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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO:836/2023

In the matter between:

MOTABI EMELDA MOGASHOA

APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

MONENE AJ

INTRODUCTION

[1] The plaintiff instituted action proceedings against the defendant for damages arising from a motor vehicle collision which occurred on 20 July 2020. Having been a passenger in of one of the motor vehicles involved in the collision, the plaintiff had the merits settled in her favour intra the parties on a 100% basis.

[2] The defendant did not defend this action at all having filed neither an intention to defend nor a plea.

[3] The matter having been properly set down for trial, the plaintiff proceeded before this court per default, sought and was granted leave to prosecute her case in terms of Uniform Rule 38(2).

[4] It being so that the jurisdiction of this court regarding general damages is regrettably and unfortunately, as per precedence, hampered by the defendant a 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.

LOSS OF EARNINGS

[5] Under cover of affidavit the plaintiff, pursuant to proving loss of earnings, adduced, in brief, the following uncontested evidence:

5.1 Dr S M Tladi, an orthopedic surgeon's evidence was that the plaintiff suffered a head laceration and soft tissue injuries on her right leg and her back. The extent of the injury on the plaintiff's head was deferred by this expert to the neurosurgeon. Similarly, examinations by an occupational therapist and an industrial psychologist were recommended by Dr Tladi.

5.2 A neurosurgeon, a Dr M P Seroto's testimony was to the effect that the plaintiff sustained a mild traumatic brain injury which led to short-temperedness, memory impairments, headaches and post-traumatic stress disorder. According to this witness other key sequelae of the mild traumatic brain injury on the plaintiff were diminished cognitive abilities manifesting as below average abstract reasoning, working memory and concentration. Opining that the accident had left the plaintiff with a whole person impairment of 20% Dr Seroto further concluded

that, *“new or worsening of neurocognitive and psychosocial sequelae may occur at a later stage.”*

5.3 The key take home from the expert opinion evidence of Dr Mathews Katjene can be summed in the following quote from his report:

“The injuries sustained have negatively impacted her neuropsychological and neurocognitive functioning with consequent adjustment difficulties.

She experiences poor quality of life due to the disturbances of moderate to severe post-concussion symptoms...”

5.4 Ms Boikhutso Molwana, an occupational therapist opined that the plaintiff who had at the time of the accident been employed seasonally as a packer and was post the accident unemployed after struggling to work after only a week of getting back, is expected to have difficulties performing occupations requiring physical demands. Noting that the plaintiff had, during recovery post the accident, not been remunerated this expert recommended that allowances be made for past loss of income. A further opinion from this witness was that the plaintiff is, post the accident, only expected to be able to perform jobs within the sedentary to light with reasonable accommodation and sympathy from employers.

5.5 The Industrial Psychologist, Ms Danushka Jenkins observing that the plaintiff, a grade 10 drop out, did not aspire furthering her studies neither before or post the accident and rather aspired to remain a general worker at least and a spaza shop owner at best, opined that the plaintiff deserved to be supported with her ambitions at her chosen level. She found that both past and future loss of earnings were applicable to the plaintiff's situation. This witness went on to opine as follows:

“The writer anticipates that the claimant’s behavioral difficulties will impede her ability to pursue job opportunities and may lead to strained relationships with colleagues and superiors, making her less desirable for promotional opportunities. Furthermore, impaired motivation could result in decreased job performance, exacerbating her anxiety levels.

These challenges are likely to hinder the claimant’s career advancement, as cognitive functioning limitations increase the likelihood of errors in her work, potentially leading to disciplinary action...

Additionally, requiring workplace accommodations/sympathetic employment places the claimant at a disadvantage, as it entails higher costs for the employer and may not fully alleviate her efficiency deficit compared to uninjured peers. This poses a risk to her employment stability.”

5.6 Anchoring on the heels of the above expert evidence, Namir Waisberg, an actuary computed the plaintiff’s total loss of earnings at R1 207 192.00 made up of R136,873.00 past loss and future loss at R1 070 319.00. These figures were arrived at after the factoring in of 5 percent contingency on past loss and 15 percent on future loss.

[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] The closest this court has to seers, soothsayers and oracles into predicting the future and coming up with fair speculated award for loss of earnings are the experts whose evidence I referred to supra. Unless their opinions are vitiated by lack of logic or by irrational reasoning, I, as a layman in their fields of wisdom, may not arbitrarily reject their evidence. That situation of accepting their evidence as is obtains more in the backdrop of that evidence not being countered by anything from the defendant.

[8] 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 sequelae of the injuries suffered by the plaintiff, particularly the cognitive impairment as gleaned from the neurosurgeon's evidence, the more than forty year life-expectancy for the plaintiff given her age of 37 at the time of the accident and her compromised employment potential, I cannot fault the computations arrived at by the actuary.

[9] Equally, given the plaintiff was only seasonally employed and was unlikely to get any better employment had the accident not happened, her being rendered an unfair labour competitor by the accident and general uncertainties around and about life, I find the standard contingencies of 5 and 15 percent applied by the actuary to be fair and reasonable.

[10] Accordingly, I am persuaded to award the plaintiff general loss of earnings in accordance with the computations of Mr Namir Waisberg.

FUTURE MEDICAL NEEDS

[11] According to the Orthopaedic Surgeon the plaintiff might need physiotherapist intervention in the future.

[12] The neurosurgeon predicts a future need for psychotherapy, physiotherapy, headache treatment for three to five years and general practitioner treatment for three years.

[13] According to the clinical psychologist the plaintiff will in future need the services of a clinical psychologist, an occupational therapist, an ophthalmologist, an audiologist and may need to be evaluated by a specialist psychiatrist.

[14] As per the occupational therapist the plaintiff will benefit from musculoskeletal rehabilitation offered by a host of medical practitioners and from Biokinetics. This witness also recommended the provision of assistive devices such as a shopping bag on wheels and a custom-designed trolley.

[15] Accordingly, I do not struggle to find that a case for an undertaking for future medical expenses has been successfully made.

ORDER

[16] Resultantly, I make the following order:

[16.1] The defendant is liable for 100 percent of the plaintiff's proven damages.

[16.2] The defendant shall pay an amount R 1 207 192.00(**ONE MILLION TWO HUNDRED AND SEVEN THOUSAND ONE HUNDRED AND NINETY-TWO RANDS ONLY**) as loss of earnings as damages for injuries suffered in the accident implicated herein.

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

ACCOUNT HOLDER: RAMAESELA MPHAHLELE ATTORNEYS

BANK: FNB

ACCOUNT NUMBER 6[...]

BRANCH CODE: 251037

REFERENCE NUMBER: RMA/00064/RAF

[16.4] Should the Defendant fail to make payment as per 16.2 and 16.3 above, the defendant shall be liable for the amount due with interest computed at the prescribed rate from the date of mora to date of final payment.

[16.5] The issue of general damages is postponed sine die.

[16.6] 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 in casu within 30 court days of this order.

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

16.7.1 Costs of Counsel on scale B in terms of Rule 67A

16.7.2 The costs attendant to obtaining the expert reports of Dr. S M Tladi, Dr M P Seroto, Dr M Katjene, Ms Boikhutso Molwana, Ms Danushka Jenkins and Mr Namir Waisberg.

[16.8] Should the defendant fail to pay the costs 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.

MALOSE S MONENE

ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on : 22 May 2024

Judgment delivered on : 30 August 2024

For the Plaintiff : Adv. L Haskings
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For the Defendant : No appearance