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

CASE NO:11951/2022

(1) REPORTABLE: YES/NO

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

(3) REVISED.

Signature:

Date: 2024/09/10

In the matter between:

SENTSHO DANIEL MAHLOKO

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MONENE AJ

[1] The plaintiff instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 20 March 2022 along the Dinotsi gravel road in this province. He was a driver of a motor vehicle which collided with another the latter having fled the scene of the crime without trace.

[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). The application to proceed on the basis of available affidavits of the witnesses and to not lead oral evidence was granted by this court.

[3] It being so that, as regards general damages, the jurisdiction of this court is as per precedence not engaged owing to the defendant having not made an election regarding the seriousness of the injuries to the plaintiff by the defendant, what stands to be determined, even per the submissions of plaintiff's counsel before this court is the liability and the plaintiff's loss of earnings. General damages are 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, the accident report and the hospital records, all of which, remaining unopposed, prove before me that the runaway driver was solely responsible for the motor vehicle collision.

4.2 Accordingly I do have no hesitation in finding that absent any other evidence other than the plaintiff's say so in the section 19(f) affidavit, the fund's liability has successfully 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 Mphele Tladi's evidence is that the plaintiff sustained a left proximal femur fracture and a back injury. The sequelae thereof manifested, as per this witness, in the plaintiff enduring acute pains daily and severe reduced hip movements. The doctor opined further that the plaintiff's injuries

suggested that in the future he may suffer more cartilage damages, post traumatic osteoarthritis of the hip leading to possible complete hip replacement.

4.5 Ms. Brilliant Manyama, an occupational therapist, recognized the fact that post the accident the plaintiff was admitted at hospital for four months and further the plaintiff, post the accident, had an antalgic gait with slow pace when walking, difficulty standing and walking for long periods and went on to opine that post morbid the plaintiff's manual work rate was below the average. Observing that the plaintiff was an educator by profession this expert opined that the stated sequelae of the injuries sustained in the accident may affect his work output negatively. She concluded thus that the plaintiff has been rendered an unequal competitor in the open labour market.

4.6 Tshepho Kalanga, an industrial psychologist, in brief, observed that the plaintiff was an educator who remains employed as such to date, having professionally qualified to do that work per a senior teaching diploma. This expert further observed that the plaintiff's gross salary per annum was R161 520.00 per annum. Given the nature of his line of work it was opined by this witness that the plaintiff, at 57 years of age, had reached his career plateau and was on the home straight of maintaining his career towards retirement. This expert further stated that but for the accident the plaintiff would, most probably, have continued the same employment trajectory until retirement 65 years. It was testified further that the industrial psychologist is of the opinion that it is more probable than not that his residual work capacity would see him losing his employment prior retirement because the plaintiff's employability has been compromised by the accident or motor vehicle collision.

4.7 Munro 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 four months sick leave, not suffered any past loss. On the contrary, the plaintiff had, considering the difference between his pre-morbid and post morbid past loss experienced an increase of R6 100.00.

This expert, in sum, postulated a net future loss of earnings at R1 594 900.00 to which amount contingencies were factored at 15 percent, resulting in a total loss of R1 355 665.565. From that amount the actuary subtracted the plaintiff's gain of R6 100.00 under the past loss computations arriving, in the final analysis, at a loss of R1 349.565.00.

[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 is clearly lacking in casu. I cannot fault any of the experts in casu in any manner.

[7] I would have granted judgement on the day the matter was argued per standard court order but had hiccup raised by a question which incessantly occupied my mind to wit; whether the plaintiff, being likely still, capable of not retiring early, he would not be unfairly advantaged by the postulated compensatory award. It remains a probability that the applicant can be accommodated by the employer, a state department for that matter, for the balance of the remaining years to retirement resulting in the plaintiff retiring at the normal retirement age of 65 and not necessarily be an early retiree as opined by both the occupational therapist and the industrial psychologist. 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. But then what if, as the sequelae get worse with the age of the plaintiff, 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 and the actuary's computations inclusive of the contingency percentage of 15 percent utilized.

[8] Accordingly, I am persuaded to award the plaintiff loss of earnings in accordance with the 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 20 March 2022.

9.2 The defendant shall pay an amount R R1 349.565.00 (**ONE MILLION, THREE HUNDRED AND FOURTY-NINE THOUSAND, FIVE HUNDRED AND SIXTY-FIVE 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: K T RACHUENE ATTORNEYS

BANK: FNB

ACCOUNT NUMBER: 6[...]

BRANCH CODE: 252145

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 their being determined; 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 It is ordered that the defendant is liable for the costs of future accommodation of the plaintiff in hospitals or other health care facilities as well as all attendant medical services needed by the plaintiff arising from injuries the plaintiff in a motor vehicle accident of 20 March 2022.

9.7 The issue of general damages is postponed sine die.

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

APPEARANCES

Heard on : 30 May 2024

Judgment delivered on : 10 September 2024

For the Plaintiff : Adv. S Mathabathe
: Instructed by K T Rachoene Attorneys
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: Email: Unknown

For the Defendant : No appearance