IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 010706/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: N/A

(3) REVISED

DATE: 6/7/2024

SIGNATURE:

In the matter between:

ANTHONY DAVID HARRIS PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

PIENAAR (AJ)

INTRODUCTION

1. This is a claim for injuries sustained by the Plaintiff as a result of the motor vehicle accident on 11th August 2019.

2. The notice of set down was served on the defendant on 15 March 2024.[1] I am satisfied that the Plaintiff followed the correct procedure. Due notice was given to the defendant of today's hearing, following obviously the 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 Delport, there was no appearance for the defendant.

3. The Plaintiff applied in terms of Rule 28 to amend the Particulars of Claim paragraph 10.3 to read as R4 301 963,00 as per the updated calculations. I have granted this application. I will address the loss of earnings and earning capacity moving forward.

4. I am accordingly satisfied that this matter is properly before on a default basis and I can entertain the claim by the Plaintiff. 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 merits and quantum of the Plaintiff's claim.

5. The claim for General Damages will have to be separated and postponed, because the Court doesn't have jurisdiction to determine the issue of General damages.

MERITS

6. Dealing firstly with the issue of liability. I have had regard to the affidavits prepared by the police services, following the investigation, as well as the affidavits filed by the Plaintiff in terms of section 19(f) of the RAF Act, and I am satisfied that the Plaintiff established negligence on the part of the insured driver.

7. According to the witnesses statement and the affidavit of the claimant, the insured driver, Mr Lucky Mathebula, was travelling from South to North at an excessively high speed failed to stop at the red traffic light, consequently causing a collision with our

[1] Caselines 15: Notice of set down

motorbike. The members of the Johannesburg Metro Police attended to the accident scene and the collision was registered that the insured driver of the motor vehicle was under the influence of alcohol and could not give a statement.[2]

8. In this case the plaintiff was a driver of a motorcycle, when the insured driver failed to stop at the red traffic light and collided with the Claimant. It is trite that the Plaintiff bears the nous of establishing that the driver of the insured driver vehicle was not only negligent, but that such negligent act caused the harm or loss[3]. It is the court's finding that it is the sole negligence of the insured driver that contributed to the collision.

LOSS OF EARNINGS/EARNING CAPACITY

9. The Plaintiff was assessed by several experts, all of whom compiled reports.

10. Dr Roelofse (Orthopaedic Surgeon) diagnosed as having sustained the following injuries:

Frontal hemorrhagic contusions, left iliac blade fracture, open book pelvis fracture and bilateral rib fracture. He was managed in the intensive care unit. He was taken to theatre for the following procedures:
Open reduction and internal fixation for the left iliac blade fracture, eduction of the pubic symphysis, double plating, debridement of the wounds on his left ankle, debridement and flap closure of the left lower leg, open reduction and internal fixation of the left medial malleolus.
Regardless of successful treatment he will always have a permanent deficit. The injuries the Claimant sustained make him an unfair competitor in the labour market. He will be able to work for another five years and will be able to work half day.

11. Dr Jason John Labuschagne, the Neursurgeon, reported that the Claimant had a

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[2] Caselines 17 : Trial bundle, item 11
[3] See van ***Wyk v Lewis 1924 AD 438*** at 444

heart stent operation performed seven years prior to the accident. Dr Labushagne found that the Claimant sustained a severe head injury, based on a GCS 14/15 a documented bleed on CT brain scan, the prolonged amnesia period and the significant cognitive symptoms experienced by the claimant. Class 3 MSCHIF traumatic brain injury.

