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**IN THE HIGH COURT OF SOUTH AFRICA**
**FREE STATE DIVISION BLOEMFONTEIN**

Case no: 850/2008

In the matter between:

**C[…] C[…] P[…]** Plaintiff

and

**ROAD ACCIDENT FUND** Defendant

**JUDGMENT BY:** RAMPAI, AJP

**HEARD ON:** 13 AUGUST 2014

**DELIVERED ON:** 5 FEBRUARY 2015

[1] These were action proceedings. Since the defendant had already conceded the substantive merits of the plaintiff's case, I was required to adjudicate the dispute concerning only the *quatum* of her claim.

[2] I deem it necessary to give a historical backdrop of the matter. The plaintiff was involved in road accident which took place in Bloemfontein on the 4 April 2003, some 11 years and 4 months before I heard the matter. The accident was in President Paul Kruger Avenue. The precise scene of the accident was at a traffic intersection formed by Fouché Street and the said avenue, which is one of the main traffic arteries in the city. At the time of the accident Mrs CC P[...] was the driver of a

motor car with registration number NXL[…] and a certain Mr F A Greyling the rider of a motor bike with registration number BTS[…].

[3] As a result of the collision, the plaintiff sustained certain bodily injuries, among others, fractured skull and a whiplash. On the 19 February 2008 she initiated these action proceedings against the Road Accident Fund as the statutory insurer of the rider of the motor bike. She claimed R570 000,00 compensation under three heads, namely:

- Past medical expenses R 20 000,00
- Future medical expenses R300 000,00
- General damages R250 000,00

See paragraph 7 of the Particulars of Claim.

[4] The matter was then enrolled for hearing. It was subsequently assigned to Hancke, J who by agreement between the parties, made the following order in favour of the plaintiff on the 15 November 2011:

> "1. The *quantum* and merits are hereby separated.
>
> 2. Defendant to pay the Plaintiff 75% of Plaintiff's damages to be proved.
>
> 3. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs, which shall include the reservation fees of Plaintiff's expert witnesses on *quantum*, on the High Court scale to date of this order.
>
> 4. In the event that the costs are not agreed upon, Plaintiff shall serve a Notice of Taxation on Defendant's attorneys of record and shall allow the Defendant seven (7) Court days thereafter to make payment of the taxed costs."

[5] The plaintiff filed a notice of his attention to amend the original particulars of the claim. The notice was filed on the 28 May 2013. The amendment concerned only two of the various components of the compensation claimed in paragraph 7. She claimed the following:

| | | |
|---|---|---|
| "7.1 | Past medical expenses | R 20 000,00 |
| 7.2 | Future medical expenses | R 300 000,00 |
| 7.3 | General damages | R 250 000,00 |
| 7.4 | Future and past loss of earnings | R5 470 135,00" |

The total sum of her claim was estimated to be R6 040 135,00. Prayer 1 was accordingly amended. Her original claim of R570 000,00 escalated to R6 040 135,00. The introduction of loss of earnings as a new component of the compensation was the sole reason for the amendment.

[6] The first component of the action, the merits, was then out of the way. The action was enrolled again to have the second component of the action, the *quantum*, adjudicated. On that second occasion the action was assigned to Ebrahim J, who, by agreement between the parties made the following order on 11 June 2013:

"1. The hearing of the matter with regards to the *quantum* of the future and past loss of earnings and past medical expenses are postponed *sine die*;

2. Defendant pays plaintiff an amount of **R187 500 (ONE HUNDRED AND EIGHTY SEVEN THOUSAND FIVE HUNDRED RANDS AND ZERO CENTS)** in respect of general damages before or on **31 July 2013**. The amounts to be paid directly into the account of the plaintiff's attorneys, the particulars thereof are as follows:

| | | |
|---|---|---|
| **Name of account holder** | **:** | **B.L. KRETSMANN ATTORNEYS** |
| **Name of bank** | **:** | **NEDBANK** |
| **Name of branch** | **:** | **WELKOM** |
| **Account number** | **:** | **[…]** |
| **Branch code** | **:** | **116 635** |

**Reference : […]**

3. The defendant to furnish to the plaintiff an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, limited to 75%, of the costs of the future accommodation of plaintiff (born **1[…] M[…] 1975**) in a hospital or nursing home or the treatment or the rendering of a service or the supplying of goods to plaintiff arising out of injuries sustained by her in the motor vehicle collision of 4 April 2003, in terms of which undertaking the defendant will be obliged to compensate plaintiff in respect of the said costs after the costs have been incurred by plaintiff or any party on behalf of her and on proof thereof.

4. Defendant is liable for payment of the plaintiff's taxed or agreed party and party costs, which will include the following:

4.1 The reasonable preparation/qualifying and reservation fees and expenses (if any) of:

4.1.1 S van Jaarsveld (Industrial Psychologist);
4.1.2 TW Doubell (Actuary);
4.1.3 Dr. P Repko (Neurosurgeon);
4.1.4 Dr. L Stevens (Clinical Psychologist);
4.1.5 M Human (Speech Therapist);
4.1.6 Dr. De Wet (Orthopedic Surgeon) and
4.1.7 M Ackerman (Neuro psychologist).

