

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)**

CASE NO: 38321/08

DATE: 24 FEBRUARY 2010

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

J A MOKATSANE

PLAINTIFF

Vs

RAF

DEFENDANT

JUDGMENT

TOLMAY, J:

Plaintiff was involved in an accident that occurred on 27 November 2006. she was walking on the pavement when a motor vehicle mounted the pavement, coming at her from the front and crushed her legs against the shop window.

She suffered serious injuries *inter alia* an open fracture of the left tibia and fibula with grade 3 bone loss, muscle loss and a degloving injury, a fracture of the right tibia and fibula. Nerve damage as a result of the injuries, including arterial damage to the left leg. A filling defect within the left main pulmonary arterial in keeping with thrombus and whiplash injury to the cervical and lumbar spine.

Plaintiff instituted a claim for damages against the defendant. At the beginning of the trial I was informed that the merits were conceded and the parties also reached an agreement on past medical expenses, in the amount of R459 547-30. They also agreed that an undertaking in terms of sec 17(4)(a) of the Act was given

regarding future medical expenses. Regarding general damages counsel for both parties indicated that an amount of R400 000-00 was reasonable under the circumstances.

The only remaining dispute was future loss of earnings and earning capacity and the applicable contingencies.

The report by the orthopaedic surgeon and occupational therapist were handed in by consent.

The plaintiff testified that she has been working as a teacher at the Are-Ithokeng Primary School for 17 years. She teaches grade 5 children in English and Arts and Culture. Before the incident she also coached netball and was a team manager during the athletics season. After the accident and due to her injuries she is not able to coach netball or assist with athletics any more.

Before the accident she had no problem standing for the whole duration of a 30 minute class. Now she has to sit down every 10 minutes due to her injuries. During evidence it was also clear that she cannot sit in the same position for long periods of time and she needs to stand up and shift position often. She finds it difficult to teach from a sitting position. She testified that as a result of her having to teach from a seated position she struggles to maintain discipline and to assist the children who needs her help effectively. In the Arts and Culture classes she teaches music, drama, dance and the visual arts. After the accident she is for example no longer able to demonstrate dance movements, which hampers her in her teaching.

She testified that she cannot cope and have to rest between periods. She is often absent from work, especially on cold and rainy days as the pain is worse in those weather conditions. She suffers from pain on a daily basis. She loves teaching but find it now frustrating as she is not capable of maintaining the same standards as she used to.

She testified that she would have worked towards promotion prior to the accident but due to the deterioration in her ability to perform she is not able to be as productive as she used to be and cannot foresee any promotion under these circumstances. There are 33 teachers at her school and 4 Head of Department ("HOD") positions.

Mrs Geneke the HOD of the plaintiff testified that she knows plaintiff as they have been working together since 1977. She testified that plaintiff was a very good teacher and did excellent work prior to the accident. Her work has however deteriorated since the accident. She does not partake in extra mural activities due to her injuries, since the accident and is often absent from work. She has also noticed that plaintiff cannot stand for long periods and needs to teach from a sitting position which creates difficulty in the effectiveness of her teaching and maintenance of discipline. She confirmed that there is only 4 HOD positions available at the school. Three are now filled

The occupational therapist testified that the plaintiffs ability to work has been affected by the pain and discomfort she experiences during activities required by her work. She confirms that plaintiff also experiences some limitation with regards to working in a seated position.

She testified that according to her, plaintiff is not coping and that a half day job will be more suitable in her specific situation. She also testified that due to the symptoms caused by her injury plaintiff will also experience problems in related employment in clerical and administrative positions. Therapy could improve her symptoms but she will still only be able to maintain a half day job. Plaintiff is not receiving therapy at present due to a lack of funds.

Mr Stephan van Huyssteen an industrial psychologist testified that it is possible that plaintiff will continue to earn an income as a full time teacher, but it will become increasingly difficult for her to work in a full time capacity. Although it is probable that plaintiff will be offered part time employment it is possible that the poorer quality of her teaching due to her not being able to stand and teach could negatively impact on schools' willingness to offer her part time work. If plaintiff should work part time her salary would be between 30% and 50% of a full time teacher's remuneration.

He further testified that there is a small possibility that plaintiff will obtain and sustain part time clerical work in the open labour market. Due to her age, lack of clerical work experience it will make it difficult for her to obtain work. She will be competing with younger, able bodied candidates who will also probably be better qualified than her.

He is of the opinion that plaintiff will in 5 years time in all probability be in a part time teaching job.

The actuarial report was handed in by consent between the parties. Mr Dredge argued that I should award the loss of income based on a 20% contingency as set out in Basis (A)ii of the actuary's report which amounts to R1 474 329-00. Ms Pauer argued that I should apply a 15% contingency as set out in Basis A(i) which amounts to R1 378 184-00. I set out the relevant calculations as done by the actuary hereunder:

	BASIS A(i)	BASIS A(ii)
Income of accident did not occur	R 3 347 937	R 3 347 937
Minus contingency	334 794	334 794
	3	013
		143
<u>3 013 143</u>		
Income given accident did occur	1 923 517	1 923 517

Minus contingency

288 528

384 703

1

634

989

1 538 814

Loss of income

1 378 154

1 474 329

In the light of the evidence specifically the nature of plaintiff's injuries and the impact it had on her ability to teach, the fact that she probably will not be able to maintain of full time job for more than 5 years, the limitations she will encounter in getting a part time job, I exercise my discretion and award the amount of R1 474 329-99 as future loss of earnings as set out in Basis A(ii) of the calculations.

In the light of the parties' concessions past medical expenses in the amount of R459 574-30 and general damages in the amount of R400 000-00 should be added to the amount of R1 474 329-99 awarded as future loss of earnings.

Consequently I make the following order:

1.1 The defendant will pay to the plaintiff the sum of R2 333 904-20;

1.2 The aforesaid amount will bear interest at the rate of 15.5% per annum from date of judgment if it is not paid within 14 days after date of judgment.

2. The defendant will provide the plaintiff with an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 in respect of future accommodation of the plaintiff in a hospital or nursing home for treatment of or the rendering of a service or supplying of goods to her, to compensate the plaintiff in respect of the said costs, after the costs have been incurred and on tendering of proof thereof, in respect of the injuries sustained, in the motor vehicle collision on 27 November 2006.

3. The defendant will pay the plaintiff's taxed or agreed party and party costs which costs shall include but not limited to:

3.1 The reasonable or taxable costs of the reports of the expert witnesses of whom the plaintiff gave notice in terms of the provisions of Rule 36(9)(a) and (b);

3.2 The reasonable and taxable consultation, preparation, reservation and qualifying fees, if any, of the following witnesses, who are declared necessary witnesses;

3.2.1 Constable Geel;

3.2.2 Mrs Geneke

3.4 Costs of senior/junior counsel.

4. The amounts stipulated in paragraphs 1 and 3 here above, shall be paid into the trust account of the plaintiff's attorney, the details of which are:

Waks Silent Inc

Standard Bank Klerksdorp

Account number: 0[...]

Type of account: Cheque

Branch code: 0[...]

R G TOLMAY

JUDGE OF THE HIGH COURT

JOALANE AGNES MOKATSANE

VS

RAF

CASE NO: 1515/08

ATTORNEYS FOR PLAINTIFF

WAKS SILENT & GEACH ATTORNEYS ATTORNEYS

143 CHARLES STREET

BROOKLYN

PRETORIA

(Mrs GEACH)

FOR DEFENDANT:

MAPONYA INCORPORATED

950 PRETORIUS STREET

ARCADIA

(Mrs B RANGATA)

DATE OF TRIAL: 11 February 2010

DATE OF JUDGMENT. 24 FEBRUARY 2010

JUDGE: TOLMAY RG