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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no:5440/2017

In the matter between

ELIA HAKISA

PLAINTIFF

And

ROAD ACCIDENT FUND

RESPONDENT

Coram: MOLITSOANE, J

Heard: 3 MAY 2024

Delivered: 18 MAY 2024

JUDGMENT

Molitsokane J

[1] This matter appeared before me as a trial enrolled and set down by agreement between the parties. On the first day of the trial, counsel for the defendant indicated to this court that she held no instructions to proceed with the trial in this matter and consequently requested permission to withdraw as an attorney of record of the defendant. The plaintiff did not object to the intended withdrawal. Although the withdrawal was requested at the doorstep of the court, I accepted the request for the attorney of the defendant to cease to act in these proceedings.

[2] The matter was set down for the hearing of the merits. Before she could withdraw, Counsel for the defendant drew the question raised by the defendant in the plea in which the following was averred: 'The Defendant specifically pleads that the Plaintiff was not legally in the country at the time of the accident thus the Defendant is not liable to compensate the Plaintiff.' I hasten to add that after withdrawal of the defendant's attorney the matter proceeded on an undefended basis.

[3] At the onset, the plaintiff launched an application in terms of rule 38(2) in which a request was made to lead the Plaintiff's evidence and some of his expert testimony by way of affidavits. The application was granted. The evidence contained in the affidavits aforementioned remain uncontested. I interpose that I am satisfied that the Plaintiff has made out a case for the order sought and the defendant is liable to compensate him as prayed for.

[4] With regard to the issue referred to by Counsel for the Defendant before she withdrew, regarding the liability of the defendant to compensate illegal foreigners injured or killed in road accidents in our country, though the issue was not pertinently argued before me, I am fortified that the defendant is liable to compensate those entitled to compensation irrespective of whether the person injured or killed is an illegal foreigner¹.

¹ See *Mudawo and Others v Minister of Transport and Another* (011795/2022) [2024] ZAGPPHC 258(26 March 2024).

[5]

[6] In the result I make the following order:

Order

- 1.1 The Defendant is liable to pay **100% (one hundred percent)** of the Plaintiff's proven or agreed damages;
- 1.2 The Defendant shall pay the Plaintiff the sum of **R763 923.20(Seven hundred and sixty three thousand and nine hundred and twenty three rand and twenty cents** in respect of general damages. The issue of general damages is separated from the issue of loss of earning capacity and is postponed to the pre-trial roll of 2 September 2024
- 1.3 The Defendant shall pay the abovementioned amount into the Plaintiff's Attorneys trust account.

The Plaintiff's Attorney's trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]
REFERENCE:	MAT103105

- 1.4 The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on **6 February 2017**.
- 1.5 In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory more rate on the date of taxation / settlement of the bill of cost,

as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.

- 1.6 In the event that the Defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the Defendant will be liable for payment of interest on such amount at 11,75% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.

2.

- 2.1 The Defendant to pay the Plaintiff's taxed or agreed party and party cost, up to and including the date, when the order is made an order of court.
- 2.2 The reasonable qualification fees of all the Plaintiff's experts of whose reports had been furnished to the Defendant and / or its experts:

- | | | |
|----------------------|---|--|
| 2.2.1 Dr JP Marin | - | Orthopaedic Surgeon |
| 2.2.2 Ms Hanri Meyer | - | Rita van Biljon Occupational Therapist |
| 2.2.3 Mr Ben Moodie | - | Industrial Psychologist |
| 2.2.4 Mr J Sauer | - | Actuary |

- 2.3 Cost of Counsel on scale A.

3.

In the event that cost is not agreed, the parties agree as follows:

- 3.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
- 3.2 The Plaintiff shall allow the Defendant fourteen court days to make payment of the taxed cost.

P.E. MOLITSOANE, J

For the Applicant:

Adv. JC Van Eeden

Instructed by:

**Du Plooy Attorneys
BLOEMFONTEIN**

For the Respondent:

Instructed by:

**No appearance
State attorney (Withdraw)**