4.2 The costs attendant upon obtaining the payment of the amounts referred to in this order.

4.3 The plaintiff shall serve the notice taxation on the defendant's attorney of record, and

4.4 The plaintiff shall allow the defendant 7 (seven) court days to make payment of the taxed costs."

I shall revert to the order later.

[7] On the 25 February 2014 the parties held a conference in terms of Rule 37(7) in pursuit of the outstanding issues relative to the second component of the action, *viz quantum*. Those issues were identified by the parties as follows:

"… future and past loss of earnings and the past medical expenses."

See paragraph [5] Rule 37 minutes – p26 record.

[8] On the 12 August 2014 the parties held a further conference in terms of Rule 37(7). The parties repeated that the only issues of *quantum* still outstanding concerned past medical expenses, past loss of earnings and future loss of earnings – vide paragraph [2]. Further Rule 37 Minutes – p2, Bundle 2.

[9] On the 13 August 2014 the matter was before me. The version of the plaintiff as regards *quantum* was presented to me by two witnesses, namely: Ms CC P[...], the plaintiff herself, and Mr T W Doubell an actuary.

[10] As regards past medical expenses, the plaintiff relied on some 56 invoices by various doctors, pharmacists, physiotherapists and other providers of health care services. It appeared that the expenses were incurred between 9 February 2010 and 9 August 2011. The total of such expenses was alleged to be R44 153,14 according to the plaintiff's schedule and supporting vouchers filed in terms of Rule 36(4) to supplement her claim. The schedule was handed up and marked Bundle 1.

[11] Save for an amount of R6 000,00 which the plaintiff made in favour of Dr P Repko on the 8 August 2011, the rest of the past medical expenses were not seriously challenged. The said doctor was not paid for medical treatment he gave to the plaintiff. He was rather paid for consultation and compilation of a medico-legal assessment report. Therefore, the amount formed no part of the plaintiff's past medical expenses. Accordingly it was not claimable from the defendant under such a component of compensation. I would, therefore, allow the plaintiff's claim for past medical expenses in the sum of R38 153.

[12] As regards past loss of earnings, the plaintiff claimed R1 134 423,00 from the defendant. See 5 actuarial assessment reports – p6, Bundle 2. The calculation was done on 11 June 2013. Her estimated past loss of earnings then increased by R362 389,00 to R1 496 812,00.

[13] The second issue is the extent to which the defendant is obliged to compensate the plaintiff in respect of past loss of earnings.

[14] On behalf of the plaintiff it was contended that the plaintiff's patrimony was diminished by the sum of R1 496 812,00 as a result of her past unemployability. Mr Roux, on behalf of the plaintiff, submitted that the plaintiff would have earned such income but for the impact of the motor vehicle accident. Counsel submitted that her incapacity to earn such income was caused by the disabling injuries she sustained in the road accident. Accordingly counsel urged me to make an award in the aforesaid amount in order to make good her past patrimonial loss.

[15] On behalf of the defendant it was contended that the plaintiff's patrimony was not so substantially diminished as the plaintiff contended it was. Mr Moeti, counsel for the defendant, argued that there was no cogent evidence which indicated that the injuries sustained by the plaintiff in the road accident were so severe that they rendered the plaintiff totally unemployable.

[16] The plaintiff was born on the 10 March 1975. She was injured in the road accident which occurred in Bloemfontein on Saturday, 4 April 2003. She was 28 years of age at the time. She lost consciousness for a brief spell of time but regained it while she was still on the scene of the accident. She did not immediately consult a doctor. She returned to Johannesburg the next day where she worked for a business enterprise called iSolve Business Solutions (Pty) Ltd. Her designation was business development manager. Her gross salary was R18 222,40 per month.

[17] She began to experience severe episodes of headache. She consulted a physician who referred her to Tembisa Hospital where she was admitted three days after the accident. She was medically treated as an in-patient. Her treating doctor

was Dr R Engels. She was examined in connection with minor head injury and neck injury. The doctor described the injuries as whiplash injury of the neck with headache. She was hospitalised for two weeks. She was then discharged. – vide p34:11, Bundle 2. The statutory medical report was completed on 30 October 2003.

[18] Her house doctor, Dr Engels referred her to a physician, Dr Roodt because she continued to suffer neck pains and headaches. The physician stabilised her neck by means of a neck traction. However, pains relative to her neck injury and head injury persisted. She was then referred to the Mediclinic in Sandton where she was hospitalised. From the record I could not established for how long she stayed in hospital. Dr Maxwell subjected her to further neck traction. She was also supplied with a neck collar.

[19] Notwithstanding her health conditions, the plaintiff resumed her work at iSolve Business Solutions (Pty) Ltd on or about 18 April 2003. She remained in the employ of that enterprise for approximately 4½ years after her injury on 4 April 2003. During that period she continued to work as a business development manager. She was permanently appointed in that position before the accident. Her position and salary were not adversely affected. Between the date of her accident and the date of her recuperation her employer fully remunerated her. Therefore, she suffered no loss of earnings during the entire period of her recuperation. On 30 September 2007 she resigned.

