

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 056258/2022

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

ZANDILE SLINDILE GUMEDE

Applicant

and

ROAD ACCIDENT FUND

Respondent

J U D G M E N T

WEIDEMAN, AJ: This is the matter of Zandile Slindile Gumede and Road Accident Fund and which was on the roll for the week of the 5th of November 2024. Counsel presented argument in support of the plaintiff's claim and I indicated I required an opportunity consider the submissions and would hand down my ruling this morning.

The accident from which this claim arose occurred on the 1st of November 2019 and the plaintiff at that stage

was 33 years of age, the date of his birth being the 15th of April 1986.

MECHANICAL ERROR

[08:20]

COURT: Of settlement in respect of negligence and general damages but that an apportionment was applied. The state attorney acting on behalf of the defendant indicated to the court that it is not an apportionment but a risk discount.

Having considered the documentation that is available I find no evidence before me that would place this plaintiff in any position other than any other passenger which is injured in a motor vehicle collision, and as such the ruling of this court is that the plaintiff is entitled to 100% of such damages as the plaintiff may be able to substantiate.

This implies that based on the offer of settlement that has been disclosed to the court, that the plaintiff is entitled to the sum of R600 000 in respect of general damages. As this is not part of the issues that is before me, it will not form part of the order that I hand down.

The parties are however invited to negotiate or to engage each other as to whether they want to include it in any combined written order after the conclusion of my remarks. The plaintiff sustained fairly severe orthopedic injuries.

The injuries on the face of it ought not to have

been as severe as they were, but there was non-union of two of the fractures and this placed the matter in a different category.

In short, the plaintiffs' injuries consisted of the following: a lumbar spinal wedge fracture at the level of L2, in respect of the right hand a non-union fracture of the right ulna styloid, and finally a non-union of the fracture of the left distal tibia and fibula. It is the non-union of the fractures that created a seriousness which is also reflected in the agreed amount for general damages.

The plaintiff left school in 2005 due to an unplanned pregnancy. However, she returned to school in 2011 and secured a grade 12 qualification in 2013 at the time when she was already 27 years of age.

The fact that she went back to school for this purpose says something about her personality and her desire to improve her circumstances in life. The plaintiff's employment history consisted of a period working as a cashier during 2009 to 2010, that was before the accident, which employment ended as a result of what appears to have been, according to the documentation, a miscarriage.

Also prior to the accident, for the period 2016 to 2019, she worked as a housekeeper or domestic servant.

The industrial psychologist takes some time in the report to set out the high levels of unemployment in South

Africa. One can only assume that this was done because it was the opinion of the industrial psychologist that it will have relevance in the quantification of the matter.

In this regard he indicates on CaseLines 005-77 that the official unemployment rate in South Africa is 32.6% and that the expanded rate of unemployment is 42, 6%. These figures need to be kept in mind when considering contingency deductions in relation to the claim for loss of income.

The plaintiff's income in 2019 terms, that would be at the time of the accident, is calculated at R61 500 per annum. The court debated the composition of this figure with counsel and counsel was strongly of the view that the manner in which the income was calculated, as at the date of the accident, implies that that figure can be projected forward without any changes.

What this discussion predominantly related to was the fact that the plaintiff, as part of her remuneration, received accommodation and which accommodation the employer allocated a value to in confirming the income of the plaintiff.

The industrial psychologist, and thereafter the actuary utilized the following figures: in 2019 terms the plaintiff's income is reflected as R61 500 per annum, which increases to 206 000 in 2023 terms, that is four years later.

For the plaintiff's income to increase from 61 500 and 2019 to 206 000 in 2023, for that hypothesis to hold water, she, as a domestic worker, must have earned R17 166,66 per month in 2023. This cannot be correct. If it was the intention that the figure of R206 000 should reflect the income that she will earn in 2034, when she is 47.5 years old, then the calculation information, as reflected in the actuarial report, is not sufficient for that deduction to follow automatically.

The amount of R206 000 is premised on the upper quartile of semi-skilled workers. The difficulty with this opinion of the industrial psychologist is that it does not explain the aspect of accommodation, semi-skilled workers will not, in most instances, receive accommodation.

So, if the figure of R206 000 is reflective of the upper quartile of semi-skilled workers, then that figure is wrong, in relation to the plaintiff. If it is a forward projection of a domestic servant's income, which includes a value for accommodation, then the manner in which it is reflected in the actuary's report, should not have left these question marks unanswered. It should provide a better and more comprehensive explanation as to how the opinions are formulated.

Having said that, the only information available as far as calculations are concerned, is that contained in the

actuarial report. As far as the figure in respect of past loss of income, R285 225,15 is concerned, this is the nett amount after the contingency deduction. It reflects the lengthy period of unemployment between the date of the accident and the date of the calculation. I find nothing offensive in this amount and my order will include an order in respect of past loss of income in the sum of R285 225,15.

As far as the claim for future loss of earnings is concerned, counsel argued, based on the plaintiffs current age of 38, that it should be a rounded amount of 20 to 25%. Taking into consideration the comments by the industrial psychologist in respect of unemployment in the sector in which the plaintiff would have sought work, had the accident not occurred, combined with the question mark over the manner in which her income was calculated as well as the length of the period over which the calculation had to be done, it is this court's opinion that a more accurate manner of assessing the contingency for future loss of income is to provide for 1.25% per annum for the period of the calculation.

If that is done, then the contingency deduction is 33.75%. If one accepts the amount of R3 152 108 as the base figure, as calculated by the actuary, then after deducting the contingency, the net amount is R2 088 271,55.

This is the amount that the court awards in respect of future loss of income. The combined total in respect of past and future loss of income is then R2 373 496,70. On case lines 021-1 a concept order in respect of this matter has been uploaded.

The order in its totality has been considered and it is acceptable except of course for the amount. For the purpose of this judgement, I confirm my order is as follows:

1. The defendant shall be liable for 100% of the plaintiff's proven damages arising out of the motor vehicle collision which occurred on the 1st of November 2019.
2. The defendant shall pay to the plaintiff the capital amount of R2 373 496.70 in respect of loss of earnings.

To the extent that I have invited counsel earlier to deal with the question of general damages, in the event that they wish to include that in this order, then the portion that I have just dictated would be 2.1, and 2.2 would then be "The defendant shall pay to the plaintiff the capital amount of R600 000 for general damages".

3. Paragraph 3 would be as per the concept order relating to the plaintiff's attorneys trust account.
4. The defendants are further to furnish to the

plaintiff an Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for 100% of the cost of future accommodation of the plaintiff in the hospital and nursing home, or treatment of or rendering of a service or supplying of goods to the plaintiff arising out of the injury sustained in the motor vehicle collision on the 1st of November 2019, and the sequelae thereof after such costs have been incurred and on proof thereof.

5. In so far as costs are concerned, the defendant shall make payment to the plaintiff of her taxed or agreed party and party costs. Counsel's fees to be on scale B.

MALE SPEAKER: As the court pleases, M'Lord



.....

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 27/11/2024