IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 47315/2013

DATE: 14-03-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE
SIGNATURE

In the matter between

C[...] J[...] Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

WEIDEMAN, AJ: This matter was previously on the roll on 25 February 2025. The discussion between counsel and the Court, at that stage, was on the basis that the mother (who is in South Africa) and the child (who is in Mozambique) are both *peregrini* and as such the reports substantiating a loss in South Africa, based on the South African labour market and income scales were not appropriate.

Counsel asked for the matter to stand down until 11 March 2025 to enable the plaintiff to attempt to secure evidence on the labour market and employment conditions in Mozambique.

When the matter was re - called on 11 March 2025 counsel submitted supplementary heads of argument. Counsel moved an application in terms of Rule 38(2) which was granted. The aspect of liability had previously been resolved between the parties. The minor was approximately two years old at the time of the accident.

The primary injury was a moderate traumatic brain injury as was confirmed by the neurosurgeon Dr Segwapa. The findings of the neurosurgeon are confirmed and supported by the assessment and findings of the clinical psychologist, Ms Modipa. The original medico-legal report of Dr Strydom is of limited assistance, however, her addendum report suffices to enable the Court to consider the claim for loss of earning capacity and to arrive at a decision based on the prevailing labour market conditions in Mozambique.

It seems from her report that there is a minimum wage in Mozambique of approximately 8 758 Meticais (MZN) per month and which is roughly the equivalent of 133 Euro. This is for an entry level position with a certificate. On CaseLines 2-180, Dr Strydom sets out a series of typical positions with the average income attached to each. Dr Strydom speculates that the minor would have entered the labour market in Mozambique earning at the minimum wage of 8 758 MZN per month, reaching her career ceiling in her mid-40s at approximately 72 000 MZN per month.

Dr Strydom further addressed the unemployment rate in Mozambique and the dropout rate in school, factors which are relevant for the purpose of contingencies. Given the information provided by Dr Strydom, the actuary prepared a revised calculation.

The result of the calculation was as follows:
But for the accident her projected possible income would have been 8 506 440 MZN and given her reduced earning capacity, the ”having regard to” calculation rendered a result of 1 944 943 MZN.

Given the comments contained in the addendum report of Dr Strydom, it was my opinion that the deduction in the “but for” scenario should be 1% per annum. However, because the usual retirement age for women in Mozambique is 55, the deduction was reduced to 25% as there is no provision for any income after the age of 55.

In the “having regard to” scenario the calculation should include a contingency deduction of 1,25% per annum. The figure was reduced on the same basis and for the same reason as the “but for” the accident contingency deduction to 31,25%. If the “but for” and “having regard to” contingencies are subtracted from the gross amounts, the results are 6 379 830 MZN and 1 337 148 MZN, respectively. Subtracting these amounts from each other results in 5 042 682 MZN.

In any matter where an award is made in a foreign currency, the conversion rate is the rate applicable on the date of payment. However, for illustrative purposes only, the effect of the conversion rate as at 12 March 2025 yields an amount of R1 446 597.21.

My order is therefore as follows:

1. The plaintiff's application in terms in Rule 38(2) is granted;
2. The plaintiff's application in terms of Rule 33(4) for the separation and postponement of the claim for general damages is granted;
3. The plaintiff's claim in respect of future loss of earnings and impairment of earning capacity is accepted and the plaintiff is awarded the sum of 5 042 682 Meticais;
4. The defendant shall provide the plaintiff with an unlimited undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for the future hospital, medical and ancillary expenses of the minor, Chamila Abdul;
5. The plaintiff is awarded her party and party costs as taxed or agreed. Counsel's fees for the 25th of February 2025 and the 11th of March 2025 will be on Scale B and for noting the judgment on 14 March 2025 on Scale A.

WEIDEMAN, AJ
JUDGE OF THE HIGH COURT
DATE: ……………….