[20] It would appear that she remarried during September 2007 before her resignation. Her husband, B[…], lived on the farm Goedverwacht, district Bultfontein, Province Free State. Her resignation was therefore prompted by her marriage and not her occupational disability caused by the road accident.

“Mrs P[...] indicated that she resigned at the end of September 2007 as she got married and moved to Bultfontein.”

Ms S van Jaarsveld, industrial psychologist p11:6.10, see page 21, Bundle 2.

[21] I am of the view that her move from Johannesburg to Bultfontein was informed by matters of the heart and not her impaired ability to perform her work satisfactory. It is more probable than not that but for the marriage she would not have resigned. If her husband lived in Johannesburg at the time of her marriage, the indications are that she would probably not have resigned.

[22] From 1 October 2007 until the 31 January 2008 the plaintiff was not gainfully employed. She lived on a farm with her husband. During those 4 months she earned no income whatsoever. She lost a gross sum of R72 889,60. She could have earned such income as a business development manager at iSolve Business Solutions (Pty) Ltd had she not freely resigned. It follows, therefore, that the defendant was not liable for such past loss of earnings.

[23] On 1 February 2008 her previous employer, iSolve Business Solutions (Pty) Ltd re-employed. She was engaged on the basis of a fixed term contract of employment. She was contracted as a project co-ordinator at Sasolburg. She worked from home. She could substantiate her allegation that she earned R15 000,00 per month. The project she co-ordinated was completed on 18 February 2010 when the business relationship between Sasol (Pty) Ltd and iSolve Business Solutions (Pty) Ltd came to an end. During that period of two years the plaintiff earned R360 000,00 gross. Again it will be readily appreciated that that contract of employment was terminated through effluxion of time and not disability to properly co-ordinate the project.

[24] Since 1 March 2010 until the 14 August 2014 the plaintiff has been unemployed. However, she has been assisting her husband with farming operations.

See S van Jaarsveld, p7:5.1.3.3 – page 17 Bundle 2. The monetary value of her performance of farming operations has not been quantified. She became jobless since the 1 March 2010 because her fixed term contract of employment expired. The contract between her employer, iSolve Business Solutions (Pty) Ltd and Sasol (Pty) Ltd came to its natural end. The project for which she was appointed was accomplished. It follows therefore that she was not dismissed on medical grounds

relative to the accident we are here dealing with. There was no evidence that her previous employer was dissatisfied with her productivity level. It is probable that she would have continued working as a project co-ordinator had the contract period of the project endured beyond 28 February 2010. Since then the plaintiff has made no serious effort to find another job because her subjective opinion was that she could not return to her previous work given her present condition.

[25] It has to be accepted that the plaintiff volunteered to work again after a break of 4 months. She was willing and able to co-ordinate her employer's project for two consecutive years. She was then laid off on the grounds of her employer's operational requirements and not her impaired capacity to do her work. The plaintiff consulted Ms S van Jaarsveld on 29 May 2012. The industrial psychologist commented as follows on the plaintiff's current unemployment on p7:5:

"5.1.3.3 At the end of February 2010 Mrs P[...]'s contact was not extended as the project she was involved in was finalised. From March 2010 until present Mrs P[...] is unemployed and assists her husband with the farming activities."

[26] From the statement one gains the impression that the plaintiff would have wanted to have her contract of employment extended. In a way she lamented the completion of the project she had co-ordinated for two years. All these tendered to suggest that she was still willing and able to carry on earning a livelihood as a project co-ordinator if her contract could have been extended from 1 March 2010. Her joblessness from that date on was, as I have already indicated, occasioned by the end of the project. It was not attributable to her injuries.

[27] In the circumstances, I have serious reservations as regards her claim for past loss of earnings. Since the foundation of her claim in this regard was questionable, the calculation thereof of her alleged loss was unreliable. There were factors which should have been taken into account but were not. I found the actuarial assessment report by Mr Doubell unhelpful. Certain assumptions on which the report was based were factually incorrect.

[28] This then completes the second issue concerning past loss of earnings.

[29] As regards future loss of earnings, the plaintiff claimed R5 738 112,00 from the defendant. The actuary, Mr Doubell, calculated the plaintiff's future loss of earnings on the strength of the industrial psychologist's assessment report. According to Ms Van Jaarsveld the plaintiff will remain unemployed for the rest of her life.

[30] Mr Roux, argued in support of the aforesaid finding that the accident had rendered the plaintiff permanently unemployable. Counsel submitted that a case has been made out that the plaintiff would suffer loss of earnings in the future. Accordingly counsel urged me to uphold her claim as quantified by the actuary.