12. Dr Elzabe Peters, the Clinical Psychologist, reported that Mr Harris lost consciousness on impact, and when emergency medical services arrived on the scent at 19:03, Mr Harris presented with a Glosgow Coma Scale (GCS) score of 14/15. It is clear that this accident influenced Mr Harris at physical, cognitive, emotional, relational and occupational levels. Although he has already been considered medically unfit to return to work due to the Orthopedic injuries he suffered, he is also accordingly not fit to be re-employed in any cognitive capacity

13. The Occupational Therapist, Eloise Du Plooy reported, that Mr Harris is a 58-year-old male with Grade 12 level of education. He holds a National Technical Diploma (NTC 6) in Mechanical Engineering. He is also a Qualified Fitter and Turner and he has completed a course in Mechanical repairs. At the time of the accident he was employed as a Mechanical Design Engineer. His occupation is classified as a professional occupation with sedentary to light work demands. His essential job demands required high level problem solving, working under pressure and adhering to to deadlines. Mr Harris was unemployed but actively seeking employment after the accident. He would not be able to secure or retain suitable employment in the open labour market as a Mechanical Design Engineer. The accident is viewed as the precipitating factor to early retirement.

14. Dr Walters, the Industrial Psychologist, confirmed that Mr Harris' qualifications are Matric, qualified artisan, as well as his NTC 6 in mechanical engineering.[4] Before the accident, Mr Harris worked for AP design, in the capacity of a mechanical design engineer for the past 12 years (up to the accident). The Plaintiff aimed to advance from tradesman to Mechanical design engineer. He pursued formal qualifications (N4-N6 in

[4] Caselines 08: Expert reports ,item 6 page 08- 458-465 [Collateral information]

engineering) while working full time. Mr Pike (the owner of the company) wanted to go in semi-retirement. Mr Harris was requested to take over the company and run it, in the nearby future. Should he have remained at the company, his average salary would have been approximately R60 000,00 per month.

An offer was on the table for a Mechanical design engineer at Harlequin International. Renumeration was 180 000 dollars off-shore and 60 000 dollars on-shore (taxable). Mr Harris has done 35 years of engineering designs in his private capacity for Mr Williams (owner of Harlequin International and Wurthington) over his career life span. Mr Williams was knowledgeable about Mr Harris engineering and technical ability and the value he could add to their specific industry. The negotiations were involved in, had to do with work, where he had to design and oversee the development of machines for oil-refinery projects. In this regard Plaintiff provided the Court with an email dated 17 June 2019 from Barry Williams to Mr Harris which confirms a conversation between themselves about possibly joining there team for upcoming projects. It further confirms that he must visit Ghana for a nine day visit from 12th July 2019 until 21st July 2019, thereafter a more detailed letter of appointment will be furnished to Mr Harris once he visits Ghana.[5]

15. There are flight tickets from Stellar Travel for Mr. Harris, flying from July 21, 2019, until July 28, 2019, to Ghana. From the email above it is clear that a letter of appointment will be furnished to Mr Harris once he has visited Ghana. The Plaintiff was involved in the motor vehicle accident on 11th August 2019. Hence, the letter of appointment wasn't given to Mr. Harris during this period before the accident. With regard to loss of income the Plaintiff must adduce evidence of his income in order to enable the court to assess his loss of income of past and future earnings.

16. Dr Walters is of the opinion that the Claimant could have continued to work for different private clients after his employment with Harlequins international ended and that his income could have been similar to what he earned at the time of the accident after returning to South Africa from Ghana. Dr Walters suggested that the claimant

[5] Caselines 08: Expert reports, item 6 page 08-388 [email]

could have worked up to the age of 69 to 70 years (average of 69.5 years or at most until the age of 72 years.

17. Post injury, Mr Williams stated, it was the most terrible blow to his career at Harlequin International and the most terrible blow to the company (as they lost his technical and mechanical expertise). The Industrial Psychologist reported that he suffered from a severe loss of amenities. The injuries and the sequelae caused distress and suffering and matters to the person - therefore its impact and interference should be regarded as significant. His physical injuries and emotional trauma experienced, prolonged period of pain and recuperation and current curtailment experienced, as well as loss of his job, his ability to function within his occupation, activities of daily living and interpersonal relationships, constituted a severe emotional traumatic event for the Plaintiff. He has been forced into early retirement, as it is expected that he will never return to work. Should he be able to secure work on an ad hoc basis, it will only be to give structure to his day.

18. The Industrial psychologists further, that he might need advice on how to manage his money and finances (and his health) so that he does not end up in debt again. Dr Walters therefore defers to the legal team, whether his money should be protected (preferably in the form of a trust).

19. Actuarial report by SNG Argen was based on the Industrial Psychologist report. The actuary did actuarial calculations for past and future loss of income.

PAST MEDICAL EXPENSES

20. The Plaintiff obtained a sworn affidavit from TT Hoosen, a claims administrator at Discovery who confirmed that the amount of R753 643,95 was paid by the Medical Aid Scheme.[6]

[6] Caselines 17-19 and Caselines 7-58-201

LEGAL PRINCIPLE

21. It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in the consequence of another's negligence. Such damages include the loss of future and/or future earning capacity.[7]

22. The court necessarily exercise a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right.

23. The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case.

24. After due consideration of the evidence available to this Court, I am satisfied that there was a past loss of earnings.

ORDER

25. Consequently, I make the following order:

25.1 The Defendant is liable for 100% of Plaintiff's proven or agreed damages

25.2 Defendant shall pay Plaintiff an amount of R1 535 498,00 (One million five hundred thirty five thousand and four hundred and ninety eight rand only) for past loss of earnings.

25.3 The Defendant shall pay the Plaintiff an amount of R753 643,95 (Seven hundred fifty three thousand and six hundred and forty three rand and ninety five cents) for past medical expenses.

[7] President Insurance Co Ltd v Matthews 1992 (1) SA 1 (A) at 5C-E

25.4 Interest on the aforesaid amount shall be payable by the defendant at the rate of 11.25% per annum, payable within 180 (hundred and eighty) days from the date of granting of this order.

25.5 From the aforesaid amount, an amount of R250 000.00 (two hundred and fifty thousand Rand) shall be paid by the plaintiff's legal representatives to the Plaintiff and not to the trust. The money should be protected by way of a trust or Financial institution. The plaintiff's attorneys shall endeavour to establish the trust (if necessary) within 6 months, alternatively within a reasonable period of time after being placed in a position to do so. If so, the Defendant is liable for all the costs of establishment of a trust.

25.6 Future loss of earnings is *postponed sine dies*

25.7 General Damages is *postponed sine die* pending a proper determination as provided by the Act within 10 days from the date of this Court Order.

25.8 Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4) of the Road Accident Fund Act 56 of 1996 in respect of future medical, hospital and related expenses.

25.9 The defendant shall pay the plaintiff's agreed or taxed High Court costs as between party and party, subject to the discretion of taxing master, such costs to include, but not be limited to the following:

25.10 The costs in respect of the preparation and compilation of the following expert reports, including addendum reports:

25.10.1 Dr Louis Francois Oelofse - Orthopaedic Surgeon
25.10.2 Shaun Michael - Physiotherapy

25.10.3 Dr J J Labuschagne - Neurosurgeon
25.10.4 Dr E E Peters - Clinical Psychologist
25.10.5 Eloise Du Plooy - Occupational Therapist
25.10.6 Dr Irma Elzette Walters - Industrial Psychologist
25.10.7 SNG Argen - Actuary

26. The plaintiff's reasonable travel and accommodation costs to attend to the plaintiff's experts;

27. The costs in respect of the employment Counsel - Adv Isma Delport

28. The plaintiff shall, in the event that the costs not being agreed upon, serve a notice of taxation on the defendant's attorney of record.

29. The plaintiff shall allow the defendant 14 days to make payment of the taxed costs after service of the taxed bill of costs; provided that interest on the taxed costs shall be payable by the defendant within 14 days from service of the taxed bill of costs at the rate applicable on the day of taxation, or the day on which agreement is reached.

30. The Capital payment shall be made within 180 days of this judgment into the trust account of the Plaintiff's attorney the details of which are: Breytenbach Attorney Incorporated, First National Bank, Account number [………] Branch code […….] Reference : RAF063

31. It is confirmed that the Plaintiff did not enter into a Contingency Fee Agreement.

PIENAAR M (AJ)
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing : 12 April 2024

Date of judgment : 08 July 2024

Plaintiff's Counsel : Adv I Delport

Instructed by : Breitenbach Attorney Inc

email: info@breitenbachattorneys.co.za

For the Defendant : Road Accident Fund

No appearance

Link no: 5071387