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

**Reportable / Not
reportable**

Case no: **4033/2013**

In the matter between:

P[...] K[...] D[...] T[...]

Plaintiff

And

**ROAD ACCIDENT FUND
LINK NUMBER: 2920204**

Defendant

Coram: Cronjé, AJ

Heard: 16 August 2024

Delivered: 03 September 2024

Summary: Motor vehicle accident – moderate head injury at age 4 – quantum of damages – general damages – loss of past and future income – impairment of neurocognitive, neurobehavioral and neuropsychiatric functioning – whether plaintiff can obtain an NQF 7 qualification – improbable that she will qualify beyond NQF 6.

ORDER

1. The defendant is liable for payment to the plaintiff in the amount of R600 000.00 (six hundred thousand rand and zero cents) in respect of the plaintiff's claim for general damages resulting from a motor vehicle collision that occurred on 11 March 2005.
2. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff arising out of injuries sustained by the plaintiff in the aforementioned motor vehicle collision, in terms of which undertaking the defendant will be obliged to compensate the plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.
3. The defendant is liable for payment to the plaintiff in the amount of R3 993 875,00 (three million, nine-hundred and ninety-three thousand, eight-hundred and seventy-five rand and zero cents) in respect of the plaintiff's claim for past and future loss of income resulting from the aforementioned motor vehicle collision.
4. The defendant is to pay the plaintiff's taxed or agreed party-and-party costs on the High Court scale until the date of this order, including but not limited to the costs set out hereunder:
 - 4.1 The reasonable qualifying and reservation fees of the following experts:
 - 4.1.1 Dr A van Aswegen (neurosurgeon).
 - 4.1.2 Ms. R du Plessis (counselling psychologist).
 - 4.1.3 Ms. S Gouws (occupational therapist).
 - 4.1.4 Ms. A Stroebeel (occupational therapist).
 - 4.1.5 Dr E J Jacobs (industrial psychologist).
 - 4.1.6 Munro Forensic Actuaries.
 - 4.1.7 Ms. L Swart (educational psychologist).

5. The cost of senior counsel as on scale C.

6. The payment provisions in respect of the foregoing are ordered as follows:

6.1 Payment of the amounts referred to in paragraphs 1 and 3 above (hereafter collectively referred to as the 'capital amount') shall be made without set-off or deduction within 180 (hundred and eighty) calendar days from the date of the granting of this order, directly into the trust account of the plaintiff's attorneys of record by means of electronic transfer, the details of which are the following:

Honey Attorneys - Trust Account

Bank - Nedbank, Maitland Street, Bfn

Branch Code - 110 234 00

Account No. - 1[...]

Reference - HL Buchner/vch/J03110 (quote the reference at all times)

7. Payment of the taxed or agreed costs shall be made within 180 (hundred and eighty) days of taxation and shall likewise be effected into the trust account of the plaintiff's attorneys of record.

8. Interest shall accrue at 11.75% (the statutory rate per annum), compounded, in respect of:

8.1 the capital amount of the claim, calculated from 14 (fourteen) days from the date of this order;

8.2 the taxed or agreed costs, calculated from 14 (fourteen) days from the date of taxation, alternatively the date of settlement of such costs.

JUDGMENT

Cronjé, AJ

Introduction:

[1] P[...] T[...]’s father instituted a claim against the Road Accident Fund (RAF) in his representative capacity as father and natural guardian when she was still a minor. She is now 23 years old, and the judgment is in her name.

[2] On 11 March 2005, at approximately 13:40, an accident occurred wherein the insured vehicle collided with P[...] who was a pedestrian. P[...] was four years and three months old at the time of the accident.

[3] The standard grounds of negligence are alleged, with addition of an allegation, namely that the insured vehicle failed to allow sufficient space between the insured vehicle and a stationary taxi offloading children when the insured vehicle passed by.

[4] The heads of damages are past and future medical and hospital expenses, past and future loss of income, and general damages. The total claim is R5 517 985.00. The parties settled the claim for general damages on R600 000.00.

[5] The defendant denies negligence and alleges that P[...] entered the road when it was inopportune to do so, failed to take reasonable care, failed to take cognisance of the insured driver’s action or intended actions. It pleads that P[...]’s claim be reduced in accordance with the Apportionment of Damages Act 34 of 1956.

[6] On 30 August 2016, Zietsman AJ granted an order in which the RAF accepted liability for 100% of P[...]’s proven or agreed damages. I need to determine the quantum of her loss.

[7] Although the rule 37 minute records that no proof is to be produced by way of affidavit in terms of rule 38(2), the parties agreed that the bundle of expert notices be accepted as evidence. This concession is qualified to the extent that a dispute exists on whether P[...] would have obtained a diploma at NQF 6 level or could obtain a degree at NQF 7 level. The contingencies are also subject to the Court's discretion.

[8] The only aspect in dispute in the reports of Mrs L Swart (educational psychologist) and Dr E.J. Jacobs (industrial psychologist) is the post-career path of P[...].

Evidence of P[...]

[9] She studied towards a three-year media practices qualification at Boston Media House in Pretoria for one year but failed some modules as the work was too much for her. She did not want to sit at home, and her father paid for her studies. She did not have a specific outcome in mind and still does not know what she will eventually achieve by studying. She, therefore, studied for a diploma in Performing Arts at TUT, having yet to find a specific outcome in mind, and succeeded in obtaining the qualification. It was practice orientated, and she never had to open a textbook. She wanted to do acting, voice-over, and voice in video production. She sent her curriculum vitae to various institutions but could not secure work. After that, she applied to ALX Africa for a 12-month online software engineering course. She failed to complete it as she could not understand coding language. After that, she registered for a post-graduate certificate in education, which complements her performing arts qualification. She commenced with it in 2024 and will complete it over a period of two years. When asked why she took this course, she said she wanted to do something and did not want to sit at home. She failed a few tests, and is now required to use textbooks. She, however, wants to avoid becoming an educator.

[10] In cross-examination, she stated that she aspires to be qualified in the medical or construction industry. She attempted to register at various nursing universities but could not recall the outcome. She is interested in quantity surveying (QS), gynaecology or geography. She took the course in media practice as it was the only one to which she was accepted. She still needs to decide what career to pursue. She has not recently attempted to register for a baccalaureate degree and had no reason not to do it.

Evidence of Mrs Linda Swart (Educational Psychologist)

[11] Mrs Swart found that P[...] has an average short-term memory for auditory material as she initially could only recall 26/43 facts. After a timed delay, she could only recall the same 26 facts. Her performance on the Digits subtests ranged between below to low average. P[...]’s spelling ability is functional and below the requirements for her chronological age. She sometimes spells phonetically and mispronounces words. Her visual-motor integration skills are delayed, which will harm her reading, spelling, and writing abilities. Applying various tests, she found that P[...] does not experience symptoms of anxiety and depression.

[12] She concluded that, but for the accident, and taking P[...]’s background and the qualifications of her parents and sibling into account, P[...] would have proceeded to obtain an NQF 7 qualification. Based on all available information, it is clear that P[...] will not be able to achieve according to her pre-accident ability.

[13] She referred to the report of Mrs. Rita Du Plessis (Neuropsychologist), who concluded that a healthy neuropsychological status requires healthy and unaffected neurocognitive, neurobehavioral and neuropsychiatric functioning. According to Mrs. Du Plessis, P[...] presents with problems in all these areas. Cumulative interference with these components leaves her with a compromised neuropsychological status.

[14] According to Mrs Swart, P[...] is not functioning in her pre-morbid state, which impacts her academic ability. The diploma in performing arts would be her highest level of education. Her present course in software engineering would not supersede her diploma and she does not foresee that P[...] would progress from an NQF 6 to an NQF 7 qualification as she would need at least an APS score of 28, whereas she only obtained 21. This would not assist her in being accepted for an undergraduate qualification. P[...] shies away from theoretical content, suffers headaches and fatigue and has difficulty concentrating. This needs to be better for obtaining a degree. She does not seem to have executive functioning, including planning abilities. As such, she will need to be directed in order to give effect to her desire to be constructive.

[15] In cross-examination, Ms Bornman asked whether P[...] could improve her grade 12 results to increase her APS score. Ms Swart opined that P[...] would have to repeat Grade 12 and increase her marks by 10% to improve her university admission chances.

It is possible to obtain a B.Tech degree and then convert to an academic qualification at the university level. She is unsure that her performing arts qualification would lead to a degree.

[16] In re-examination, she stated that the demands of a B.Tech degree are the same as a course at university level. A combination of parental pressure and P[...]’s lack of direction, combined with the impairment of her executive functioning, is prodding her in a direction but nothing specific. The picture P[...] paints is not that of laziness but a result of her suffering from a moderate head injury and attendant deficits of such an injury.