[31] Mr Moeti, argued against the finding that the injury which the plaintiff sustained in the accident totally impaired her capacity to earn any income whatsoever in the future. He submitted that the plaintiff had failed to make out a case that she had been totally incapacitated to gainfully participate in the open labour market again for the rest of her life. Accordingly counsel urged me to award the plaintiff compensation commensurate to the extent of her partially diminished patrimony in the future.

[32] There were nine assessment reports which were handed up by agreement between the parties. Eight of them were bound together in a single document marked Bundle 2. I chose to list them here in accordance with their historical sequence:

30 July 2007 Ms P du Plessis, physiotherapist – see p81, Bundle 2;
8 August 2011 Dr P Repko, neurosurgeon - see p27, Bundle 2;
19 August 2011 Ms Marietha Ackerman, counselling psychologist – see p77, Bundle 2;
8 November 2011 Dr J Earle, neurosurgeion – see p44, Bundle 2;
23 May 2012 Ms Marleen Human, audiologist – see p86, Bundle 2;
29 May 2012 Ms S van Jaarsveld, industrial psychologist – see p9, Bundle 2;
16 October 2012 Mr E Joubert, clinical phsychologist – see p57, Bundle 2;
11 June 2013 Mr T W Doubell, actuary – see p2, Bundle 2;

13 August 2014 Mr T W Doubell, actuary – see exhibit a.

[33] All those experts, with the exception of two, were appointed by the plaintiff. The two exceptions who were appointed by the defendant were Dr J Earle, the neurosurgeon and Mr E Joubert, the clinical psychologist. I shall revert to the experts opinion later.

[34] The plaintiff injured in Bloemfontein on Saterday the 4 April 2003. She took a wrong turn across the traffic lane on which a motor bike was travelling. The bike crashed into the right front door of her motor car. The force of the impact flung rider off the bike and propelled him forward. He landed into the car through the driver's window. He knocked the right side of her head with a helmet. She briefly lost consciousness. However, she regained it on the scene of the accident shortly afterwards. She was confused for a while. She discovered that the rider was lying on her lap; that she was bleeding from the right ear; that she was bleeding from the nose as well; that her neck was stiff and painful and that the rider's bike was under her car.

[35] From the scene she drove to the police station, to the rider's home and finally to her host's residence. The next day she drove back to Johannesburg. Two days after the accident she was referred to Tembisa Hospital where she was admitted. She had severe headache and stiff neck. A brain scan was done. The apparent bleeding on the brain was detected as was the swelling thereof. Her neck was put in traction. She stayed in hospital under treatment for a period of two weeks.

[36] She testified and complained about:

- severe headaches;
- stiff neck spasm;
- memory problem; and
- imbalance of movement.

[37] As regards the complaint of headaches, Ms Petro du Plessis, remarked that the plaintiff's complaint was a symptom of:

> "Erge temporale hoofpyn, sewe dae 'n week en agt tot tien op 'n skaal van nul tot tien."

She expressed her opinion as a physiotherapist as follows:

> "Hierdie is 'n massiewe besering."

[38] Dr Pieter Repko investigated the plaintiff's complained of headaches. He attributed the cause thereof to the head injury which stemmed from a blunt injury in the parietal area on the right side which was associated by loss of consciousness. He was of the opinion that the plaintiff's complaint about temporal and frontal headaches was genuine and that it was a *sequilae* of the head injuries she sustained in the road accident.

[39] Ms Marietha Ackerman also heard about the plaintiff's complaint about headaches. The counselling psychologist subjected her to a wide range of psychological test. The plaintiff fared dismally. Ms Ackerman found that the scores were not just below average but that they were in the lower range of average scores to her age norm group. She expressed the opinion that the plaintiff experienced a variety of significant difficulties and that the difficulties she complained about could not exclusively be attributed to brain injury consisting of cerebral oedema (swelling of the brain) and possible haemorrhage contusion (bleeding on the brain):

> "However, these difficulties could also be associated with the presence of depression."

[40] Dr Jaap Earl also investigated the plaintiff's complaint about persistent headaches. As a neaurosurgeon his examination focused on the brain in an endeavour to ascertain the cause of the plaintiff's complaint. He was placed in possession of Dr P Repko's neurosurgical assessment report. He regretted two omissions. He was not furnished with the statutory medical report, Form MMF.1 and

the original scan of the CT Brain Scanning Procedure. As a result he had the patient's brain examined. He caused the brain to be tested at his clinic by way of EEG (electro-effino gram) test. Although the outcome was not absolutely conclusive, to a large extent, the test excluded the presence of serious brain damage or the danger of post traumatic epilepsy.

[41] The opinion of the neurosurgeon therefore was that the condition of her brain was normal. The doctor found that the plaintiff's severe headaches were not a manifestation of an underlying brain damage. His opinion fortified that of Dr Repko that a CT brain scan done on 28 September 2004 was reported on as normal. He intimated a probable cause(s). The finding negated that of Ms P du Plessis who described the plaintiff's head injury as "massiewe hoofbesering."

[42] Ms M Human did not deal with the plaintiff's complaint concerning severe headaches. Perhaps the matter did not fall within the domain of her expertise. She is an audiologist by profession. The plaintiff complained about constant headaches to Mr E Joubert. She told the clinical psychologist that she suffers from chronic pain; that the chronic pain impaired her sleeping pattern; that her workspeed had slowed down; that she quickly gets irritated; that she gets depressed and despondent with herself; that she considered killing herself post-accident and that she does not dream about the accident. I understand the last to mean that she does not have nightmares associated with the accident.

[43] The clinical psychologist administered a number of psychometric tests. The plaintiff's overall performance on the different cognitive domains was pathetically poor. The clinical psychologist gained the general impression that her performance constituted an effort which was in accordance with her potential. The psychometric test results were summaraised on p12 of the assessment report. They fluctuated between average and poor. She attained virtually nothing above average. Ms P[...]'s neuropsychological profile was graphically reflected on p13 of the report.

[44] Mr Joubert found that the neurosurgical profile Ms P[...] presented with was not in keeping with her suggested academic profile and her occupational profile. It must be borne in mind that her academic credentials were never verified. Therefore,

her psychometric test results were never assessed against any proven academic background. The finding of the clinical psychologist was that Ms P[...]'s neuropsychological problems can be associated with a significant head injury. The lady's poor psychometric test results might as well have been a true indication of her normal and unimpaired natural intellect. Mr Joubert's finding in connection with the "significant head injury correspondent with that of Dr Repko". He referred to Dr Repko's conclusion at paragraph 9 on p13 of his report. However, he was not aware of Dr Earl's contrary conclusion. Apparently, he was not finished with a copy of such assessment report dated the 8 November 2011. See paragraph 3 for the list of the documentation he received. He assessed the plaintiff on the 2 February 2012. Mr Joubert noted on p16 of his psychoforensic assessment report that Ms P[...]'s emotional status was a matter of concern to him even though she did not appear to be clinically depressed during the assessment. He then commented that the relationship between depression and pain is well-documented. Therefore the headache complained of or the chronic pain might well be manifestation of the plaintiff's depression. It might also be a combination of such depression and head injury.

[45] Ms S van Jaarsveld assessed the impact of the road accident on the plaintiff's present and future prospects of employment with emphasis on the type of work she is currently able to perform.

[46] Among others the industrial psychologist noted that the plaintiff complained that she experiences severe headaches on daily basis. I have already discussed the plaintiff's occupational history immediately before the accident, at the time of the accident and after the accident.

[47] At paragraph 6.8 of her assessment report, the industrial psychologist commented as follows on the plaintiff's claim for future loss of earnings:

> "6.8 With regard to Mrs P[...]'s pre-accident income potential one can assume that, had the accident not taken place, she would have continued with her work as a Business Development Manager or in a similar position up until the retirement age of 65 with earnings equivalent to her earnings at the time

of the accident and with annual salary adjustments in line with annual inflation rates. According to the different salary surveys a Business Development Manager/Project Coordinator can be linked to Paterson level C4. Remuneration connected with specific levels of the Paterson scale can be specified as follows;

| Paterson | Basic Salary Scale | | | Total Package | | |
|---|---|---|---|---|---|---|
| | Lower Quartile | Median | Upper Quartile | Lower Quartile | Median | Upper Quartile |
| C4 | R230 000 | R273 000 | R325 000 | R346 000 | R389 000 | R466 000 |

[48] The statement was flawed because, as I have earlier indicated, the plaintiff resigned from iSolve Business Solution (Pty) Ltd on account of her marriage in September 2007 and not the accident in April 2003. Four months later, the same employer rehired her as project co-ordinator. Her re-employment in a sense tended to confirm or to demonstrate that her alleged impairment never disadvantage her, at least in the eyes of her employer. If her original contract of employment was terminated on the grounds of occupational impairment, as it was contended, then it was unlikely that the employer would again have taken her back. She worked for two more years. On the 28 February 2010 her fixed term contract expired. Once again her disability had nothing to do with her subsequent joblessness. Since the accident she was able to work for over 6½ years notwithstanding her physical and psychological impairment.

[49] She answered during cross-examination by Mr Moeti that she at one stage received an offer of employment in Johannesburg after the expiry of her fixed term contract as a project co-ordinator. However, she declined the offer. She also conceded that there was greater demand for her expertise in a big city such as Johannesburg or Bloemfontein than a small town such as Bultfontein where she has been living since her marriage in 2007.

[50] I am not persuaded by Ms Van Jaarsveld's opinion that "the possibility exists that Ms P[...] would have lost her work as a project co-ordinator due to her physical and psychological impairment after the accident even if she had not married." Let me put the record straight. At the time of her marriage, the plaintiff was not employed as a project co-ordinator but rather a business development manager. No expert had ventured to say the plaintiff was now totally or 100% disabled. The plaintiff herself reckoned that, in her present condition, she could not return to her previous work. Well, she may not be capable to work as a business development manager, the most rewarding of the various types of jobs she ever did. However, that did not and does not mean she is now absolutely unemployable. She is not a professional. Her occupational history showed that before 2003 she did all kinds of other jobs to earn a livelihood. Dr Earle noted:

> "She didn't feel that she would return to her previous work."
>
> Obviously the doctor did not make a finding to that effect.

