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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 27265/2021

DATE: 06-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

DATE

SIGNATURE

In the matter between

M T K[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WEIDEMAN, AJ: Matter number 4 on this week's roll is case number 27265/2021, the matter of M T K[...] and the Road Accident Fund. This claim arose from an accident which occurred on 8 June 2016. The plaintiff's date of birth is 25 May 2001 and she was 15 years old at the time of the accident.

The plaintiff's claim consists of the following:

- Past hospital medical expenses: R6 319.72
- Future hospital medical expenses: Undertaking
- There is no claim for past loss of earnings
- Future loss of earnings: R2.566 million
- General damages: There was an agreement that this head of damage would not proceed.

At the commencement of the hearing of the matter counsel moved an application in terms of Rule 38(2). The applicant was granted.

Counsel then moved an application in terms of Rule 33 (4) from the bar to have the aspect of general damages separated out and postponed *sine die* as the defendant had not yet made a decision as to the seriousness of the plaintiff's injuries. This application was also granted.

The aspect of liability was resolved on or about 8 July 2019. The defendant accepted liability for 100% of such damages as the plaintiff may be able to substantiate.

The plaintiff's injuries, as per paragraph 6 of the Particulars of Claim, were the following:

- Injury to the thoracic spine
- low back injury
- pelvic injury
- neck injury
- right ankle injury.

These injuries affected the plaintiff's school career to the extent that she could not continue with sporting activities, which she was fairly competent with prior to the accident.

After leaving school, she commenced her studies in political science. She abandoned those studies on the basis that she lost interest and wanted to pursue a career in the field of teaching, this being her passion - especially the foundational phase.

Counsel was asked to comment on the general delictual principle of mitigation of damages.

Counsel referred me to case law as part of his Heads of Argument and which addresses the general principles relating to liability. Neither of the cases, as I understood it, addressed specifically whether plaintiff's exercising the choice to follow a career which was incompatible with the injuries sustained, served to mitigate her damages.

Counsel argued that it was inherently iniquitous that a victim of an incident over which she had no control, in this instance been a passenger in a bus, should be expected not to pursue her chosen career and passion as a result of this general principle. Although I have sympathy with counsel's argument, I do not believe this Court is in a position to rewrite general delictual principles.

Having said that and having considered the medico-legal reports filed of record, I am persuaded that the plaintiff's potential had been compromised, bearing in mind the injuries. It is accepted that she had lost some of her ability to pursue the career of her choice unencumbered. Although it is possible that she may not be able to function, in the long-term, on the same basis as if the accident had not occurred, I am not at all convinced that this is an inevitable certainty.

I do believe that the plaintiff, through her resilience to-date, had shown that the correct point of departure for the calculation should

be her uninjured earnings and which, pre-contingency deduction, is the sum of R10 362 200.

I am also of the opinion that the same figure should be used in both the pre- and post-accident scenarios but that the impediments that she may suffer in the pursuit of her career and the limitations that there might be, should be addressed by way of a contingency differential.

But for the accident, working on a period of 40 years, I have used a contingency deduction of 0.75% per annum and which equates to a 30% contingency deduction. The nett figure, after the contingency deduction, in the but for the accident scenario, is therefore R7 253 540.

In the having regard to the accident scenario and looking at the content of the medico-legal reports, I am of the view that a contingency deduction of 1.25% per annum would adequately address the plaintiff's loss. Calculated over a 40-year period, this equates to a 50% contingency deduction. The nett effect is an amount of R5 181 100.

The calculation is therefore $R7\,253\,540 - R5\,181\,100 = R2\,072\,440$, yielding an amount of R2 072 440.

ORDER

[1] The plaintiff's application in terms of Rule 38(2) is granted.

[2] The plaintiff's application in terms of Rule 33(4) for the separation of general damages and the postponement thereof *sine die* is granted.

[3] The defendant shall pay the plaintiff the sum of R2 072 440 in respect of loss of earnings.

[4] The defendant shall provide the plaintiff with a 100%

undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, in respect of such accident-related future hospital medical and ancillary expenses as she may require.

[5] The defendant shall pay the plaintiff the sum of R6 319.72 in respect of past hospital and medical expenses.

[6] The defendant shall pay the plaintiff's party and party costs as taxed or agreed, counsel's fees to be on Scale B and the cost to include both Tuesday's fee and today's fee.

Matter number 4 on this week's roll, case 0027265/2021, the matter of K[...] and the Road Accident Fund. This matter was presented by counsel earlier today.

My order had been reduced to writing. I mark it "X" by identification.

WEIDEMAN, AJ
JUDGE OF THE HIGH COURT
DATE: