REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:1885/2016

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED

Signature:

Date: 17 July 2024

In the matter between:

OUPA CHILOANE **APPLICANT**

And

ROAD ACCIDENT FUND. **RESPONDENT**

JUDGMENT

MONENE AJ

[1] The plaintiff instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 17 August 2014. Having been a driver of one of the motor vehicles the plaintiff had the merits settled in his favour on an

85% basis.

[2] Having initially filed the routine generally bare denial plea to this matter the defendant partook no further in the long evolution of the matter such that post discovery stage only the plaintiff had expert reports filed when the matter was set down for trial. Why it took a full ten years for this matter remains a mystery that is yet again lamented by this court. I am not inclined to detail the unsightly history in the file accounting for this delayed justice on the plaintiff, but a cursory look suggests a combination of lethargy, indecisiveness and kicking of the can across the road to varying degrees by almost all role players. All but the helpless plaintiff.

[3] The plaintiff proceeded before this court per default, sought and was granted leave to prosecute his case in terms of Uniform Rule 38(2).

[4] It being so that the jurisdiction of this court is unfortunately as per precedence hampered by the defendant, an opposing litigant's failure to make an election on the seriousness of the injuries involved *in casu*, what stands to be determined before this court is the quantum of the plaintiff's loss of earnings. Ancillary thereto is a standard prayer for an undertaking insuring the plaintiff's future medical expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[5] Under cover of affidavit the plaintiff adduced the following uncontested evidence in brief:

> 5.1 Dr Peter T Kumbirai, an orthopedic surgeon's evidence was that the plaintiff suffered a femoral head fracture, a dislocation of the right hip, a fracture of the right acetabulum and a fracture of the right humerus.
>
> 5.2 An occupational therapist, Jane Baker's testimony was to the effect that the plaintiff presented with decreased range of movement and muscle strength in his right hip. It was her further evidence that flowing from his injuries his employment

prospects will be reduced and further that even if employed he will due to reduced physical abilities have difficulties in maintaining employment while being generally disadvantaged in the open labour market.

5.3 Dr Zurayda Shaik an industrial psychologist opined that because most pre-accident capacities had been compromised the plaintiff would rely only on scarcely available sympathetic employment. The doctor also observed that the thread of the plaintiff's need for medical treatment in the future was prominent in the reports of the Orthopaedic surgeon and the Occupational Therapists.

5.4 Armed with the background of the above expert opinions Munro Actuaries computed a capital loss of earnings excluding a RAF cap at R8 184 490.00 and capped loss of R6 582 900.00 both ostensibly factoring in contingencies on a spread of 5% on past and 15% future earnings.

[6] The approach in assessing loss of earnings can be put no better than it was stated in **Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F** where the following was said:

> "*Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augururs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss...*"

[7] I do not have the benefit of soothsayers and oracles as I make a prediction of a future loss in the present day but at least I have the benefit of experts' opinions to assist me in that speculation and make it one guided by expertise. To deviate therefrom I need something better or a counterview, which evidently, is lacking in casu.

[11] The summary of expert evidence led before me above, which evidence I have no

reason nor inclination to deviate from is, in my view, sufficient determinant of the quantum opined on loss of earnings. Given the well-documented sequalae of the injuries suffered by the plaintiff, particularly his severely hampered employment prospects, his stated pre-accident earnings as an LHD operator of no less than R17 000.00 per month and his youthfulness at the time of the accident(He was just 30 years of age), and his being declared medically unfit to continue with his pre-accident employment, I cannot fault the computations arrived at by the actuary.

[12] Accordingly, I am persuaded to award the plaintiff general loss of earnings in accordance with the capped computation of the actuarial scientist. To that amount the 15% apportionment in accordance with the 85% merits settlement is to be subtracted.

[13] It is clear from the reports of the orthopedic surgeon, the radiologist Mkhabele C Zulu and the occupational therapist that the plaintiff will need to intermittently consult various medical practitioners for virtually the rest of his life. I can only imagine how the inexplicable injustice of a ten-year delay in that regard have impacted on him.

[16] In all the above premises, I make the following order:

[16.1] The defendant shall pay an amount R 5 595 465.00(**FIVE MILLION FIVE HUNDRED NINETY-FIVE THOUSAND FOUR HUNDRED AND SIXTY FIVE RANDS ONLY**) as loss of earnings computed as R6 582 900.00 less fifteen percent thereof and as damages for injuries suffered in the accident implicated herein

[16.2] The amount stated supra shall be paid into the infra-mentioned trust account within 180 days by direct transfer:

ACCOUNT HOLDER: A M MAMMILE ATTORNEYS BANK: FNB
ACCOUNT NUMBER 6[...]
BRANCH CODE: 240455

REFERENCE NUMBER: Am/mva/1083/CLN.

16.3 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for the costs of medical treatment arising out of the injuries sustained by him in the motor vehicle accident which occurred on 17 August 2014 upon proof thereof, limited to 85%.

16.4 The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale which costs shall include:

16.4.1 Costs of Counsel on scale B

16.4.2 The costs attendant to obtaining the expert reports of Dr. Peter T Kumbirai, Jane Baker, Dr Z Shaik and Munro Actuaries.

16.5 Should the defendant fail to pay the amount timeously; the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of allocator to date of final payment.

16.6 The issue of general damages is postponed sine die.

M S MONENE
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on : *6 May 2024*

Judgment delivered on	*: 17 July 2024*
For the Plaintiff	*: Mr . A M Mammile*
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For the Defendant	*: No appearance*