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

CASE NO:313/2013

(1) REPORTABLE: YES / NO

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

(3) REVISED.

Date: 2024/10/02

Signature:

In the matter between:

M[...] T[...] M[...]

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MONENE AJ

[1] On 20 October 2010 the plaintiff, then a minor, was a pedestrian when he was involved in a motor vehicle accident wherein, he was knocked down by a motor vehicle on a public road in Botlokwa.

[2] The plaintiff suffered injuries consequently explained by the Orthopaedic surgeon as head injury with concussion, back injury, fracture of the sacrum, abrasion and lacerations of the head and hair loss and abrasions of the lip, right cheek, back of head and shoulders,

[3] In the aftermath of all that the plaintiff instituted proceedings against the defendant under cover of section 17 of the Road Accident Fund Act 56 of 1996.

[4] Per previous court orders the merits were conceded 100 percent in favour of the plaintiff and general damages settled at R800 000.00.

[5] This matter proceeded before me on loss of earnings with the defendant having, as is now standard reaction to these kinds of actions, offered absolutely no defense to the plaintiff's claim having filed no reports to assist with the determinations to be made in that regard.

[6] The matter served before this court in default with the plaintiff praying that I determine loss of earnings as they arise from the injuries sustained in the said motor vehicle collision and their sequelae.

[7] To attend to the issues which lay before me for determination the plaintiff sought and was granted leave to prosecute his case on paper in terms of Uniform rules 38(2) and 39(1).

LOSS OF EARNINGS

[8] The main take homes as to the injuries suffered by the plaintiff in this matter as per Dr PWS Williams, the Orthopaedic Surgeon having already been alluded to supra, it only remains necessary for the balance of the uncontested expert reports feeding into the plaintiff's case as to quantum to be determined.

[9] The occupational therapist, Mr Motlana opined in general that flowing from the injuries and sequelae suffered by the plaintiff he presents with occupational dysfunction which

would render him an unequal competitor in the open labour market. This opinion was derived from an observation that the plaintiff had functional restrictions regarding standing, walking, climbing, lifting and bending all of which are basic to the ability to do any work in the open labour market.

[10] Drs L T Kekana and SAC Verhoef, educational psychologists engaged by the plaintiff opined that the plaintiff suffered, because of the accident, from cognitive deficits which rendered him academically disadvantaged such that even if he would, as he could, his studies would not be any more beneficial than for mere therapeutic purposes.

[11] Computations by Arch Actuaries resulted in a total loss of earnings of R7 604 334.20 post the factoring in of 20% contingencies for both past and future loss. I was then addressed by counsel for the plaintiff to the effect that from that amount a previously paid interim payment of R500 000.00 should be subtracted. That would less the amount computed by the actuaries to R7 104 334.20. From this amount I must also less the amount of R11 894.00 computed by the actuaries which amount I find indefensible in the light of the incontrovertible opinion of the industrial psychologist to the effect that because at 10 years (the time of the accident) the plaintiff had not yet entered the labour market there could not have been any past loss. That leaves the loss of earnings at R7 092 440.20.

[12] In the backdrop of the above uncontested expert evidence and address by counsel for the plaintiff, I must determine loss of earnings suffered by the plaintiff in respect of which the lodestar to a proper approach remains, in my view, **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. It has open to it two possible approaches. One is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an

assessment, by way of mathematical calculations, on the basis of assumptions resting on evidence. The validity of this approach depends upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.”

[13] This court has previously, in the unreported matter of **Makgoba Malesela Freddy and Road Accident Fund (2121/2023)** out of this division and heard on 22 May 2024 and delivered on 28 August 2024, made the following remarks by which it still stands:

“I am a layman to all the disciplines of the experts who testified. While I may not and should not merely rubberstamp their recommendations and must subject them to a test of looking into the reasoning which went into their opinions, I should not and will not allow myself to be swayed by maudlin alarmist sensitivities in the public domain emanating from either the defendant in casu which has literally abandoned and absconded from defending these actions which flood our court rolls daily or that defendant’s apologists whose common mantra is to see any amount having six figures as undeserved or as an attempt by plaintiffs to deceptively and greedily milk the “cash-cow” that is the Road Accident Fund.”

[14] Regard being had to how the experts in casu reasoned their opinions as alluded to supra and reflected upon in argument before me, I cannot in anyway bring myself to fault the expert evidence led before me and readily accept that evidence without any reservations. I am also at ease with the contingencies applied having taken counsel from the plaintiff’s Industrial psychologist, Danushka Jenkins, who recommended considerably higher post-accident contingency deductions

[15] I understand the need for contingencies to be informed by the speculative nature of the work done by the learned experts employed in the determination of quantum which involve, in general, looking into uncertainties such as life expectancy, future employment or unemployment prospects, future improvements or diminutions in working conditions prospects and a host of other unknown variables such as the economic viability of a country. Those are factored in to either temper with amounts postulated by actuaries downwards or upwards, although practice has, perhaps actuated by persuasions I

lamented supra as referenced from a previous unreported decision of this court, developed to factor contingencies only to what, at first blush, appear to be possibly too high amount postulations.

[16] Given the age of the plaintiff at the time of the accident which was a mere 10 years, the expected longer life span expected still, the unquestionably grave sequelae as to physical and cognitive deficits, the fast depreciating value of money in our current downward economic slide and the projections of a further bleak economic future which is more likely to see the plaintiff unemployed for life than not, I am disinclined to see the amount arrived at by the experts as alluded to supra as excessive.

[17] Resultantly, I make the following order:

17.1 The defendant shall pay the plaintiff a total sum of R7 092 440.20 (**SEVEN MILLION NINETY-TWO THOUSAND FOUR HUNDRED AND FOURTY RANDS TWENTY CENTS ONLY**) in respect of the loss of earnings being damages suffered by the plaintiff in relation to the motor vehicle accident in *casu* which occurred 20 October 2010.

17.2 The amount in order number 22.1 above shall, within 180 days from date of this order, be paid by direct transfer into the trust account the details of which shall be nominated by the Plaintiff's attorneys of record.

17.3 In the event of the above capital amount not being paid timeously, the defendant shall be liable for interest at the prescribed rate of interest per annum, calculated from the date of mora to date of payment.

17.4 The defendant is ordered to pay the cost of this suit on a High Court scale inclusive of the costs attendant to obtaining the expert reports relied upon in evidence and the costs of counsel on scale B.

17.5 The plaintiff shall, if the parties disagree as to the costs referred to supra, serve a notice of taxation on the defendant and shall allow the defendant 14 court days post taxation to make payment of the taxed costs.

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

APPEARANCES

Heard on : 13 June 2024

Judgement delivered on : 2 October 2024

For the Plaintiff : T Sibiya
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For the Defendant : No appearance