

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED. ✓

14/5/2018
DATE

[Signature]
SIGNATURE

Case no: 28200/14

In the matter between:

CHUMA VUTIVI PETUNIAH

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

1. This is a Road Accident Fund matter in which I was advised by both counsel at commencement of this trial that the following was common cause between the parties:
 - 1.1. that the Plaintiff had no expenses in respect of her claim under 8.1 of the particulars of claim in respect of past hospital and medical costs;
 - 1.2. Defendant had given an undertaking as provided for in section 17(4)(a) of Act 56 of 1996 (par 8.2 of the particulars of claim);

- 1.3. that Defendant would pay the Plaintiff general damages in the amount of R500 000.00;
 - 1.4. that the Plaintiff abandoned her claim for past loss of earnings as set out in 8.3 of the particulars of claim;
 - 1.5. the Defendant conceded the qualifying fees and expert fees of Plaintiff's experts are conceded.
2. Thus the only dispute to be decided was the amount to be awarded to Plaintiff for future loss of earnings and the contingencies to be applied to that award.
3. Mr Maphelela for Plaintiff submitted that the accident, Plaintiff's injuries and contents of the Plaintiff's expert reports are not in dispute which was confirmed by Mr Mphahlele who acts for Defendant.
4. The Plaintiff was a nursing student. She had no prior injuries or surgeries. As a result of the accident she can no longer walk or stand properly which is required in the nursing profession.
5. According to the occupational therapist the Plaintiff will deteriorate and she will not be able to work at her chosen profession (i.e. nursing) and she will have to change careers: it is doubtful that she has the funds to do this at this stage.

6. According to the Clinical Psychologist the Plaintiff has “...*poor working memory, major problems with focussed attention and concentration, as well as problems with memory and speed. Her sort- as well as long term memory functions are problematic, underachievement in all areas of her cognitive functioning...*”. This does not bode well for the Plaintiff’s chosen profession where she has a multitude of functions to perform which include following doctor’s instructions and dispensing medicine.
7. Counsel for Plaintiff has submitted that the sequelae of the accident have not rendered the Plaintiff completely unemployable. The Industrial Psychologist clearly indicates that although Plaintiff has a residual work capacity, people in her position struggle to find work and if they do, it is usually in the unskilled labour market.
8. Plaintiff’s retirement age is calculated to be age 65.
9. When looking at the actuarial calculations, I was informed that the parties had agreed to use the calculation on p 97 of Bundle A (and not those on p 98).
10. Bearing in mind that Plaintiff has abandoned her claim for past loss of income in the amount of R199 700,00 the calculation now looks as follows:

Future uninjured income

R6 611 200

minus

Future injured income	R3 233 100
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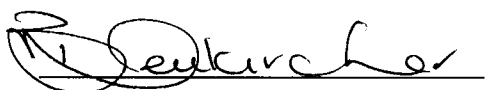
Loss of income	R3 388 100
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11. Mr Maphelela submitted that the usual pre- and post-morbid spread of injuries is 5% pre up to 15% post.
12. He submitted that a 20% pre-morbid contingency is reasonable which bring the calculation of "future uninjured income" to R5 288 960. He submitted that a post-morbid contingency of 25% is reasonable and the "future injured income" will then be R2 417 325. This leaves Plaintiff with an amount of R2 871 635 in respect of future loss of income.
13. Thus Mr Maphelela claims the following order should be granted:
 - 13.1. an amount of R2 871 635 for future loss of income;
 - 13.2. an amount of R500 000 for general damages;
 - 13.3. the undertaking in respect of section 17(4)(a) of Act 56 of 1996;
 - 13.4. costs, including the costs of all the experts who prepared reports.

14. Mr Mphahlele on behalf of Defendant submitted that given the fact that Plaintiff completed her nurses training on 31 October 2013 i.e. four months after the accident, her sequelae cannot be as severe as has been stated (as I understand him). He supports this argument by referring to the report of Dr Kumbirai (Orthopaedic Surgeon) who gives a 10% occupational reduction i.e. the Plaintiff has a 90% working capacity. However, this does not take into account the fact that the Defendant has already conceded the expert reports which includes the facts and findings.
15. In any event one cannot look at this report in isolation as the report of the Industrial Psychologist states that Plaintiff's condition will deteriorate and she will not be able to work at her chosen profession. In the absence of any evidence to the contrary (as no experts were called by Defendant or gave reports) I must accept this evidence as she is the one who determines Plaintiff's future work prospects, not the orthopaedic surgeon.
16. Mr Mphahlele submitted that bearing in mind that Plaintiff previously was employed at Khari Gode (as school for adult learners) where she earned R1 350,00 per month in 2011 – 2011 a pre-morbid contingency of 50% should be applied which would put her uninjured income at R3 305 600.
17. He submitted that a post-morbid contingency of 25% is appropriate putting Plaintiff's injured loss at R2 417 325.

18. This then leaves R899 275 for her future loss of income.
19. I do not agree that 50:25 spread is reasonable given the facts and circumstances of this case.
20. Mr Mphahlele then tendered the costs of suit on a party and party scale including the costs of Plaintiff's experts.
21. I also note herein that the matter stood down from 6 May 2015 until today as no judges were available.
22. Given the facts of this matter and having regard to the report of the Industrial Psychologist, I am of the view that the 20:25% spread submitted by Plaintiff's counsel is reasonable.
23. Thus the following order is made:
 - 23.1. Defendant is to pay the Plaintiff an amount of R3 371 635;
 - 23.2. interest at 9% will run from 14 days of date of this order to date of payment;
 - 23.3. the Defendant is to give the Plaintiff an undertaking as provided for in section 17(4)(a) of Act 56 of 1996;

23.4. the Defendant is to pay Plaintiff's cost including the costs consequent upon the employment of all her experts their, their qualifying fees and reports.

A handwritten signature in black ink, appearing to read 'B Neukircher', written over a horizontal line.

B NEUKIRCHER (AJ)

14 May 2015