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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:1436/2022

(1) REPORTABLE: YES/NO

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

(3) REVISED.

Signature:

Date: 08/10/2024

In the matter between:

MASIPA TUMELO **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 July 2020. The plaintiff was a passenger in a motor vehicle at the time of the accident

[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's failure to make an election on the seriousness of the injuries involved *in casu* and further noting that liability was finalized 100% in the plaintiff's favour per court order of M G Phatudi J(as he then was) dated 25 November 2022, what stands to be determined before this court the plaintiff's loss of earnings with general damages having to be postponed sine die.

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

> [4.1] Regarding the injuries suffered by the plaintiff resulting from motor vehicle collision, an Orthopaedic surgeon, Dr F C Baloyi as well as the radiographer, Dr J R Sibiya's evidence is that the plaintiff suffered from mid-tibial and fibula fractures which resulted in 5% whole body impairment. She experiences continuous leg pains arising from those injuries.
>
> [4.2] MAF Mashala, an occupational therapist, testified that the plaintiff was a grade 10, who post the accident, suffers from forgetfulness, headaches, left-side chest pains radiating down to the left hand and right leg pain exacerbated by inclement weather. It was this witness's further evidence that the plaintiff's physical capacity could meet the open labour market physical requirements for occupations in the labour market that fails within the full range of light type work category. The witness further opined that due to sympathetic employment she may be able to work until retirement.
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> [4.3] Glory Manamela an educational psychologist opined that the plaintiff suffers

from traumatic memory impairments and struggles to concentrate when studying. Her ceiling academic qualification which could have been a degree but for the accident was post the accident now only at post matric college certificate.

[4.4] Herbert Kanengoni an industrial psychologist agreed that pre-morbid the plaintiff was an NQF Level 6 candidate but had post morbid been reduced to an NQF Level 4. This witness found the plaintiff to be compromised in her physical capabilities and had already suffered a delay in career progression as her employment was delayed by the accident and its sequelae. This witness further testified that the plaintiff would suffer future loss of earnings until retirement even if it be that he had limited residual work capacity.

[4.5] Tsebo Actuaries, informed by the industrial psychologist's report, postulated a net future loss of earnings at R6 760 670.75 having factored contingencies at 5 percent for past loss and a spread of 15 to 35 percent spread 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 stated:

"*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] This court is not inclined to deviate from the uncontested expert evidence tendered before it, more so the actuarial computations. To so deviate I would need something better or a counterview or at least a reasoned view that the expert evidence led is irrational or otherwise not to believed for another reason. All that is lacking in casu. I

thus cannot fault any of the experts in casu in any manner. Furthermore, having regard to the facts and expert opinions already referred to above, particularly the plaintiff's relatively young age of 23 years and consequent expected long life expectancy, I am persuaded that the 15 percent and 20 percent contingencies for past and future loss of earnings contingencies factored by the actuaries are fair and reasonable.

[7] Accordingly, I am persuaded to award the plaintiff loss of earnings in accordance with the submissions made by counsel in the plaintiff's Heads of argument and viva voce before me, where factoring in contingencies different to those of the actuarial scientists, to wit 15 and 25 percent, the computation settled at R6 273 911.75.

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

[8.1] The defendant shall pay an amount R 6 273 911.75(**SIX MILLION, TWO HUNDRED AND SEVENTY-THREE THOUSAND, NINE HUNDRED AND ELEVEN RANDS, SEVENTY-FIVE CENTS ONLY**) in respect of loss of earnings.

[8.2] 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: MACHAKA SEKWALA ATTORNEYS
BANK: FNB
ACCOUNT NUMBER: 6[...]
BRANCH CODE: 250655
BRANCH: JORRISEN STREET
REF: SJM/RAF/0014

[8.3] 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

[8.4] Should the defendant fail to pay the amount in 8.1 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.

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

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

APPEARANCES

Heard on	*: 10 June 2024*
Judgment delivered on	*: 08 October 2024*
For the Plaintiff	*: Adv. Z S Rasekgala* *(Heads prepared by Adv. Hlakudi Mpe)* *: Instructed by Machaka Sekwala Attorneys* *: Tel: - 068 110 0430* *: Email: sekwalamachaka@gmail.com*
For the Defendant	*: No appearance*