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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A326/2024

(1) REPORTABLE: YES/NO

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

(3) REVISED:

DATE 2.10.2025

SIGNATURE

In the matter between:

**THE MEMBER OF THE EXECUTIVE COMMITTEE
FOR HEALTH, GAUTENG PROVINCE**

Appellant

and

A[...] A[...] S[...] obo

C[...] M[...] M[...] S[...]

Respondent

JUDGMENT

Coram: Raulinga J, Mokose J and Hassim J

Raulinga J

[1] The appellant appeals against the judgment of the count a quo and part of its order handed down on 24th June 2024.

[2] It seems to me that the appeal is against the award to the respondent in their personal capacity in respect of loss of earnings suffered by her personally as

reflected in the paragraphs 1 and 1.1 of the order. There is no appeal against the cost order.

- [3] It is apparent that the appellant on appeal is submitting that they are willing to pay R436 066.00 (four hundred and thirty thousand sixty-six rands) to the plaintiff (respondent in this judgment) in her personal capacity calculated as R400 000.00 (four hundred thousand rands) for general damages plus R36 066.00 (thirty-six thousand sixty-six rands) future loss.
- [4] In essence, their argument seems to be in the form of a question, whether the respondent has a claim for loss of earnings (i.e. whether the appellant is liable to compensate her for a loss – this was not raised in the appellant's heads of argument, because liability for loss had been conceded).
- [5] In order to demystify this issue, a short factual background may suffice.
- [6] The respondent, on behalf of her son C[...] (referred to as 'C') previously instituted an action for claim for damages against the appellant arising from the negligent conduct of the employees of the appellant, which conduct resulted in C suffering from cerebral palsy.
- [7] The liability issue was disposed of on the 27th January 2020, when the appellant was ordered to pay 100% of the plaintiff's proven or agreed damages, both in her personal and representative capacity. The claim on behalf of C was finalised.
- [8] The issue before the court a quo was only for quantification of the respondent's damages in her personal capacity, for general damages, past and future medical expenses as well as past and future loss of damages. It was not about whether the

appellant is liable to compensate her for a loss because the issue of liability has been settled.¹

- [9] By agreement between the parties at the hearing before the court a quo, the application in terms of rule 38(2) of the Uniform Rules of Court regarding the admission of the plaintiff's expert reports as constituting evidence were granted. The respondent's reports were accepted as admissible hearsay evidence in terms of the provisions of section 3 of the Law of Amendment Act² and section 34 of the Civil Proceedings Evidence Act³.
- [10] The health condition and diagnosis of C is common cause. He was born on 18 October 2015 and was diagnosed with cerebral palsy. He is entirely dependent on this mother for all his needs. He is incontinent of bladder and bowel functioning and has to be kept in a nappy at all times. He cannot sit, walk, speak or respond. Medication does not control his seizures, which he experiences numerous times a day. His feeding is by way of an abdominal feeding tube as he has problems swallowing.
- [11] In arriving at an award for general damages, the court a quo relied on comparable decided cases in their response such as *MNK and Another v MEC for Health, Gauteng Province*⁴ where an amount of R350 000.00 (three hundred and fifty thousand rands) was awarded for general damages and *Mngomeni obo Zangwe v MEC for Health, Eastern Cape Division*⁵ where an amount of R300 000.00 (three hundred thousand) for emotional shock and severe depression due to cerebral palsy of the child was awarded.

¹ See case lines 0015-2, para 2 of special trial note; trial dated 31 October to 14 June 2022 – issues in dispute were identified as “quantification of claim”.

² 45 of 1988.

³ 25 of 1965.

⁴ (9407 /2017) [2022] ZAGPJHC 175 (25 March 2022).