[51] Dr Repko found that the plaintiff's injuries have become chronic and permanent in nature. It was not his opinion, though, that the plaintiff would never be able to work again.

[52] Ms Van Jaarsveld concluded her assessment report as follows:

> "Mrs P[...] will find it difficult to secure alternative employment in the open labour market as following factors will have a negative impact on her chances to secure alternative employment:
>
> - Mrs P[...] is already 38 years old;
> - Mrs P[...] will thus have to secure employment from a sympathetic employer who would be willing to accommodate her.
> - Mrs P[...] will have to compete with more able bodied individuals."

[53] I accept that the plaintiff's capacity to work has been impaired, to a certain extent, by the accident. However, I am not persuaded that the accident has so disabled her that she has become virtually unemployable.

[54] Besides constant headaches, the plaintiff also complained that she experienced neck pains, balance problems, memory and concentration problems. I deem it unnecessary to deal at length with the rest of these complaints as I did with the first, in other words, the headache problem.

[55] As regards the plaintiff's balance, experts express divergent views. At paragraph 10.7 on p9 of the neurological assessment report Dr Repko commented as follows:

> "**10.7 BALANCE**
>
> With a Rhömberg-test there was an inclination of the patient to veer towards the right. With open eyes the patient could not balance herself standing on the right leg only, although she could do it on the left. She was inclined to fall over towards the right."
> See p34, Bundle 2.

[56] At paragraph 4 on p 37 Dr Repko, under the heading: Discussion of present complaints came to the following conclusion concerning the balance problem complained of:

> "4. **A BALANCE PROBLEM**
> This problem is a true complaint and was found on clinical examination. It is possible that it is due to the fact that the patient sustained a fracture of the base of the skull, which would have damaged the inner ear giving rise to not only to some hearing loss as found on clinical examination but to disturbance of the function of the balance organ, which is also placed in the middle-ear area. In my opinion however the sensory loss over the right half of the body plays the major role in the balance problem and explains adequately why the patient cannot balance herself open-eyed standing on the right leg."

See p37, Bundle 2.

[57] About the balance problem, Ms Human, at paragraph 2 of her audiological assessment report recorded the plaintiff's complaint as follows:

> "Mev. P[...] kla van swak gehoor in haar regteroor. As sy op haar linkeroor lê, hoor sy nie. Sy is ook dikwels van balans af. Sy loop in goed vas en kan bv. Nie op die plaas deur 'n draad klim nie. Sy ervaar soms 'n steekpyn in die regteroor. Daar is nie dreinasie vanuit die ore nie. Sy ondervind soms tinnitus, regs. Daar is nie 'n familiegeskiedenis van gehoorgestremdheid nie. Sy word nie aan lawaai blootgestel nie. Sy moet die TV soms effens harder stel en sit voor in vergaderings om behoorlik te kan hoor."
> See p86, Bundle 2.

[58] The audiologist then carried out certain tests or examinations and found that everything was normal with plaintiff's right ear. Her finding was couched in the following manner:

> "Otoskopies lyk alles normal. "n Timpanogram is uitgevoer. Daarvolgens het sy normale middeloorfunksionering in beide ore. Ipsilaterale reflekse is in die regteroor getoets en is normal ontlok. Ek het ook 'n diagnostiese oto akoestiese emissiemeting uitgevoer om die funksionering van die koglea van die regteroor te ondersoek. Sy het "slaag" response oor die hele frekwensiespektrum van 750 Hz tot 8 000 Hz gekry. Ons kan aanvaar dat die koglea normal funksioneer. Suiwertoonoudiometrie dui op gehoordrempesl, wat bilateral binne normale perke val. Daar is egter 'n defnitiewe verskil tussen die ore. Mev. P[...] se gemiddelde suiwertoondrempel vir die linkeroor is 3,3 dB, terwyl dit 18,3 dB in die regteroor is. Gehoordrempels van <25 dB word beskou as normal. Sy het spraakontvangsdrempels van 0 dB, links en 5 dB, regs. Sy behaal 100% spraakdiskriminasie by 20 dB, bilateral. ("n Normalehorende persoon moet 100% hoor by ten minste 30 dB)."
> See paragraph 3 on p86, Bundle 2.

[59] The conclusion of the audiologist was quite important. She concluded:

> "Die verskil tussen haar ore mag veroorsaak wees deur die ongeluk, aangesien die impak van die ongeluk aan haar regterkant was. Aangesien haar gehoordrempels binne normale perke val, behoor dit nie haar bevoegheid as werknemer te beïnvloed nie. Die balansstoornis mag lasting wees, maar dit wil voorkom asof dit ne met sekere aksies voorkom en slegs sekondes duur, bv. Wanneer sy deur 'n draad klim of aantrek of opstaan nadat sy gesit of gelê het. Verdere ondersoek deur 'n ONK art kan dit moontlik net bevestig. Sekere manuevres word deur die ONK arts uitgevoer om balansstoornis te ontlok. Oefeninge word soms voorgeskryf as daar vermoed word dat partikels in die halfsirkelvormige kanale kan wees."
>
> See paragraph 3, on p87, Bundle 2.

