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

Not reportable

Case no: 1838/2020

In the matter between

GLORIA THOLWANA MOTAUNG **PLAINTIFF**

and

THE MINISTER OF POLICE **DEFENDANT**

Neutral citation: *Gloria Tholwana Motaung v The Minister of Police*

Coram: NEMAVHIDI, AJ

Heard: 16 OCTOBER 2024

Delivered: 05 November 2024

Summary: A delictual claim arising out of the wrongful and negligent shooting by the members of the South African Police Services. Damages and future loss of income determined by the Court.

ORDER

1. Defendant shall pay the plaintiff the following amounts:

1.1 General damages: R 250 000.00

1.2 Future medical and hospital expenses: R 91 800.00

1.3 Assistive devices and Equipment: R9 565.80

1.4 Loss of income: R150 000.00

Total: **R501 365.80**

2. Defendant shall pay costs on scale A of Rule 67A.

JUDGMENT

Nemavhidi AJ

[1] In this matter, the plaintiff launched a delictual claim against the defendant arising out of the wrongful and negligent shooting of the plaintiff by the members of the South African Police Services which occurred on the 26th of March 2019 at Schonkenville, Parys in the Free State Province.

[2] The issue of liability was settled between the parties on the 23rd of March 2023. The defendant is 100% liable for proven damages suffered by the Plaintiff.

[3] The plastic surgeons confirm that the plaintiff has two scars on the back of her left leg and right leg near the knee. The scars are hypothropic and hypopigmented and could be improved surgically on two occasions for maximum benefit.

[4] The total cost of the envisioned operations amounts to R52 000.00. A future amount for future medical and hospitalization amounts to R104 000.00 less 10% contingency (R10 200.00), leaving an amount of R91 800.00. The plaintiff will in future need assistive devices which will cost R9 565.00.

[5] The actuarial calculation of loss of earnings was calculated to an amount of R301 665.00 after a 5% contingency. However, the Defendant argues for a 2.5% contingency differential as opposed to 5% contingency differential. This leads to an estimated loss of R150 828.12.

[6] The plaintiff submitted that the amount of general damages would amount to a total of R450 000.00 while the defendant argues that there is no functional impairment on the plaintiff, and that there is no basis why the Plaintiff should be given any amount of money for pain and suffering, loss of amenities of life, shock, disability and disfigurement.

DAMAGES

[7] The object of the allotment of damages is to place the plaintiff in the same position (or close thereto as possible) as she would have been, but for the shooting[1] and the award of damages falls squarely within the court's discretion.[2] The court hears the relevant evidence and considers the object and effectiveness of the compensation, the principles and fairness and conservatism as well as any previous awards as set out in the precedents.

LOSS OF EARNINGS

[8] Future loss of earnings is the difference between what the plaintiff could potentially have earned before the damage causing event and what she will earn now that the damage causing event has taken place. Past loss of earnings, on the other hand, represents the income the plaintiff lost from date of the shooting to date of judgment. The difference between the two represents the plaintiff's actual loss of income.

[9] The court is assisted by the actuarial calculations to determine the monetary value to be awarded in respect of the loss of earnings or earning capacity as the whole exercise of determining same is in essence speculative in nature and devoid of any certainty. Contingencies are applied by the court to align the actuarial calculation with the circumstances of the case and life as it happens in general.

[10] It was held in Southern Insurance Association Ltd v Bailey NO:

'Where the method of actuarial compensation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is tied down by inexorable actuarial calculations. He has a large discretion to award what he considers right. One of the elements in exercising that

[1] *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 at 917.

[2] De Jongh v Du Pisani 2005 (5) SA 457 SCA.

discretion is the making of a discount for contingencies or differently put the 'vicissitudes of life'. These include such matters as the possibility, that the Plaintiff may in the result have less than a normal expectation of life, and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic condition. The amount of any discount may vary, depending upon the circumstances of the case.'[3]

[13] Having regard to all the submissions and having considered contingencies and precedence, the following order is made:

1. Defendant shall pay the plaintiff the following amounts:

1.1 General damages: R 250 000.00

1.2 Future medical and hospital expenses: R 91 800.00

1.3 Assistive devices and Equipment: R9 565.80

1.4 Loss of income: R150 000.00

Total: **R501 365.80**

2. Defendant shall pay costs on scale A of rule 67A.

[redacted]

Nemavhidi AJ

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[3] *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98A at 116a to 117A.

Appearances

For the Plaintiff:	Adv JMV Malema
Instructed by:	MM Hattingh Inc
For the Defendant:	Adv K Shole
Instructed by:	State Attorney