Report of Dr. Van Aswegen (Neurosurgeon)

[17] Dr Van Aswegen states that P[...] was hospitalised with a head injury with a laceration to the forehead. Her initial Glasgow Come Scale (GCS) score was 9/15, and she was extremely irritable. Her GCS after that improved to 11/15, and a CT scan of the brain showed a skull fracture and an underlying neurocranium. She complains of daily headaches which do not follow a specific pattern. Using aspirin brings mild relief. She also complained of impaired memory by forgetting to do chores and homework. On the memory and effect test, she scored 30/30. Her higher cognitive functions tested 30/30.

[18] He summarised her World Health Organisation Disability Assessment Schedule (WHODAS) 2.0 score at a 40.63% disability. He concluded that the possible long-term consequences of the head injury poses an epilepsy risk of 1.2-4.2%, delayed neurocognitive development disorders, and possible attention deficit disorder with or without hyperactivity. The complaints of headaches, impaired memory and lack of concentration can directly be ascribed to the head injury that she sustained.

Report of Mrs Simone Gouws (Occupational Therapist)

[19] Mrs Simone Gouws applied the Repeatable Battery for the Assessment of Neuropsychological Status (RBANS) test and found that P[...]’s immediate memory was average, visual-spatial/construction was average, language and delayed memory was low- average and her attention to be average. Her total index score was low-average. The total index score is a good indicator of a person's general cognitive functioning. Low scores on this index strongly suggest general cognitive impairment, even when some individual subject scores may have been within normal limits.

[20] Applying the Thurstone questionnaire, she concluded that P[...]’s work speed was faster than the norm, and her work accuracy was within the acceptable amounts of errors on the first two sections of the test. However, as time progressed, she started making an increased amount of errors, subsequently making an acceptable amount of errors on the last two sections of the test.

[21] On the Beery-Buktenica developmental test of visual-motor integration, P[...] scored below average for visual-motor integration and development of visual perception. Her test of motor coordination was average.

[22] She notes limitations with expressive language, limitations in attention, concentration and visual perceptual skills.

[23] She concludes that in the event that P[...] pursues a tertiary qualification, it should be noted that these cognitive and visual perceptual limitations will increase the possibility that she will not complete future studies within the allocated period.

[24] In her opinion, P[...] is at risk of making more errors than her peers in jobs requiring a high amount of sustained attention and concentration, a higher amount of accuracy, and high demands on memory. This may result in her becoming a vulnerable employee in future.

Actuarial Report of Munroe Forensic Actuaries

[25] The actuarial report is dated 5 September 2023. The total loss of earnings, considering the contingencies applied, is R4 615 405.00.

Legal precedent

[26] In *Ralph v Road Accident Fund*¹ Molitsoane J summarised the approach to contingency calculations, referring to various decisions, including *Oosthuizen v Road Accident Fund*.² It was held that matters that cannot otherwise be provided for or cannot be calculated exactly but that may impact the damages claimed are considered contingencies and are usually provided for by deducting a stated percentage of the

¹ *Ralph v Road Accident Fund* [2023] ZAFSHC 76 para 26.

² *Oosthuizen v Road Accident Fund* 2015 JDR 1717 (GJ).

amount or specific claims. Contingencies include any relevant future event that might cause damage or a part thereof or may otherwise influence the extent of the plaintiff's damage. Contingencies have also been described as unforeseen circumstances of life.

Conclusion

[27] I am mindful of the fact that P[...] was injured when she was very young. It is difficult to determine how a child will develop at that stage as many factors play a role. Bearing in mind the educational environment P[...] grew up in, what appears to be a stable family environment, she would have had the potential to achieve more than she presently has. I am also mindful that P[...], during various occasions in her evidence, and as also captured in some of the expert reports, indicated that she does not know what she would like to become. Her evidence left the impression that she would rather do something than sit at home. This is part of what Mrs Swart states to be part of the neurocognitive outfall.

[28] Mr Zietsman argues for a 40% contingency on Munroe Actuaries' calculation of R6 215 300.00. This leaves a loss of past and future income of R3 993 875.00. I am satisfied that this amount represents the best estimation one can achieve.

Costs of the experts

[29] I am satisfied that the experts of whom reports were submitted were necessary and of assistance to determine the merits and the quantum and their fees should be allowed.

Costs

[30] There is no reason why the costs should not follow the result. I am satisfied that the services of senior counsel were justified and that the costs should be taxable on scale C.

ORDER

[31] Therefore, I make the following order:

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damages resulting from a motor vehicle collision that occurred on 11 March 2005.

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CRONJÉ, AJ

Appearances:

For the Plaintiff:

Adv. PJJ Zietsman SC

Instructed by:

Honey Attorneys
Bloemfontein

For the Defendant:

Ms C Bornman

Instructed by:

State Attorney
Bloemfontein