[60] The plaintiff complained to Dr Repko that the hearing through her right ear had declined. Dr Repko found there was such a decrease of hearing. He stated that the origin of the diminished hearing appeared to be damages cranial nerve.

[61] About the plaintiff's right ear and deafness Dr Earle commented:

> "With this degree of concussion and no post-traumatic amnesia it is most unlikely that she could have suffered a serious injury. A CT brain scan apparently showed a haematoma or it might have been a haemorrhagic contusion and some brain oedema. This scan is now missing and I saw no report and it must simply be placed in a doubtful and unproven category but cannot be ignored. One notes that she has certain complaints which started at the time of the accident and still persist and I found it difficult to tie them in with the accident."
>
> See p49, Bundle 2.

[62] Whatever the extent may be of the plaintiff's reduced hearing of her right ear, I am persuaded that it will not adversely affect her performance as an employee to a very large extent.

[63] A few of the experts such as Dr Repko, Dr Earle and Mr Joubert, among others, remarked about the plaintiff's emotional status. There was genuine concern that her emotional turmoil or depression was also probably implicated in her chronic state of unwellness. Among the aggravating stress factors the following were specifically mentioned: her divorce, her reproductive infertility, her artificial insemination, the agony of her miscarriage and her persistent anxiety about her childlessness. To a greater or a lesser extent, these unfavourable emotional factors have contributed to her chronic state of pains.

[64] Mr Joubert expressed his opinion as follows:

> "Ms P[...] 's neuropsychological level of performance is potentially also under influence of the chronic pain which she presents with. Although not noted as a factor during this assessment, chronic pain is known to have an impact on procession speed (Klle *et al* 2005) and levels of attention, concertration and memory (Dick and Rashiq 2007).
>
> The neuropsychological problems Ms P[...] presents with can be expected to have a significant impact on her performance in a formal work environment, with her impaired processing speed and levels of attention, concentration and memory of note. Theses neuropsychological problems can equally be expected to feature significantly during academic pursuits should Ms P[...] decide to do so."

[65] There were certain inconsistences which surfaced during the interviews the plaintiff had with some of the experts. For instance, according to the assessment report by Mr Joubert, the highest level of formal education her father attained was Grade 12. See paragraph 4, p3 of the report or p59, Bundle 2. However, according to the assessment report by Ms Van Jaarsveld, her father had a university degree in teaching. See paragraph 1.2, p2 of the report or p12, Bundle 2.

> Her mother has a diploma in education. See paragraph 4, page 3 Mr Joubert's report. The next moment her mother had a degree in teaching. See paragraph 1.2, page 2 Ms Van Jaarsveld's report.

[66] One finds further inconsistences concerning the occupation of the plaintiff's parents. Her father was a farmer – Mr Joubert's report *supra*. Her father was a broker – Ms Van Jaarsveld's report *supra*.

> Her mother was a handcraft shop assistant. See Mr Joubert's report *supra*. Her mother was a teacher. See Ms Van Jaarsveld's report.

[67] The aforesaid material inconsistencies were disturbingly worrisome. Where a claimant's biographical information of her family members appears to be so distorted, serious doubt is cast on her own alleged level of education. Questions arose on my mind as to whether her first marriage to Henry was dissolved through death or divorce. See Ms Ackerman, paragraph 2.3, p3 or page 79, Bundle 2 and Dr Earle, paragraph 4, page 7 or page 51, Bundle 2 respectively.

[68] In view of these and the facts as a whole one has to guide against the danger of exaggeration. In assessing her future income potential I am inclined to say the lower quartile of Paterson C4 remuneration scale ought to be used. I am not persuaded by the argument that the plaintiff will never again earn any income in the future. According to certain experts the plaintiff herself feels that she can no longer work. The difficulty I have with her feeling stems from the facts that I could find no expert who pertinently ventured to express a positive and a firm opinion in support of her feeling.

[69] Dr Repko found that as a result of the head injury the plaintiff had a deterioration in attention spam, a deterioration in other mental functions, degeneration of intervertebral disc which may cause pressure on a nerve root and that the possibility still remains that she may develop post traumatic epilepsy. The concluded:

> "It is my opinion that due to the complaints the patient has as a result of the injuries sustained in the accident, which have become of chronic and permanent nature, she may develop depression."
> See p38, Bundle 2.

[70] Although the doctor described the plaintiff's injuries as chronic and permanent in nature, he refrained from expressing a firm opinion as regards the exact extent of her disability. He did not say precisely what other mental functions of the plaintiff have deteriorated. Instead he deferred to a clinical psychologist.

