

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 002126/2024

DATE: 08-11-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 8/11/2024

SIGNATURE [REDACTED]

In the matter between

ZWINEYI MUNDEREZA

Applicant

and

ROAD ACCIDENT FUND

Respondent

J U D G M E N T

WEIDEMAN, AJ: Case number 002126/2024, the matter of Zwineyi Mundereza and the Road Accident Fund, this matter was on the roll for the week of the 5th of November 2024. The matter was dealt with and presented by counsel, and I requested an opportunity to consider counsel's submissions before making a ruling.

The accident from which this claim arose occurred on the 12th of July 2014. The plaintiff was born on the 10th

of September 1957. The aspect of negligence had previously been dealt with and the defendant conceded liability for such damages as the plaintiff may be able to substantiate and which arose as a result of this collision.

At the time that the aspect of negligence was dealt with, the plaintiffs claim in respect of future hospital, medical and ancillary expenses were also dealt with. At the commencement of his submissions, counsel moved an application in terms of rule 38(2). This application can be found on case lines 14-1.

The application was granted. The plaintiff was 57 years old in 2014 when the accident occurred. At that stage she was employed as a domestic worker. She is unschooled never having attended school. She originally hailed from Zimbabwe.

In the accident she sustained a fracture of the right humerus. The plaintiffs' submissions include an averment that the plaintiff earned an amount of R3 000 per month for her work as a domestic worker, during the work week Monday to Friday.

At the same time, on a part time basis, over weekends, a further averment is that she earned an additional R3 000 per month as a part time vendor selling steel baths, buckets, curtains, blankets, etcetera.

It needs to be said that there is no collateral

evidence in support of either of these allegations. When one looks at the report of the industrial psychologists, then there are a couple of statements that should have been explained, and which by it not having been explained, creates question marks about various aspects of the industrial psychologist's report.

In this regard, for example on case lines 10-51 the industrial psychologist report that at the time of the accident she was a passenger in the company's vehicle. This statement flies in the face of the other allegations that she was a domestic worker and part time vendor, either that sentence was left over from a cut and paste project of a previous matter which places a question mark about the content of the report, or it required some form of explanation.

At the same time, and on the same page, the plaintiff indicates that she has lost her employers contact information. A statement such as that where the allegation is that she had worked for the employer for some time, is difficult to understand.

One could interpret it to mean having lost a telephone number but certainly she should have been able to take a representative of her attorneys to the address where she worked. A simple statement in the industrial psychologist report that the plaintiff has lost her employer's

contact details and therefore it is impossible to secure any form of collateral information, is not good enough.

It leaves a question mark about how much effort was made to obtain confirmation of the allegation that she was one, employed, two, the amount that she averred she earned.

Also further in the industrial psychologist report, the industrial psychologist report that the plaintiff indicates that as a result of the accident she had plaster of Paris on her right hand and on her left leg, this is on case lines 10-51.

Now as indicated earlier the injury as per the particulars of claim, is a fracture of the right humerus which is the upper arm bone between the shoulder and elbow. Why there would there have been plaster on her hand and where the plaster on her leg fits into the matter, is left unexplained.

This creates a problem again in considering the validity of the report in its totality. The industrial psychologist continues and indicates on case line 10-54 that the normal retirement age is 60, but then continues and projects that the plaintiff would have worked past the normal retirement age, partly because she is a foreigner.

The only employment information or history that is available is the statement in the industrial psychologist

report that she was employed as a domestic worker for six years before the accident. That would be from the age of 51. The industrial psychologist report is silent as to whether she ever worked before the age of 51, or what the form of that employment might have been.

This is a lacuna in the report, which creates a problem in considering the totality of the validity of the recommendations made by the industrial psychologist. There is in fact no collateral information of any sort that the plaintiff ever worked, except in respect of her own reporting to the experts.

In addition to the difficulties refer to above, the very fact that she is a foreigner and requires a visa to work in South Africa, influences the calculation of any potential claim. It must be stated that at the time that the accident occurred, the plaintiff indeed had a valid work visa and which was for the period 2010 to 2014, allowing her to work in South Africa as a nanny.

There is no evidence presented as to whether there was any visa before 2010, or whether given her peculiar circumstances, she would have been entitled to an extension of that visa after 2014. Again, this is a lacuna which makes the calculation difficult to accept.

The actuarial report as at case lines 10-1 to 10-5 presupposes that the income reporting is true and correct.

As I have indicated earlier, there is no evidence to support the allegation that it is. To the extent that the industrial psychologist report is based on untested hear-say evidence with no collateral evidence to support it, it is of no assistance to the court.

It then follows that the same fate befalls the actuary's calculations. There is therefore no quantifiable loss, it is not possible to perform any calculation in respect of this plaintiff's claim, however it is equally true that our case law provides for the possibility of making a lump sum award where a court believes that there is a loss, but where it is equally clear that the loss cannot be mathematically calculated.

Because I do believe that the plaintiff has been injured and has suffered a loss, I am exercising my discretion, and I am awarding this plaintiff a lump sum award for loss of earning capacity in the sum of R210 000.

My order is thus as follows: 1: The defendant is liable to the plaintiff in the amount of R210 000, for loss of earning capacity. 2. The plaintiff is entitled to her party and party costs as taxed or agreed, to the extent that such costs have not been dealt with or awarded in earlier settlements between the parties.

MALE SPEAKER: As the court pleases, M'Lord. I wanted to find out if I have to prepare a draft order?

COURT: That is that is up to you, the order will be typed, but I have no idea when. So if you want to prepare an order and give it to my registrar, then I will sign it, and she will tell you when you can pick it up again.

MALE SPEAKER: As the court pleases, M'Lord. I also wanted to enquiry, with regards to costs, counsel's fee which scale would it be?

COURT: It is my understanding that if no scale is specified it is automatically scale A.

MALE SPEAKER: As the court pleases. And it will it be okay if the draft order specifies to say cost of counsel include the Tuesday, Wednesday and today?

COURT: Yes.

MALE SPEAKER: As the court pleases, M'Lord.



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WEIDEMAN

JUDGE OF THE HIGH COURT

DATE: 27/11/2024