REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:2764/2022

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

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

(3) REVISED

Signature:

Date 17TH JULY 2024

In the matter between:

MAGOMANA RASEABANE LIZER **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MONENE AJ

[1] On 6 October 2019 the plaintiff, then a 53-year-old lady, was passenger in a motor vehicle which collided with another on the R37 road in the Groblersdahl area within the

geographical area of this court

[2] On being admitted at hospital she was found to have suffered a left tibial plateau fracture, a back injury and a traumatic brain injury.

[3] In the aftermaths of all that she instituted proceedings against the defendant under cover of section 17 of the Road Accident Fund Act 56 of 1996.

[4] As is now standard reaction to these kinds of actions the defendant offered absolutely no defense to the plaintiff's claim.

[5] The matter served before this court in default with the plaintiff praying that I determine the question of liability, the loss of earnings and the need for the defendant to make an undertaking in respect of the future medical needs of the plaintiff to the extent that those medical needs would be arising from the injuries sustained in the said motor vehicle accident. General damages were placed on the backburner on account of the defendant having not yet made an election on the extent and/or seriousness of the injuries *in casu.*

[6] The plaintiff sought and was granted leave to prosecute her case on paper in terms of Uniform rule 38(2).

MERITS

[7] Pursuant to proving merits I was referred to both the plaintiff's section 17(f) affidavit and the accident report, both of which proved that indeed the plaintiff was a passenger in one of the motor vehicles involved in the motor vehicle accident implicated in this matter.

[8] The proverbial one percent negligence being clearly in the offing, I have no hesitation in finding on the merits that the defendant is 100 percent liable for the

plaintiff's proven damages.

LOSS OF EARNINGS

[9] According of the evidence of the orthopaedic surgeon,Dr Makgabo John Tladi ,the plaintiff presented with constant left knee, back and lower limb pain. The sequalae of her injuries are an antalgic gait, left knee and back pains, multiple arthropathy and post-traumatic osteoarthritis of the knee joint. Dr Tladi opined that the plaintiff has a serious long-term impairment or loss of body function with a whole person impairment of 10 percent.

[10] The clinical psychologist, one Linda Maye opined that the plaintiff suffered a traumatic brain injury which had significantly debilitated and impaired her cognitive functioning in her personal, social and income-generation life. She had changed from a pre-accident physically and mentally fit sociable person to a post-accident shadow of her former self reflecting social detachment, being a fatigued bundle of pains whose neurophysical difficulties were of a permanent nature.

[11] L.K Papo, an occupational therapist, testified that the plaintiff who had a grade 12 level of education and was prior to the accident employed as general worker at a farm, was post the accident virtually unemployable as she fails to meet the physical work samples within the norm standards for all occupations, be they heavy, medium or light. She remains, it was testified to by this witness, academically available for sedentary to light types of work but in reality, is more likely to be unemployed for the remainder of her employment years.

[12] Completing this gory picture of the hopelessness of the plaintiff's life in the wake of the accident was Tshepho Kalanko, an industrial psychologist. The key take home from this witness' evidence was that at the age of 53 years at the time of the accident the plaintiff had already reached her career ceiling and would, but for the accident, have continued working in her pre-accident employment or been exposed to similar

employment opportunities until the normal retirement age. It was this witness' expert opinion that the injuries suffered by the plaintiff and their sequelae had rendered the plaintiff an unequal competitor in the open labour market.

[13] Armed with all the above background information and expert opinions Wim Loots, an actuarial scientist gave evidence of his computations the long and short of which was a total loss of earnings of R1 246 706.00 to which no contingencies were factored.

[14] In this court's view, the lodestar to a proper approach in assessing loss of earnings remains **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. It has open to it two possible approaches. One is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on evidence. The validity of this approach depends upon the soundness of the assumptions, and these may very from the strongly probable to the speculative."*

[15] I find that given the dire picture painted by the clinical psychologist as summed supra about the extent of the compromise visited upon the plaintiff's cognitive abilities; given the extremely poor prospects of this now 56 year old plaintiff finding any worthwhile income-generating means and given the fact of her having reached her career ceiling, the assumptions of the industrial psychologist and those of the actuary are more strongly probable than speculative and can safely be relied upon. If anything, if I was to fault the educated augururs in this matter it would be that I find the loss of

earnings figure a bit conservative given the injuries and sequelae. However, I will not ride that horse lest I plunge into the unknown thereby misled not by evidence but by injudicious maudling sympathy.

[16] It being so that my sense of what is just says that had I ridden the horse of a guessing judge, who although a layman in matters actuarial, arrives at round estimate amount, I would have arrived at an estimate a bit more above the actuary in casu's computations, I am disinclined to exercise my discretion in favour of interfering with the amount computed by way of contingencies. That is despite the submissions of Mr Moifo on behalf of the plaintiff who in his well-reasoned and most helpful heads of argument and in submissions before me had argued for a differential contingency of 10% for past loss and 25 % for future loss of earnings, the result of which would have been a diminution in the capital amount proposed by the actuary.

FUTURE MEDICAL TREATMENT

[17] According to the orthopedic surgeon's evidence the plaintiff still needs treatment in the form of lumbar spine decompression and fusion, total left knee replacement and revision as well as physiotherapy and facet infiltration.

[18] The clinical psychologist opined that opined that that the plaintiff will in future need psychiatric intervention and psychotherapy.

[19] The occupational therapist gave evidence to the effect that the plaintiff will in the future incur expenses in pursuit of physiotherapy and the purchase of occupational therapy assistive devices such as a customized domestic trolley, an adjustable foot stool and a shopping bag on wheels.

[20] In all the above circumstances it cannot be gainsaid that a case for an order compelling an undertaking for medical expenses has been mounted successfully.

[21] In the result of all the foregoing I make the following order:

21.1 The defendant is liable to pay 100 percent of the plaintiff's proven damages arising from the motor vehicle accident of 6 October 2019 in which the plaintiff was a passenger.

21.2 The defendant shall pay the plaintiff a total sum of R1 246 706.00 (**ONE MILLION TWO HUNDRED AND FOURTY SIX THOUNSAND SEVEN HUNDRED AND SIX RANDS ONLY**) in respect of the loss of earnings suffered by the plaintiff in relation to the motor vehicle accident in *casu.*

21.3 The amount in order number 21.2 above shall, within 180 days from date of this order, be paid by direct transfer into the trust account of Komane Attorneys the details of which are the following:

BANK: FNB

ACCOUNT NO: 6[...]

BRANCH CODE 250655

REF: KOMANE/MRL/191/PI/JF/19

21.4 In the event of the above capital amount not being paid timeously, the defendant shall be liable for interest at the prescribed rate of interest per annum, calculated from the date of mora to date of payment.

21.5 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) (a) of Act 56 of 1996 in respect of all medical treatment, medical costs and the supply of any medicine and goods and services arising out of the injuries sustained by the plaintiff in the motor vehicle accident implicated in this matter.

21.6 The defendant is ordered to pay the cost of this suit on a High Court scale inclusive of the costs attendant to obtaining the expert reports relied upon in evidence and the costs of counsel on scale B.

21.7 The plaintiff shall, in the event that the parties are in disagreement as to the costs referred to supra, serve a notice of taxation on the defendant and shall allow the defendant 14 court days post taxation to make payment of the taxed costs.

21.8 The issue of general damages is postponed sine die.

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

APPEARANCES

Heard on	*: 6 May 2024*
Judgement delivered on	*: 17 July 2024*
For the Plaintiff	*: Adv. M B Moifo*
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For the Defendant *: No appearance*