NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT,

PRETORIA (REPUBLIC OF SOUTH AFRICA)

Case No: 42251/2011

DATE: 29/11/2012

In the matter between:

DITHEBE. MOTETEKOANE MARIA obo NPD	**Plaintiff**
and	
ROAD ACCIDENT FUND	**Defendant**

JUDGMENT

RANCHOD J:

[1] The plaintiff in this matter sues in her personal capacity as well as in her representative capacity as the mother and natural guardian of her minor child NPD born on 12 May 1998 ('the child').

[2] On 20 November 2007, at approximately 19h30, a motor vehicle collision ("the collision") occurred in Phakamile Street, Jouberton, between a motor vehicle with registration letters and numbers BXK 061 GP, driven by T A Molefe ("the insured driver") and the child who was a pedestrian at the time.

[1] From the record it appears that the child sustained a growth plate injury and fracture through her distal right femur, multiple lacerations, contusions and abrasions, and psychological shock and trauma.

[2] Shortly before the commencement of the trial the defendant conceded 100% liability on the merits of the claim. The only issue remaining was the determination of the quantum of plaintiffs damages.

[3] When the trial commenced I was informed that past medical expenses and general damages had been settled leaving only the issue of future loss of income in dispute. I was also informed that whereas the plaintiff had obtained her expert reports timeously, the defendant had failed to do so. In fact the defendant only obtained its expert reports less than two weeks before the trial. I was informed by plaintiff's counsel that due to the late filing of the reports by the defendant they were not before court. However, plaintiff accepts the report of the defendant's Industrial Psychologist Ms Lowane-Mayayise as she relies upon the medico-

legal report by Ms Noble (plaintiff's expert) in arriving at her conclusions.

[4] I was also informed that the only issue relating to the quantum for future loss of income was the contingencies to be applied and not so much the amount as calculated by the plaintiff's actuary, Mr Whittaker.

[5] The plaintiff then led the evidence of an educational psychologist Ms Elmarie Prinsloo. The defendant did not lead any evidence. In the result, I have before me the plaintiff's expert's evidence on quantum and that of Ms Lowane-Mayayise written report.

[6] Plaintiffs counsel's submission was that the actuarial report prepared by Mr Whittaker cannot be faulted and I should therefore accept the calculations as set out in his report.

[7] Defendant's counsel submitted that even though the medico-legal reports of plaintiff's experts indicated that the child will in all likelihood attain a level of education that would prepare her for semi-skilled work, I should nevertheless find that she would be in fact qualified only to do unskilled work. However, asked as to the basis on which the submission was made defendant's counsel could not provide any, other than a reference to the minor child's pre-accident school performance, more in particular at the Roosheuwel primary school. However, I have considered Ms Prinsloo's evidence and her medico-legal report. I am of the view that that aspect has been adequately taken into account.

[8] Defendant's counsel then submitted that the general contingency deductions of 20 per cent pre-morbid and 50 per cent post-morbid suggested by the actuary, Mr Whittaker, appeared to be in order. However, counsel submitted, a further 50% deduction should be

made on the net amount of R488,267.00 arrived at by the actuary. Once again, pressed on this point, counsel was unable to substantiate the submission by reference to any expert or other acceptable evidence.

[11] In all the circumstances, and having considered the evidence of Ms Prinsloo and the other relevant opinions of the plaintiffs experts which were referred to by her as well as that of defendant's expert referred to earlier, I am satisfied that a proper case has been made out for awarding an amount of R488,267.00 for the child's future loss of income as calculated by Mr Whittaker.

[12] In the result I make the following order:

1. The defendant shall pay:

1.1 Past medical expenses RI0,163.40;

1.2 Future loss of income R488,267.00;

1.3 General damages R250,000.00.

2. The defendant is to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in terms of which the defendant undertakes to pay the costs of future accommodation of the minor child in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her pursuant to the injury sustained by her in a motor vehicle collision which occurred on 20 November 2007, after the costs have been incurred and on proof thereof.

3. The defendant is to pay plaintiff's taxed or agreed party and party costs on the High Court scale which costs shall include the following:

3.1 The fees of senior-junior counsel on the High Court scale;

3.2 The reasonable taxable costs of obtaining all expert, medico-legal, addendum medical legal and actuarial reports from the plaintiffs experts which were furnished to the defendant;

3.3 The reasonable taxable preparation and reservation fees, if any, of the following experts of whom notice has been given, being:

3.3.1 Prof. H Myburgh

3.3.2 Ms A Greef

3.3.3 Mr P B White

3.3.4 Miss E Prinsloo

3.3.5 Miss E Noble

3.3.6 Mr G A Whittaker.

(In this regard it is to be noted that the only expert present in court and who gave oral evidence was Ms E Prinsloo.)

3.4 The reasonable taxable transportation costs incurred by the plaintiff in attending medico-legal consultations with the parties' experts as well as the court proceedings, subject to the discretion of the taxing Master;

3.5 The reasonable taxable transportation and other costs incurred by the plaintiffs legal representatives in conducting an inspection in loco at the scene of the collision, subject to the discretion of the taxing Master.

4.The following provisions will apply to the determination of the aforementioned taxed or agreed costs:

4.1 The plaintiff shall serve the notice of taxation on the defendant's attorneys of record;

4.2 The plaintiff shall allow the defendant seven court days to make payment of the taxed costs from date of settlement or taxation thereof;

4.3 should payment not be effected timeously, plaintiff will be entitled to recover interest at the rate of 15,5% on the taxed or agreed costs from date of the allocatur to date of final payment.

5. The defendant will not be liable for interest on the amounts referred to in 1 above provided that same is paid timeously, failing which interest at the rate of 15,5% per annum will be payable by the defendant from the date 14 days after the date of judgment.

6. All amounts to be paid in terms of this order shall be paid into the plaintiff's attorneys' trust account:

Adams & Adams Trust Account Nedbank, Pretoria Branch Branch code:198765 Account number: …....8902 REF: MMM/LEB/ksk/LT45.

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JUDGE OF THE HIGH COURT

Appearances:

Counsel for Plaintiff: Adv. E. Milanzi

Instructed by: Adams & Adams Incorporated

Counsel for Defendant: Adv. M. Veldsman

Instructed by: Sekati Monyane & Partners

Judgement Handed Down: 29/11/2012