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NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

(1) REPORTABLE: ☒ YES, ☐ NO.
(2) OF INTEREST TO OTHER JUDGES: ☒ YES, ☐ NO.
(3) REVISED.

DATE: 22/09/2011 SIGNATURE:  CASE NO: 18928/2008

In the matter between:

22/9/2011

SINDISWA JUDICATE SUKAZI

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE J

[1] This matter concerns only the quantum of the damages which the plaintiff has suffered as a result of the injuries she sustained in a motor vehicle collision which occurred on 30 July 2006

[2] The plaintiff, a grade 11 learner at the time of the accident was a passenger in a minibus taxi, and was on her way home from Ermelo town. As the minibus taxi was crossing the intersection of

Jan van Riebeeck and Fourie streets, a bakkie, ("the insured vehicle") approached from the right hand side and came into collision with the minibus taxi.

[3] The plaintiff was attending school at the time of the accident. She completed grade 12 the next year when she turned 18. She failed grade 11 the year before the accident. Before the accident she was doing average to below average. Post the accident, she has no work experience and her tertiary education is not complete.

[4] I was advised at the commencement of the trial that I must make a finding on general damages as the defendant has not made any offer despite conceding the merits 100% in favour of the plaintiff. In addition the defendant has tendered to provide to the plaintiff an undertaking as envisaged in section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996. This undertaking would provide for all the plaintiff's future medical expenses.

[5] What remains for decision is accordingly the plaintiff's loss of future earning capacity and general damages.

[6] There is no dispute as to the injuries, which the plaintiff

sustained in and as a result of the collision. A number of medico legal reports have been provided and I was advised at the commencement of the trial that the parties are agreed that the medico legal reports of Dr JH Kruger, a Neuro Surgeon, Dr GGA Cappaert, an Orthopedic Surgeon, W Van der Walt, an Occupational Therapist, Dr Pretorius, an Industrial Psychologist and Dr Leon Roper, a Clinical Psychologist, may be admitted into evidence without the necessity of calling these witnesses. The parties are in agreement as to the correctness of both the facts recorded therein and the opinions set out therein.

[7] These reports reveal that the plaintiff suffered the following physical injuries in the collision:

1. A soft tissue injury to her neck;
2. A soft tissue injury to her left knee; and
3. Post traumatic stress as well as symptoms of anxiety and mayor depressive mood disorder.

[8] As a result of these injuries the plaintiff continues to suffer from the following sequelae:

1. Attention and concentration deficits, slowed response speed abilities, rote verbal learning deficits, forward planning and problem solving deficits;
2. A mild concussive head injury;
3. Major depressive disorder;
4. Poor cognitive work ability and coping skills; and
5. Regular headaches and pain to her knee.

[9] Immediately after the accident the plaintiff stated that she has been unable to recall how she got out of the taxi, but has been able to recall lying on the ground next to the taxi. Her next recollection has been of her in the casualty unit at Ermelo hospital. Her grandmother and uncle had been present when she came to her senses. On examination no significant neurological findings were made save for a tender left knee according to the RAF medical report. She was given analgesics and was dispatched home after a day or two.

[10] Dr Cappaert, an orthopedic surgeon, saw plaintiff on 21 April 2009 and reports that at the time of assessment, she presented with a soft tissue injury of the neck and tenderness over the patella region of the left knee. He suggests conservative treatment of her

injuries and does not foresee the possibility of surgery to her neck (less than 1%).

[11] W Van Der Walt, the Occupational Therapist, reports that plaintiff retains a painful left knee and pain upon back rotation. Her cognitive work ability is poor. She presents with distractibility and poor concentration that negatively affects her memory. Her ability to absorb volumes of information on a given time is limited. Her physical work ability is affected. When she had to handle loads on a frequent basis, she develops neck pain and becomes increasingly reluctant to exert full effort because of ongoing pain to her left knee. She reports further that apart from the above, there are no other physical limitations that could impact on her work ability. She concludes that her ongoing cognitive problems and mild physical problems would relegate her to seated and light physical work. She considers that plaintiff's oppositional and distractible behavior may have been pre-existing. She found that plaintiff has regained sufficient ability to perform her functional tasks independently and should be able to run a household and maintain her living arrangements as well as her living environment.

[12] Plaintiff was diagnosed with a post traumatic stress disorder

by Dr Roper and he described her symptoms as follows: avoidance behavior, a loss of interest in debating and table tennis, flashbacks of the accident, increased anxiety when travelling in a motor vehicle, especially a taxi and when she sees another vehicle approaching from the side, concentration difficulties, increased levels of irritability, exaggerated startled responses as well as hyper-vigilance when travelling in a motor vehicle since her involvement in the accident.

[13] Dr Roper found that plaintiff presented with fluctuating simple attention abilities, she experience working memory and double tracking as well as sustained attention difficulties. In addition to this, plaintiff has slowed psychomotor and mental response speed abilities. With regard to her executive functioning abilities, forward planning and problem solving impairments were indicated.

