

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case no: 799/06
Date heard: 2008-09-22
Date delivered: 2008-09-22

In the matter of:

DOPP, DS N.O.

PLAINTIFF

versus

MEC HEALTH, NORTHERN CAPE

DEFENDANT

EX TEMPORE JUDGMENT

The Plaintiff's minor son, Arthur Rens, 10 years old at the time, had to undergo an above elbow amputation through his left shoulder as a consequence of the admitted negligence of the Defendant's employees, acting as such in the course of their employment with Defendant at the Gordonia Hospital in Upington, during February 1998.

The Defendant has conceded the merits and the matter is before me on the quantum of Plaintiff's damagesclaim.

The Defendant seeks a postponement of the matter, since his expert reports are not ready. The Plaintiff is ready to proceed to trial and its witnesses, including expert witnesses, have been reserved accordingly.

I must agree with Mr Corbett, for the Plaintiff, that the grounds advanced for the postponement are somewhat flimsy. Having said that, I am of the view that justice and fairness dictate that I grant the application.

I have great empathy with Arthur who, through no fault of his own, has suffered the devastating loss of an upper limb. The various expert reports filed by the Plaintiff attest to the severe trauma which Arthur has suffered in all aspects of his life. His future employability has been reduced to almost nil. The psychological and physical sequelae are almost self-evident, but are nevertheless lucidly detailed in the expert reports.

For a decade this young man has had to make do without the use of an upper limb. Again, I reiterate, it should be noted, through absolutely no fault of his own.

This Court cannot be dispassionately removed from his plight. An interim payment is highly desirable in these circumstances. Mr Nyangiwe for the Defendant has been able to procure a commitment from the Head of the Provincial Department of Health, Dr Sibeko, that the Defendant would be willing to make an interim payment of R100 000 and also to pay the costs of the postponement.

While I appreciate this commitment, which is in writing and placed on the Court file and while I am indebted to the efforts of Mr Nyangiwe and his attorney in this regard, I am of the view that the amount offered is wholly inadequate.

A motorised prosthesis will, according to the renowned orthotist and posthetist, Mr Kritzinger, cost R417 688,55. Plaintiff's claim for future medical expenses amounts of R9 282 600,00 future loss of earnings R3 007 100,00 and general damages R800 000,00.

It is clear therefore that the Defendant, who has conceded liability in full, will have to make a substantial payment herein.

I do not intend specifying what the interim payment is to be allocated to, but would require Plaintiff's attorney to hold the payment in his trust account, to allocate payments from there and to account fully at the next hearing for the amount spent at that time.

I issue the following order:

1. The matter is postponed to 24-27 February 2009, a date which has been arranged with the Registrar.
2. The Defendant is to pay the costs occasioned by the postponement on the scale as between attorney and own client.
3. The Defendant is ordered to pay into the Plaintiff's attorney's trust account as an interim payment the sum of one million Rand (R1 000 000,00) within one month hereof, i.e. by no later than 23 October 2008.
4. The aforementioned amount is to be retained in the said trust account and is to be utilised only in respect of the Plaintiff's and Arthur Rens' expenses and a full, detailed account is to be made in respect of such expenditure to the Court at the date of the next hearing.
5. This ex tempore judgment is to be transcribed and placed on the Court file.

SA MAJIEDT

JUDGE

2008-09-22