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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 33323/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 18 June 2024

SIGNATURE

In the matter between:

NONDALO REBECCA NDZIMBOVU

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR (AJ)

Introduction

[1] The Plaintiff was on 5 December 2018 involved in a motor vehicle accident at Wynberg Street, Actonville, Benoni, Gauteng, a collision occurred when a Silver Hyundai IX35 with registration number B[...] 7[...] X[...] G[...] driven at the time by A Armogan collided with the Plaintiff being a pedestrian at the time of the accident.

[2] I am satisfied that the Plaintiff followed the correct procedure. Due notice was given to the defendant of today's hearing, following obviously proper service of the claim form, proper service of the summons, proper service of the application for default judgment. When the matter was called by Counsel for the Plaintiff Adv Bekker, there was no appearance for the defendant.

[3] Counsel requested me in terms of Rule 38 (2) of the uniform rules of court to have regard to the affidavits filed on record as the evidence that I need to consider to establish the quantum of the Plaintiff's claim and I have granted the order.

[4] The matter is before me for both merits and quantum.

Merits

[5] The Plaintiff Ms Nondalo Rebecca Ndzimbovu gave evidence that could be summarised as follows:

[6] On 15 December 2018 she was standing on the left side crossing the road when she saw the car, the car stopped. It was safe to cross the road. She was in the middle of the road, when the car stopped. The car collided with her in the middle of the road.

[7] According to the Accident Report (AR) form, the Insured alleged that he was traveling straight from West to East when he suddenly saw a pedestrian crossing in front of his vehicle and collided with her.

Analysis of Evidence

[8] In *Tshwarelo Khomola vs RAF* [1] The Plaintiff crossed the road whilst bearing a table on her head. She does not claim to have crossed the road at a pedestrian crossing. She therefore crossed the road at a point that was not designated for

pedestrians. In addition, her bearing a table on her head whilst crossing the road must have impeded both her agility and ability to observe the movement of traffic. She would have been impeded from turning her head as she made her way across the road, so as to better assess the traffic on the road. The Court order that she contributed to the accident. I apportion her liability at 50%.

[9] I am grateful for the Plaintiff's Counsel Case law regarding merits.

[10] Counsel submitted a concession, because there is no version for the Defendant.

[11] Having considered the evidence and submissions from Plaintiff I am of the view that 60% apportionment in favour of the Claimant is fair and reasonable.

Quantum

[12] Regarding the injuries, I have regard to the medical legal reports prepared by the various experts and I have regard and have been guided by the Heads of Argument of Adv Bekker for which I am grateful.

[13] The Plaintiff claims a total amount of R2 250 000,00 as a result of the bodily injuries sustained, it being the damages suffered by the Plaintiff as follows:

13.1 Past medical expenses	R250 000,00
13.2 Future medical expenses	Section 17(4)(a)
13.3 Past Loss of income	R200 000,00
13.4 Future loss of income	R1 000 000,00
13.5 General Damages	R800 000,00

[14] Plaintiff's Notice of Intention to amend its Particulars of Claim in terms of Rule 28(1) is as follows:

14.1 Past medical expenses	R500 000,00
14.2 Future medical expenses	Section 17(4)(a)
14.3 Past loss of income	R500 000,00
14.4 Future loss of income	R6 200 000,00
14.5 General Damages	R1 000 000,00

[15] According to the medico legal reports the Plaintiff sustained a mild head injury, abrasions to the left side of the forehead, haematoma of the left side of the neck, left elbow soft tissue injury and left hip soft tissue injuries. When one considers the nature and the extent of the injuries it goes without saying and it follows, that the Plaintiff will require future medical treatment and for the purpose counsel for the plaintiff asked me to grant an order in terms of Section 17 of the RAF to directive Fund to provide a certificate so that the Plaintiff may undergo and receive medical treatment.

[16] The Industrial Psychologist, read with the occupational therapist clearly says that the Plaintiff is now compromised individual. She will no longer be the same person as before. There is a departure from her pre injury earning and her post injury earnings. She is now an unequal competitor in the open labour market as well as sympathetically employed.

[17] I am satisfied that a proper case has been made out for the claim for loss of earnings. I am also grateful for the Plaintiff's Counsel reported to use the Plaintiff's pre-

scenario as her post scenario as well, with a contingency differential of 30%. This would then calculate her loss at R2 961 872,00.

[18] The claim for General Damages will have to be separated and postponed. I am informed by Counsel for the Plaintiff, that the Defendant has said nothing regarding the Plaintiff's claim for General Damages, either they accept or reject the RAF 4's and they failed to do so. Unfortunately my hands are tied and I need to postpone that claim for General Damages.

ORDER

[16] In the circumstances, the following is the Order of this Court:

1.1 The Defendant is liable for 60% of Plaintiff's proven or agreed damages

1.2 The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4) of Act 56 of 1996 for payment of 60% of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supply of goods to her, arising from the injuries sustained by her in the motor vehicle collision on 5th December 2018.

1.3 Loss of Earnings/earning capacity R2 961 872,00.

1.4 To this total should be applied the 40% apportionment in respect of the liability issue, which means that the said total will be reduced by 40% resulting in the final amount of the judgment to be granted in favour of the Plaintiff of R1 777 123,00, which must be paid by the Defendant within 180 days from date of this Court Order.

1.5 General Damages is *postponed sine die*.

1.6 The Defendant shall pay the Plaintiff's costs either as agreed or taxed including the costs of those expert witnesses whose reports had been delivered in terms of Rule 36(9)(b) and the costs of counsel.

1.7 The payment shall be made within 14 days of this judgment into the trust account of the Plaintiff's attorney the details of which are:

Z Smit Attorneys, Trust account, First National Bank, with account number 6[...], branch code 2[...] and reference number RAF1/ZS0058

M PIENAAR (AJ)
JUDGE OF THE HIGH COURT GAUTENG
DIVISION, PRETORIA

Date of hearing : 05 April 2024
Date of Judgment : 18 June 2024
Plaintiff's Counsel : Adv Bekker
Instructed by : Z Smit Attorneys
Contact details : 012 945 1909
Defendant : Road Accident Fund - no appearance
Link no: 51319241

[1] Tshwarelo Khomola case no: 21945/2018