintiff's income generating potential, according to Dr Enslin, remains “affected by his chronic pain, as well as by a major depressive disorder”. The Dr noted that the plaintiff cannot perform all of the work tasks that he previously performed.” The plaintiff is vulnerable and less competitive than younger and healthier job seekers in the open labour market. With his certificate as an Ambulance Assistant and a certificate in Restaurant training, according to the Dr, the plaintiff's employment within these positions would seem unlikely.

[18] I have accepted the plaintiff's evidence regarding his employment and salary. The remaining issue to be determined is that of contingencies to be applied to his past and future earnings.

[19] The parties are *ad idem* when it comes to amounts. The differences relate to the percentages to be applied. The parties agree that 5% / 5% should be applied to the past earnings. Mr Ledwaba held the view

that when in doubt the court should apply 50% / 50% to the future earnings. Mr Dredge, for the plaintiff, held the view that for past earnings 5% / 5% should be applicable while 15% /15% should be applied in respect of future earnings. I agree.

[20] The defendant never controverted the plaintiffs evidence. The defendant, in the absence of their evidence and their expert reports became bound to admit and accept the plaintiffs expert reports. It had no alternative. Having considered the plaintiffs evidence and his expert reports, which in any event, were admitted and accepted by the defendant, Mr Dredge's submission has merit and is acceptable.

[21] The past loss of earnings based on 5% / 5% amounts to R144 427.00. The future loss of earnings based on 15% / 15% amounts to R653 251.35. We get our total loss of earnings by adding R144 427.00 to R652 251.35 and that gives us the total loss of R797 678.35. This is the amount that the defendant is liable to pay the plaintiff.

[22] Mr Dredge provided me with a draft order which I have perused and accepted.

[23] The draft order, in my view, is in order as it covers everything that needed to be covered.

[24] **I, in the result make the following order:**

The draft order "X" signed and dated and annexed hereto is made an order of the court.

M.W. MSIMEKI

JUDGE OF THE GAUTENG DIVISION

PRETORIA

COUNSEL FOR THE PLAINTIFF: ADV C M DREDGE

INSTRUCTED BY: VAN ZYL LE ROUX INC

COUNSEL FOR THE DEFENDANT: ADV L G P LEDWABA

INSTRUCTED BY: IQBAL MAHOMED ATTORNEYS

DATE OF HEARING: 28 OCTOBER 2014

DATE OF JUDGMENT: 11 MARCH 2015

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case num: 24246/2013

28 October 2014

Before the Honourable Justice

MSIMEKI

In the matter between:

LAWRENCE PUDURU MOTEBEJANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

AFTER HAVING HEARD COUNSEL, IT IS ORDERED THAT:

1.1 The Defendant is to pay the Plaintiffs attorneys the sum of R 797678.35

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

ACCOUNT HOLDER: VAN ZYL LE ROUX INC

BRANCH: ABSA VAN DER WALT STREET

BRANCH CODE: 323345

TYPE OF ACCOUNT: TRUST ACCOUNT

ACCOUNT NUMBER: [...]

1.2 In the event of default on the above payment, interest shall accrue on such outstanding amount at 9% per annum calculated from due date until the date of payment;

1.3 That the issue of general damages is separated from all the other issues in terms of rule 33(4), with the aforementioned being postponed sine die.

2.

2.1 The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, limited to 80% (eighty percent) in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **4 December 2005**.

2.2 If the Defendant fails to furnish the undertaking to the Plaintiff on due date, the Defendant shall be held liable for the payment of the taxable party and party additional costs incurred to obtain the undertaking;

3.

The Defendant to pay the Plaintiffs taxed or agreed party and party cost in the above mentioned account, for the instructing attorneys, which cost shall include, but not be limited to the following:

3.1 All reserved cost to be unreserved if any;

3.2 The fees of Counsel;

3.3 The cost of obtaining all expert medico legal- and any other reports of an expert nature which were furnished to the Defendant;

3.4 The reasonable taxable qualifying, preparation and reservation fees of all experts, if any;

3.5 The reasonable traveling- and accommodation cost, if any, incurred in transporting the Plaintiff to all medico-legal appointments;

3.6 The above-mentioned payment with regard to costs shall be subject to the following conditions:

3.6.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and

3.6.2 The Plaintiff shall allow the Defendant 14 (fourteen) calendar days to make payment of the taxed costs.

There exists no contingency fee agreement between the Plaintiff and the Plaintiff's attorneys.

By Order of the Court

REGISTRAR