[14] According to Dr JH Kruger, a Neuro-Surgeon, the trigger for the post traumatic stress disorder as well as the depression was the concussion that plaintiff sustained in the accident. From a neurosurgery perspective, he agrees that the concussion could have led to the neuro-psychological sequelae that developed after the accident. He reports that plaintiff's complains of progressive loss of

short-term memory as well as progressive problems with her concentration are signs of a light concussion and the symptoms will improve with time. On these considerations I am asked to assess her loss of earning capacity and general damages.

Loss of earning capacity

[15] I was referred to an actuarial report prepared by JHS du Plessis, an actuary in which he has calculated the plaintiff's future loss of earning capacity on the basis of certain assumptions. The parties are not in agreement as to the actuarial accuracy of all the calculations and the defendant submitted that there are no evidential basis assumptions made by Mr du Plessis. Mr du Plessis based his actuarial calculations on the postulations by Dr Pretorius, an industrial psychologist that plaintiff could have completed a N6 before entering the labour market in 2010 on Paterson B2 and over time her earnings could have progressed in a straight line to a median Paterson C3 at age 48. The plaintiff failed to have her educational record scrutinized by an educational psychologist to ascertain her pre-accident potential as well as her post-accident potential for studies. There is no evidence before the court to determine what the impact of the accident on the plaintiff's scholastic functioning is, save for the plaintiff's say so to the

industrial psychologist that the accident affected her scholastic performance. The court is left with no option but to speculate.

[16] Nicholas JA, in *Southern Insurance Association Limited v Bailey* NO 1984 (1) SA 98 (A) at 113 noted that an enquiry into damages for future loss of earning capacity is "of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augers or oracles. All that the court can do is to make an estimate, which is very often a rough estimate, of the present value of the loss."

[17] He went on to note that two approaches to this enquiry were open to the court. The first is to make a rounded estimate, an approach which he described as "entirely a matter of guess work, a blind plunge into the unknown."

[18] The second approach is to try to make a calculated estimate by way of actuarial evidence as to the probable value of the loss. In this matter the parties do not agree on the assumptions, as there is no evidence on the impact of the accident on the scholastic performance of the plaintiff. In my view, this is the case where the court has to take a blind plunge into the unknown and make a

rounded estimate.

[19] Given the lack of reliable evidence underpinning the assumption made in the calculations, I am of the view that the calculation is also unreliable.

[20] On the weighing of all these considerations, more particularly the report by the neuro-surgeon that plaintiff's loss of short term memory and problems with concentration will improve with time, I am of the view that a rounded figure of R200 000,00 in respect of future loss of earning capacity would be a fair and reasonable compensation in the circumstances.

General damages

[21] There are no general rules to follow in determining the amount to be awarded for general damages. Watermeyer JA, in *Sandler v Wholesale Coal Supplies Limited* 1941 AD 194 at 199 stated as follows:

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the Judges view of what is fair in all the circumstances of the case."

[22] The injuries which the plaintiff sustained and the sequelae which she has endured are set out and discussed above. I have given careful consideration thereto in endeavouring to assess a reasonable compensation for general damages.

[23] I have been referred to by the legal representatives of the parties, to a number of previous decisions which they argued are of assistance in indicating a general trend of the value of awards in matters comparable to the present. I have given careful consideration to each of these decisions, and regrettably, each of these differs on the facts and considerations raised therein from the present case.

[24] I have considered the well-established principle that I should take care to see that the award which I make is fair to both sides so as to give just compensation to the plaintiff, but not "to pour out largesse from the horn of plenty at the defendant's expense". (*Compare Pitt v Economic Insurance Company Limited* 1957 (3) SA 284 (N) at 287).

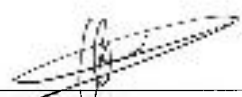
[25] On a consideration of all these factors and in particular the injuries and sequelae sustained by the plaintiff as fully set out

above I consider that an award of R100 000, 00 would represent a fair compensation as general damages for shock, pain and suffering, discomfort, disability, and loss of the enjoyment of the amenities of life which the plaintiff has suffered.

[26] In the result, the following order is made:

1. The defendant is ordered to pay to the plaintiff R300 000,00 for damages.
2. The defendant is ordered to provide to the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996 within fourteen (14) days of the date hereof.
3. The defendant is ordered to pay to the plaintiff interest on the aforesated damages calculated at the legal rate from a date fourteen (14) days after the date hereof to the date of payment.
4. The defendant is ordered to pay the plaintiff's costs of the suit as taxed or agreed, on a party and party scale. Such costs are to include the costs of all reports of all experts of whom notice has been given by the plaintiff in terms of Rule 36(9)(a) and (b) either as agreed or

allowed by the Taxing Master.



K E MATOJANE
JUDGE OF THE HIGH COURT