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

CASE NO:8401/2021

(1) REPORTABLE: YES/NO

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

(3) REVISED.

Signature:

Date: 05/11/2024

In the matter between:

MAMPURU NTOBENG ELIAS 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 08 November 2020 along the Leporogong, Ga Nkwana in Limpopo Province. The plaintiff, a passenger in a motor vehicle which overturned resulting in him being injured was, at the time of the accident, 55 years of age.

[2] Although the defendant initially filed a notice of intention to defend the action and was thereafter barred, it never filed a plea.

[3] On 13 April 2023 the merits or liability in this matter was settled 100 percent in favour of the plaintiff. In that order, per Kganyago J, general damages were settled in the amount of R500 000.00 while a section 17(4)(a) undertaking for future medical costs was also ordered.

[4] With the defendant having not followed through with defending the matter leading and characteristically having no expert reports regarding quantum, the plaintiff approached this court on default and sought to be heard per cover of affidavit in terms of uniform rule 38(2). The trial approach prayed for by the plaintiff was granted by this court.

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

[5.1] Dr Dimakatso Ramushu, an orthopedic surgeon, testified about recording the accident-related injuries of the plaintiff as follows:

5.1.1 Fracture of the Lumbar spine at L3 to L4.

5.1.2 Fracture of the pelvis with pubis diastasis.

5.1.3 Dislocation of the sacroiliac joint.

5.1.4 Blunt abdominal trauma

5.1.5 Soft tissue facial injuries.

[5.2] Lerato Sambo, an occupational therapist, testified that the plaintiff has difficulties performing anything related to kneeling, stooping, lifting heavy objects and standing for prolonged periods. It was this expert's further evidence that post-morbid the plaintiff can only perform light work in the open

labour market and was that now a vulnerable unequal competitor in job seeking. He thus, it was testified, is no longer able to perform his pre-morbid job as a self-employed wood cutter and seller as that job entailed the physical demands in which post-morbid he now suffered serious deficiencies.

[5.3] The industrial psychologist, Chayla Gonclaves, observed that the plaintiff had up to three years before the accident been employed as a Mining Supervisor at a salary of R279,268,92 per annum. He had, it was noted by this witness from collateral information, post the retrenchment worked as a self-employed wood vendor at a R150 000.00 annual income. This witness then postulated two scenarios for loss of earnings, one scenario being premised on him having again secured a job in the mining industry had the accident not happened and the other scenario being if had continued as a wood vendor. Noting that whichever scenario would have applied the reality is that post the accident the plaintiff was unable to do either, this witness found that the plaintiff had suffered both past and future loss of earnings.

[5.4] Taking a cue from the industrial psychologist's report and the two scenarios postulated by the industrial psychologist, Itai Karidza an actuarial scientist under Tsebo Actuaries computed total loss of earnings as follows:

5.4.1 R1 274 648.00 under the scenario of the plaintiff as a wood vendor, an amount arrived at post factoring contingencies at 5 % for both past and future loss.

5.4.2 R2 051 373.00 under the scenario premised on the plaintiff having regained employment in the mining sector. To arrive at this amount, a general contingency of 5% had been factored in.

[6] Counsel for the plaintiff invited me to not arbitrarily chose one scenario over the other and to rather take the mean of the two scenarios as a reasonable compensation amount. That was a sober input which I am inclined, at first blush, to accept regard being had to the fact that we will never with certainty know whether the plaintiff may have continued in his lower income self-employment or may have

been re-employed in the mining industry, an industry in which, as per collateral information availed to the industrial psychologist, he was qualified.

[7] I acknowledge that the evidence of experts and that of the actuarial scientist as to how to compute the compensation award, in particular, serves, as counselled by *Shield Insurance Co & D vs Hall* (1976) (4) SA 431 A, only as a guideline and do not per se bind the court the extent of having no room to manouvre. That kind of evidence should at the same not be taken lightly by a court which retains its discretion on both the amount and applicable contingencies.

[8] However this court remains convinced that the best approach in computation of loss of earnings can never be better stated as was in ***Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F***(“*Bailie*”) 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. 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 the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.”

[9] In ***Prince v Road Accident Fund***(ca143/2017) [2018] ZAECHC 20(20 March 2018) the full court cautioned courts never to ignore loss of earnings computations so long as those computations are having an evidential basis.

[10] 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.”

[11] In my view this matter calls for a hybrid of reliance on informed expert evidence as led before me and the consideration of a rough estimate informed by principles of fairness as determined by the court. That is what makes the idea of going for the mean of the two scenarios postulated by the industrial psychologist and computed on by the actuarial scientist most attractive to this court.

[12] Given the well-documented sequelae of the injuries suffered by the plaintiff, particularly the physical deficiencies arising from the spine and pelvic are injuries, which are most probably aggravated by factors outside the injuries such as old age and furthermore considering the likelihoods around re-employment or continuance with self-employment had the accident not happened as well as the probable shorter than most life-expectancy of the plaintiff at age 55, I am inclined to award in terms of the mean as prayed for by counsel for the plaintiff, which approach leaves total loss of earnings at R1 663 311.00.

[13] I note that the plaintiff's claim for past hospital and expenses which was also previously per Kganyago J's order postponed for later determination heard has, according to the plaintiff's written submissions, been abandoned. That decision to abandon was one taken wisely as there was no evidence before this court to help prove that claim.

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

[14.1] The defendant shall pay an amount **R 1 663 311.00(ONE MILLION SIX HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED AND ELEVEN RANDS ONLY)** as loss of earnings

[14.2] The amount stated in 14.1 supra shall be paid by direct transfer into the following trust account within 180 days of this order:

ACCOUNT HOLDER: RUNGWANE MATHEBA ATTORNEYS

NAME OF BANK: FIRST NATIONAL BANK

ACCOUNT NUMBER: 6[...]

BRANCH CODE: 210213

[14.3] 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.

[14.4] 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.

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

APPEARANCES

Heard on : 26 June 2024

Judgment delivered on : 05 November 2024

For the Plaintiff : Adv. I W Makhubo
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For the Defendant : No appearance