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

CASE NO: 2016/06275

- 1. Reportable: No
 - 2. Of interest to other judges: No
 - 3. Revised: Yes, 6 March 2020
- _____

In the matter between:

A, M

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Amendment to particulars of claim.

JUDGMENT

DE VILLIERS, AJ

- [1] The applicant seeks leave to amend his particulars of claim. The summons, dated 4 February 2016, states that the plaintiff was a pizza delivery driver. It alleged that the plaintiff was involved in a motor car collision on 6 December 2016 (it should have been 6 December 2014), the plaintiff was driving a motorbike, and that he is unable to continue with his delivery work. He had suffered multiple bodily injuries, being injuries to his pelvis, two broken legs, and abdominal injuries.
- [2] The amendments that the applicant seeks are:
 - [2.1] That the plaintiff is a qualified teacher and would have secured such employment;
 - [2.2] He would suffer a loss of income due to cognitive deficits, short term memory loss, and emotional vulnerability that would impact on his occupational capacity as a teacher. In addition, he has pain in his knee and hip, exacerbated by long periods of sitting, standing, and walking and would likely be off work for considerable periods;
 - [2.3] Hence, he claims for loss of earning capacity in the amount of R3 678 200.00.
- [3] The objection to the amendment raised the following issues:
 - [3.1] The statutory medical report dated 20 May 2015 listed only orthopaedic injuries;
 - [3.2] The matter had already been prepared for trial in November 2017, and the expert reports and joint minutes only deal with orthopaedic injuries;
 - [3.3] The plaintiff's neurologist did not find a brain injury in 2017;
 - [3.4] The head injury noted by the HPSA was a "*minor head injury with lacerations*", the meaning of which could not be clarified in argument, especially if a minor head injury, or a minor brain injury,

was meant. The reference to lacerations would point to the former. However, the HPSA found that there was no residual effect from the head injury, which would point to the latter;

[3.5] The claim now sought to be introduced is a summersault of the previous pleaded case. The applicant seeks an indulgence, and must show good cause for the amendment to be allowed. An applicant should not (unreasonably) delay bringing the application. These objections were raised with reference to identified case law;

[3.6] A prescription point was taken too. I need not refer thereto due to the finding that I make.

[4] On receipt of the notice of objection, the applicant merely delivered a notice of application without an affidavit in support. The usual procedure in applying for leave to amend after objection to an intended amendment, is to deliver a formal “*application for leave to amend*” in terms of Uniform Rule 28(4). It is an interlocutory application, and as set out in Rule 6(11) may be “*supported by such affidavits as the case may require*”. I had regard to the type of cases listed in *Swartz v Van der Walt t/a Sentraten* 1998 (1) SA 53 (W) at 56H-57C as cases where an affidavit would be required. I paraphrase:

Amendments that are not simple and purely formal (such as arithmetical and clerical errors), but are substantial amendments (such as seeking to withdraw an admission) would require formal applications, supported by affidavit.

[5] In my view the claim now sought to be introduced, would require an explanation. There seems to be an increase in alleged brain injury cases. They are difficult to disprove, especially five or more years after the collision. Even if the amendment was ultimately to be allowed, someone with knowledge of the matter must state why it is raised at such a late stage. If the true reason was to mislead the RAF, this must be stated and the amendment should fail. If the true reason is that the alleged injury manifested itself only five years after the collision, this must be stated and would point to the amendment being granted. If the true reason is that it was a mere oversight,

as the alleged injury manifested itself immediately after the collision, this must be stated. Similarly, if the educational qualification was always known, or not, this must be stated.

[6] The amendment is not simple and purely formal, but is substantial. I do not lose sight of the fact that amendments in the normal course should be granted to allow a proper ventilation of the real dispute between the parties, so that justice may be done. I also do not lose sight of the fact that the RAF should compensate persons such as the plaintiff. However, my order is not a final order on the merits of the application. It could be revisited in a fresh application, properly supported by affidavit and, if need be, evidence. The respondent would then be able to properly assess its position and any prejudice that could not be cured by a costs order.

[7] I make the following order:

1. The application is dismissed with costs.

DP de Villiers AJ

On behalf of the Plaintiff:	Adv MIE Ismail
Instructed by:	CH Oguike Attorneys
On behalf of the Defendant:	Adv J Mogodi
Instructed by:	Lindsay Keller
Heard on:	20 February 2020
Delivered on:	6 March 2020