[71] On the contrary Dr Earle was very critical about the alleged head injuries and their alleged adverse impact on the plaintiff. Among others he firmly expressed the opinion that it was most unlikely that she would develop epilepsy. He expressed the opinion on 8 November 2011, being the dated of the interview, almost 8½ years after the accident. He advised that clinical neurologist would be an appropriately qualified expert to categorise the extent of her problems such as memory; that he could not attribute the entire outcome to the head injury and that she could return to her previous type of work.

[72] Dr Repko saw and examined the plaintiff on the 8th August 2011. By then she had already lost her first husband. She had already had an unfortunate miscarriage. As I pointed out earlier those two were some of the traumatic factors which caused her to develop depression or aggravated it.

[73] The matter was heard in 2014, some 11 years and 5 months after the accident in 2003. During that period the plaintiff worked and earned income for 6 years and 8 months. At the time of the hearing the plaintiff was 39 years of age. The pre-morbid expectation was that she would be gainfully occupied until the year 2040. In that year she will turn 65 years of age and retire. As from 2014 her remaining work life span was 65 – 39 = 26 years. Her claim for future loss of earnings was calculated on the assumption that she was totally disabled and that she will never earn any income during the next 26 years.

[74] About her employability or otherwise Dr Earle commented as follows:

> "I think if she needed to and does want to maybe she could return to her previous type of work. She did after all continue with that for five years after the accident and intermittently for two and a half years since then."

See p12, of the report or p55, Bundle 2.

[75] Now, the defendant contended that since she was not totally disabled she was able to earn an income for years in the past after the accident, she has made out no case that she is totally disabled to earn further income for years in the future after the adjudications. There was substance in that argument.

[76] Some mathematical approach is now needed here. Eleven years times 12 (+ 5 months) = 137 months. Six years times 12 months (+ 8 months) = 80 months. Between the date of the accident being 4th April 2003 and the date of adjudication – there were ±137 months. During that period the plaintiff was gainfully employed for 80 months. Therefore 80/137 x 100% = 58.4%.

[77] Twenty six years x 12 months = 312 months. 312 months x 58.4% = 182 months. From 2014 until 2040, the plaintiff's working life span consists of 312 months. The chances are that she would probably be gainfully employed for ±182 months of that period. It follows, therefore, that she is likely to be unemployed for a period of 312 – 182 = 130. Put differently 130 months ÷ 312 months x 100% = 41.6%.

[78] Now I turn to exhibit 1, actuarial assessment report. Mr Doubell estimated the plaintiff's future pre-morbid income after 30% reduction of contingencies to be R4 016 679,00. The actuary's prediction was that the plaintiff's future post-morbid income after contingencies would be naught. With that assumption I am in respectful disagreement. I generously worked on the basis of the figures given by the actuary before the deduction of any contingencies – see p5, exhibit a.

[79] The estimated future loss of earning is R5 738 112,00. That figure was given. It is my considered view that she would probably work again in the future. The chances that she may are at most 58.4% and at least 50%. Her probable future loss of earnings may be estimated as follows: R5 738 112 x 41.6% = R2 390 880,00. This is based on the assumption that she has about 58,4% chances of being employed in the future which is the equivalent of about 15 years out of 26 years. By

the very nature of predictions are not accurate. In the worst case scenario the chances that she may work again are about 50%. In that event her probable future loss of earnings can fairly be estimated as follows: R5 738 112 x 50% = R2 869 560. This amount represents the likely income she may earn during 13 of the 26 remaining years of her work life span.

[80] The average between the 15 years scenario and the 13 year scenario is R2 629 968. In my view this represents a reasonable estimate of the plaintiff's possible future loss of earnings.

[81] The a foregoing estimate is subject to an apportionment in accordance with the plaintiff's degree of contributory negligence. The agreed degree of negligence attributable to her was 25% of her proven damages. Therefore the final compensation due to her in respect of future loss of earnings will have to be accordingly adjusted.

[82] To sum up the final position is as follows:

| | | |
|---|---|---|
| 82.1 | Past medical expenses | R 38 153 |
| 82.2 | Past loss of earnings | R 0 |
| 82.3 | Future loss of earnings | R2 628 968 |
| Total | R2 668 121 | |

Therefore the plaintiff's entitlement or proven damages less 25% apportionment equals R2 668 121 x 75% = R2 001 091.

[83] Accordingly I grant judgment in favour of the plaintiff against the defendant as follows:

83.1 Payment of sum of R2 001 091 plus interest thereon at the rate of 9% per annum from the 31st day after this order.

83.2 Payment of the qualifying fees of the following expert witnesses of the plaintiff:

Dr T W Doubell, actuary;
Ms S van Jaarsveld, industrial psychologist;
Dr P Repko, neurosurgeon;
Ms A Ackerman, counselling psychologist;
Ms M Human, audiologist;

83.3 The costs of the action on the party and party scale.

**M. H. RAMPAI, J**

On behalf of the plaintiff: Adv. L. A. Roux
Instructed by
Claude Reid Inc.
BLOEMFONTEIN

On behalf of the defendant: Mr. P. J. Moeti
Instructed by:
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