⁵ (1972/2014) (20 June 2017) (unreported)

- [12] In this case, both the respondent and the appellant agreed that an award in the amount of R400 000.00 (four hundred thousand) would be fair and reasonable.
- [13] The respondent's future medical and other related expenses were calculated based on the reports of Dr Romaines and Dr Van der Ryst, as per the actuarial report dated 29 September 2022. According to the report, the respondent would require psychotherapeutic consultations with a clinical psychologist once weekly plus travel expenses. Both parties agreed it would be fair and reasonable to award an amount of R 36 060.00 to the respondent for future medical expenses.
- [14] Pertaining to the loss of income and earning capacity, the respondent never repeated a grade. She obtained her grade 12 senior certificate in 2010. From 2011 to 2014, she managed to secure employment. She consequently decided to upgrade her grade 12 marks in 2015 to meet the minimum requirements to study for a degree qualification and improve her chances of securing employment. During that year, she became pregnant and due to birth complications, her baby was born with Hypoxia Ischaemic Encephalopathy, which resulted in Quadriplegic Cerebral Palsy with mental enfeeblement, seizures and cortical blindness.
- [15] Since then, she has been mainly responsible for his therapies and interventions. At the time of the hearing of the action by the court a quo, he was five years old and she wanted to find a suitable LSEN to proceed with further studies. However, as he is so young, she presented that for the present time, her mother took care of the child. The respondent was 29 years old at the time.
- [16] Having scrutinized the report of the Educational Psychologist (Dr Van der Ryst) and that of the Industrial Psychologist (Dr Kotze) where after a number of scenarios were proposed, her counsel argued that scenario 2, where she would have upgraded her matric in 2015 and obtained a higher certificate (NQF5), is the appropriate scenario. Based upon this postulation, she would have a total capitalised loss of earning capacity.

- [17] Counsel for the appellant then referred the court a quo to the matter of *Road Accident Fund v Guedes*⁶ where the Supreme Court of Appeal stated that the calculation of the granting of a future amount, such as loss of earning capacity, is not a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can only estimate the present value of loss, which is often a very rough estimate. The court necessarily exercises wide discretion when it assesses the quantum of damages due to loss of earning capacity and has considerable discretion to award what it considers suitable. Courts have adopted the approach that in order to assist in such a calculation, an actuarial computation is a helpful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just.⁷
- [18] It is also trite that the determination of the general contingency deduction to be made falls squarely within the discretion of the court, which must decide what is fair and reasonable.⁸
- [19] Equipped with these authorities and considering the respondent's circumstances which influenced its assessment of the general contingencies to be applied and the content of the experts reports, the court a quo accepted the deduction of 5% on the past loss of earning capacity for pre-morbid earning capacity as fair and reasonable. Concerning future loss of earning capacity, the court a quo determined a 15% contingency deduction on gross from pre-morbidity earning capacity and a 50% contingency deduction on post-morbidity earning capacity as being fair and reasonable.
- [20] The court was also satisfied that a deduction of 20% as contended by the respondent was justified. The respondent's loss of earning capacity must be

⁶ 2006 (5) SA 583 (SCA).

⁷ See *Southern Insurance Association Ltd v Bailey* N.O 2003 (5) SA 164 (SCA) at para 23; See also *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114F-115D.

⁸ *Fulton v Road Accident Fund* 2012 (3) SA 255 (GSJ) at para 95-96.

adjusted, resulting in a total capitalised value of loss of earning capacity of R4 786 091.00 (four million seven hundred and eighty-six thousand and ninety-one rands).

- [21] The issues raised in the appeal by the appellant are at variance with what the court a quo dealt with. The court a quo didn't deal with the issue as to whether the respondent has a claim for loss of earnings against the appellant in her personal capacity in respect of loss of earnings suffered by her personally. Further, the appellant doesn't deal with the issues dealt with by the court a quo in its judgment.
- [22] In the circumstances, this court finds nothing untoward in the judgment and order of the court a quo. In the result, the appellant's appeal is dismissed with costs.

The following order is made:

1. The appellant's appeal against the judgment and order of the court a quo fails.
2. The appellant is ordered to pay the costs of the appeal including costs of 2 counsel in this application.

J RAULINGA

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree,

S MOKOSE

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree,

S HASSIM

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For Appellant: Adv AB Rassouw SC & Adv L A Pretorius instructed by State Attorney Pretoria.

For Respondent: Adv S Myburgh SC & Adv C Jacobs instructed by Werner Boshoff Incorporated.

Date heard: 30 August 2025

Date of Judgment: