REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:912/2023

In the matter between:

SEHLABELA MMASA MARIA **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

MONENE AJ

[1] The plaintiff, a 61-year-old educator, instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 4 September 2022 along the R36 road in Letaba Cross in this province. She was a passenger in a motor vehicle which collided with another at a four-way stop intersection.

[2] The defendant did not defend this action at all leading to the plaintiff approaching this court on default and seeking to be heard per cover of affidavit in terms of uniform rule 38(2).

[3] 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 liability and the plaintiff's loss of earnings with general damages to be postponed sine die.

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

[4.1] Regarding merits or liability counsel for the plaintiff pointed me in the direction of the plaintiff's section 19(f)(i) affidavit which proved that the plaintiff was a passenger in one of the motor vehicles involved in the collision. To this court it matters not, for purposes of proving liability in a passenger claim, whether the negligent driver was the one ferrying the plaintiff or the other. Either's negligence is sufficient to prove the defendant's liability for the damages the passenger incurred.

[4.2] Accordingly I do not struggle to find that the proverbial one percent negligence highlighted in such matters as **Groenewald v Road Accident Fund(74920/2014)[2017] ZAGPPHC 879(5 October 2017)** per Mavundla J, has, absent any other evidence other than the plaintiff's say so in the section 19(f) affidavit, been proven.

[4.3] Thus the defendant is, in my view, 100 percent liable for the plaintiff's proven damages.

[4.4] Regarding the injuries suffered by the plaintiff resulting from motor vehicle collision an Orthopaedic surgeon, Dr W F Wayers' evidence is that she suffered from a right shoulder clavicle injury and soft tissue injuries to both her lower limbs. It was further opined by this expert witness that the plaintiff now suffered, arising from the accident, from midfoot degeneration to both her feet exacerbated by her advanced age.

[4.5] Dr I Diphofa, an occupational therapist, testified that as sequelae of the motor vehicle accident induced injuries the plaintiff walks with a wide base gait, has restricted elevation of the right arm, limited range of motion and is unable to work for a long period as she cannot stand for long. It was furthermore the opinion of this expert that the accident has seen the plaintiff struggle to perform core tasks attendant to being a teacher such as standing in front of learners for long and writing on the chalkboard. This witness opined that the plaintiff would be pushed by the sequelae to retire this year,2024, which is four years earlier than her retirement age.

[4.6] M Mokhethi, an industrial psychologist, in brief, agreed with the occupational therapist's opinion that the plaintiff would retire early because of the accident. This early retirement, it was opined by this expert, would see her suffer a three-year loss of earnings.

[4.7] I B Karidza of Tsebo Actuaries determined, informed by the industrial psychologist's report that the plaintiff had, because she has continued to work as an educator post the accident and had been remunerated during her sick leave, not suffered any past loss. He postulated a net future loss of earnings at R1 163 354.00 having factored contingencies at a spread of 5 to 10 percent to arrive at that amount.

[5] 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...*"

[6] 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. I cannot fault any of the experts in casu in any manner.

[7] Where this court has a hiccup over and above the normal “what ifs” which feed into educated soothsaying is the question regarding what if she does not retire early. I engaged counsel for the plaintiff on this aspect and he could not disagree that the early retirement opined upon was not cast in stone. It remains a possibility and a probability that the applicant can be accommodated for three more years and retire at normal retirement age. If that was to obtain, she would, if the net loss of earnings is not interfered a bit more with contingencies, have received far more than was due to her. The education department has accommodated her for close to two years to date since the accident and maybe can still accommodate her some more three years. But then what if, as the sequelae get worse with age, she was to indeed retire early? Won’t she then be said to have been under-compensated? I cannot see into the future and need guidance. The only guidance I have and must work on unless there was a countervailing expert opinion from the defendant is that of the occupational therapist and that of the industrial psychologist who, unlike the court, are not lay people in the science of speculation. I am safe going with their well-reasoned conclusions.

[8] Accordingly, I am persuaded to award the plaintiff loss of earnings in accordance with the capped computation of the actuarial scientist and in line with submissions made by the plaintiff’s counsel in both his heads of argument and in oral submissions before me.

[9] In the result, I make the following order:

[9.1] The defendant is 100 percent liable for the plaintiff’s proven damages arising from injuries and sequelae emanating from the motor vehicle collision which occurred on 2 September 2022.

[9.2] The defendant shall pay an amount R 1 163 354.00(**ONE MILLION, ONE HUNDRED AND SIXTY-THREE THOUSAND, THREE HUNDRED AND FIFTY-FOUR RANDS ONLY**) in respect of loss of earnings.

[9.3] The said amount shall be paid into the infra-mentioned trust account by direct transfer within 180 days of this court order being delivered:

ACCOUNT HOLDER: MALETE MOSIBUDI MARY ATTORNEYS
BANK: FNB
ACCOUNT NUMBER: 6[...]
BRANCH CODE: 260226
BRANCH: PLATINUM PARK POLOKWANE

[9.4] The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale which costs shall include the costs attendant to obtaining expert reports and the costs of counsel on scale B

[9.5] Should the defendant fail to pay the amount in 9.2 above within the 180 days and/or the agreed to or taxed costs within 30 days; 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.

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

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

APPEARANCES

Heard on : *03 June 2024*

Judgment delivered on : *04 September 2024*

For the Plaintiff : *Adv. D M Mphahlele*

: *Instructed by Malete Mosibudi Mary Attorneys*

: *Tel: - 015 101 1578*

: *Email: Maletemmattorneys@gmail.com*

For the Defendant : *No appearance*