

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

CASE NO:368/2017

(1) REPORTABLE: YES/ NO
(2) OF INTEREST TO THE JUDGES: YES/ NO
(3) REVISED.

Signature

Date.....

In the matter between:

LENTSOANE MOTLALEPULE JOHANNA

PLAINTIFF

And

ROAD ACCIDENT FUND.

DEFENDANT

JUDGMENT

MONENE AJ

[1] The plaintiff an adult female person instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 05 February 2016. Already the merits in this matter have per court order dated 15 May

2023 been settled 100 percent in favour of the plaintiff. The same court order saw general damages settled in the amount of R500 000.00.

[2] Having initially filed the routine generally bare denial plea to this matter the defendant partook no further in the long evolution of the matter such that when this matter was set down for determination of loss of earnings, as it now is being heard, only the plaintiff had filed relevant expert reports.

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

4.1 Dr Mphele Tladi, an orthopedic surgeon's evidence was that the plaintiff sustained an open medial malleolar fracture which left her with residual ankle instability and lateral heel sensation loss. It was testified further that although the plaintiff's injury does not pass the 30% rule, they however pass the narrative test for serious long-term impairment or loss of a body function.

4.2 An occupational therapist, M O Mashishi's testimony was that the plaintiff who was an unemployed university graduate at the time of the accident presented with residual work capacity for sedentary light to low level medium work. She was after the accident, it was testified, suited for occupations where she was reasonably accommodated owing to her physical deficiencies arising from the accident. It was further opined by this witness that from a functional perspective, the plaintiff has suffered a decline in earning capacity, particularly in physically demanding occupations that require the use of the lower limbs.

4.3 J Buitendach, the industrial psychologist, observed the following:

4.3.1 That the pre-accident unemployed university graduate that is the plaintiff managed to secure employments as media monitor and lab assistant post the accident but was unable to cope with those jobs due to her compromised physical capacity.

4.3.2 That she has since remained unemployed.

4.4 This expert concluded that the plaintiff's employment prospects are significantly reduced. It was opined further that she also has emotional dysfunction sequelae which further diminished her employment potential in an already hostile employment space even if one is able-bodied.

4.5 Wim Loots, an actuarial scientist, informed in the main by the industrial psychologist's report which itself had factored in the orthopedic and occupational therapist reports, computed total loss of earnings at R3 693 843.00 to which amount no contingencies were factored in.

4.6 In very helpful heads of argument counsel for the plaintiff, Adv. S S Masina factored in 10% contingencies for past loss and 20-30% on future loss to ultimately arrive at a total loss of R3 169 009.00.

[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] In ***Hersman v Shapiro and Co 1926 TPD at 379*** it was held as follows:

“Monetary damage having been suffered, it is necessary for the court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the court is bound to award damages.”

[7] In my view the expert evidence which was led before me is solid and informed. These experts represent for this court present day soothsayers and oracles providing a very useful service to the court in its determination of loss of earnings. To needlessly compute outside their evidence where their evidence has not been gainsaid by any opposing view and where it cannot be faulted would, in my view, be a misdirection.

[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 back pain and ankle problems as well as the actual proof of the plaintiff's relative unemployability seen in the two post-accident failed attempts at working and her youthfulness at 34 which suggests relatively a much longer life expectancy, I am unable to fault the computations arrived at by the actuary.

[9] Accordingly, I am persuaded to award the plaintiff a loss of earnings in accordance with the computation of the actuarial scientist and on the contingencies suggested by counsel for the plaintiff.

[10] In all the above premises, I make the following order:

[10.1] The defendant shall pay an amount R 3 169 009.00(**THREE MILLION ONE HUNDRED SIXTY-NINE THOUSAND AND NINE RANDS ONLY**) as loss of earnings.

[10.2] The amount stated supra shall be paid by direct transfer into the following trust account within 180 days of this order:

ACCOUNT HOLDER: KOMANE ATTORNEYS

NAME OF BANK: FIRST NATIONAL BANK

ACCOUNT NUMBER: 6[...]

BRANCH CODE: 250655

ACCOUNT TYPE: CHEAQUE

10.3 The defendant shall pay the plaintiff's taxed or agreed to party and party costs on a high court scale within 30 days of taxation or agreement which costs shall include the costs attendant to securing expert reports and the costs of counsel on scale B.

10.4 Should the defendant fail to pay the capital amount and/or the taxed costs timeously; the plaintiff shall be entitled to recover interest thereon on the prescribed rate of interest from the date of mora to date of final payment.

M S MONENE

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES

Heard on

: 24 June 2024

Judgment delivered on

: 04 November 2024

For the Plaintiff

: Adv S S Masina

: Instructed by Komane Attorneys

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For the Defendant

: No appearance

POLOKWANE HIGH COURT