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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **35770/2018**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

9 January 2025

In the matter between:

T[...] T[...] M[...]

obo M[...] P[...] M[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] The plaintiff instituted action in her representative capacity as mother of the minor, M[...] P[...] M[...], born on 17 January 2007 (“the minor”), against the defendant for the payment of damages the minor suffered as a result of a motor vehicle collision that occurred on 12 July 2015.

[2] The defendant was not represented during the trial and the trial proceeded on a default basis. Both the merits and quantum of the minor's claim against the defendant is in dispute and in order to facilitate the introduction of evidence into the record, an order in terms of the provisions of rule 38(2) allowing the affidavits pertaining to the merits and the medico legal reports of various medical experts to be admitted into evidence, was granted.

Merits

[3] On 12 July 2015 a collision occurred on the R528 between Haenertzburg and Tzaneen between a motor vehicle driven by B N Mokoena and a motor vehicle driven by G S Ngobeni. The minor was a passenger in the vehicle driven by Mokoena. For purposes of liability the minor needs to proof that one or both of the drivers were 1% negligent and that such negligence caused the collision.

[4] From the fact that a collision did occur, I am satisfied that one or both of the insured drivers were 1% negligent in that one or both of them failed to take any or adequate steps to avoid the collision when by the exercise of reasonable care and diligence, he or they could and should have done so.

[5] In the result, the defendant is liable for the damages suffered by the minor as a result of the collision.

Quantum

[6] At the time of the trial, the defendant had not yet made a decision in respect of the seriousness of the injuries suffered by the minor during the accident. Consequently, the issue of general damages was separated from the issue of loss of earning capacity and postponed *sine die*.

[7] It appears from the medico-legal reports that the minor will require future medical treatment and an order directing the defendant to provide an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, will follow.

Loss of earning capacity

[8] The minor was admitted to Van Velden hospital and according to the hospital records the minor suffered a head injury and an injury to the right eye during the accident. The minor was 8 years old and a grade 2 learner at the time of the accident.

[9] Dr Mazwi, a specialist neurosurgeon, examined the minor on 7 May 2024 and reported that the minor had difficulty with concentration and poor recall due to the head injury he suffered during the accident.

[10] In order to determine the impact of the head injury on the minor's earning ability, the plaintiff presented the evidence of an educational psychologist, Ms Masipa. The minor was assessed by Ms Masipa on 7 May 2024. He was 17 years of age at the time of the assessment and in grade 11. Insofar as the minor's educational history is concerned he passed grade 3 to 10 after the accident. He, however, failed grade 11 in 2023 and was repeating the grade at the time of the assessment.

[11] Based on the assessment, Ms Masipa opined that pre-accident the minor had the ability to pass grade 12 within the mainstream schooling system and would have been eligible to study towards a NQF Level 7 Qualification. Post-accident the minor is unlikely to pass grade 12 and will remain with a grade 11 as his highest educational attainment.

[12] The findings of Ms Masipa prove on a balance of probabilities that the head injury suffered by the minor during the accident has had a negative impact on the minor's scholastic abilities and will in turn impact on his earning ability.

[13] The evidence of an industrial psychologist, Ms Lowane-Mayayise was presented to provide an opinion on the probable career paths of the minor pre-and post- accident. Ms Lowane-Mayayise opined that the minor would have obtained a degree but for the accident and would most probably have secured employment within the formal sector of the labour market as a semi-skilled worker earning on a grade

C2/C3 median range total cost to employer and thereafter progressed through to a junior managerial functioning level earning on a grade D1/2 medium quartile total cost to the employer level by the age 45.

[14] Insofar as his post-accident scenario is concerned, Ms Lowane-Mayayise opined that with a grade 11 as his highest educational attainment, it is highly likely that the minor will attain employment as an unskilled labourer within the open labour market. Ms Lowane-Mayayise also discussed a further scenario in which the minor would have improved his academic attainment to a Level 3 Vocational Qualification.

[15] Ms Lowane-Mayayise's opinion was referred to Mr Mureriwa, an actuary. Based on the opinion of Ms Lowane-Mayayise, Mr Mureriwa calculated the minor's pre-accident income to be R 10 709 864, 00. According to the calculations, the minor will earn R 1 084 857, 00 with a grade 11 qualification and R 1 461 565, 00 with a Level 3 Vocational Qualification. Having applied 15% pre- and- 25% post-accident contingency deductions and the prescribed cap, the minor's loss of earning capacity amounts to R 7 858 744, 00 and R 7 685 484, 00 respectively.

Discussion

[16] Both the opinions of Ms Masipa and Ms Lowane-Mayayise is problematic insofar as they considered only one pre-accident scenario, to wit that the minor would have obtained a degree. It is not clear from their respective reports why other scenarios were not considered. The minor's mother has a grade 11 highest level of education and although Ms Lowane-Mayayise indicated that the father's highest level of education is unknown, Ms Masipa indicated that the minor's father obtained a grade 12. It is common cause that the minor's father worked as general worker prior to his demise in 2007. The minor's sister was condoned to grade 12 and have a grade 12 qualification.

[17] I am alive to the fact that a family history in itself does not necessary impact on the scholastic and career potential of a minor. It is, however, a factor to take into account when venturing on an opinion in respect of the probability of a minor's scholastic and career potential.

[18] Furthermore, there is no indication in the minor's pre-accident scholastic performance that the most probable pre-accident academic path would have been that of obtaining a degree. In order to arrive at a balanced pre-accident academic and career path other options such as grade 12, a diploma and so forth should at least, in view of the facts at hand, have been considered.

[19] Not every child in South Africa that has the ability to obtain a grade 12 qualification automatically proceed to obtain a degree. Even if a degree is obtained, the minor's career path envisaged by Ms Lowane-Mayayise in her report is not a given. In short, there are no facts that support the opinions of Ms Masipa and Ms Lowane-Mayayise.

[20] I raised these concerns with Mr Baloyi, counsel for the plaintiff, during the hearing of the matter. Instead of addressing the court's concerns, Mr Baloyi simply obtained a further actuarial calculation based on the same pre-accident scenario. In the result the further calculations amounted to R 7 778 877, 00 and R 7 623 002,00 respectively. This places the court in the inevitable position of having to determine the minor's loss of earning capacity without sufficient facts.

[21] Having had regard to the minor's family history, the lack of any facts that establishes the minor's probable pre-accident scholastic and career path coupled with a balanced and more realistic approach to the career path of a person that obtains a grade 12 qualification, I deem it fair and just to deduct 50% from the pre-accident future income. This amounts to R 6 299 920,00. After having applied the suggested 15% contingency deduction, the minor's pre-accident future loss of earning capacity amounts to R 5 354 932, 00.

[22] I am satisfied with the post-accident calculation in the amount of R 1 084 857, 00 and when deducted from the pre-accident calculation the total loss of earning capacity amounts to R 4 270 075, 00.

ORDER

In the result, I grant the following order:

1. The defendant is ordered to pay the minor's proven damages.
2. The issue pertaining to general damages is separated from the issue pertaining to loss of earning capacity and postponed *sine die*.
3. The defendant is ordered to pay an amount of R 4 270 075, 00 to the plaintiff in respect of the minor's loss of earning capacity.
4. The defendant is ordered to furnish the plaintiff with an undertaking for the costs of the future medical expenses of the minor that arises from the injuries he sustained in the accident that occurred on 12 July 2015.
5. The defendant is ordered to pay the costs of suit.

JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT DIVISION, PRETORIA

DATE HEARD:

25 October 2024

DATE DELIVERED:

9 January 2025

APPEARANCES

For the Plaintiff: Adv Baloyi M

Instructed by: Molefe Machaka attorneys Inc

For the Defendant: No appearance