

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

Case Number: 4951/2014

7/9/2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

HERMAN BRUWER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

***Coram:* HUGHES J**

JUDGMENT

Heard on: 2 September 2015

Delivered on: 7 September 2015

HUGHES J

[1] Barend Petrus Hermanus Bruwer (Herman) was involved in a motor collision on 10 December 2012. Herman was the driver of a Toyota Hilux with registration letters BF 24 KH GP and Mr Senoge was the driver of motor vehicle with registration letters BH 73 JM GP which collided head on with Herman's vehicle.

[2] This court is tasked to determine but a narrow issue. This issue is the age of retirement of the plaintiff, Herman. Whether same would be normal retirement at age 65

or as the plaintiff alleges at age 70.

[3] The defendant conceded liability in *toto* and offered to pay 100% of the plaintiff's proven damages.

[4] As a result of the collision Herman sustained severe bodily injuries. These injuries are annotated as Back: fracture of the L3, 4 and 5; Fracture of the sternum; Rupture of the diaphragm; Facial injury and scarring; Broken teeth and lastly, fracture of the right foot.

[5] Herman underwent medical treatment for his injuries and the aspect of past medical expenses has not been resolved and is by consent postponed *sine die*. The plaintiff, Herman, will require in the future medical and related expenses and the defendant, the Road Accident Fund, has offered an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[6] In respect of the plaintiff's claim for general damages, which encompassed pain and suffering past, present and future, loss of amenities of life and permanent disability an amount of R500 000.00 was agreed upon by the parties.

[7] The issue that needs to be determined by this court is that of loss of past and future loss of earnings. In the circumstances the plaintiff and Mr Lance Marias the plaintiff's Industrial Psychologist were the only two witnesses that adduced evidence in this regard.

[8] The occupational therapist Shirley Tudor, records from her assessment of the plaintiff that he completed matric and attained a Bachelors of Commerce degree through UNISA. He has forty years' experience in the railway operations, risk management and railway safety regulation sphere.

[9] The plaintiff testified that he had commenced his career at South African Rail and Harbour and was employed at the specific establishment for about 31 years. In 2005 he attained the title of General Manager Safety Assurance.

[10] The plaintiff testified that he was head hunted in 2008 and ultimately concluded a

contract with Serco in Dubai. It is recorded, by the occupational therapist that at the time of the collision the plaintiff was employed by SERCO in Dubai. Working on the Dubai Metro project in the United Arab Emirates as Head of Safety projects. He testified that his duties entailed both office work and working out on in the fields inspecting the railway line. He advised the occupational therapist that when conducting his inspections of the line he had to stand, walk, crawl and climb as the railway lines were elevated.

[11] What resonated from the evidence of the plaintiff is that his primary goal was to ensure that he was a force to be reckoned with in the international sphere of his occupation.

[12] I gathered from the evidence of the plaintiff he had this extraordinary passion for his job to such an extent that he was head hunted globally. I further ascertained from the plaintiff's evidence that his ultimate goal was to grow internationally and eventually be part of the super regulators. What I noted from the progression of the plaintiff that he was on the path of achieving his quest.

[13] Even after the plaintiff sustained his injuries he returned to his employment and conducted same wheelchair bound. Eventually, with the necessary medical treatment crutches, operations and walking aid the plaintiff was self-supportive.

[14] It transpired once he was assisted with the walker that he was not able to do all that he was able to do in his designated position prior to that of the collision, of course with difficulty. Be that as it may the plaintiff was still resilient in the sense that he was still being head hunted from companies abroad in his specific field.

[15] The evidence of the plaintiff is that as he was experiencing difficulties ambulating when conducting site inspections as was required in terms of his job description. He was eventually asked to leave the employment scenario as this posed a risk.

[16] After being laid off work he gained employed at two other companies even though he had been head hunted and he had disclosure his disabilities, he still experienced difficulties in securing and sustaining his employment in the relevant market because of the nature of his injuries.

[17] The plaintiff is of the view that he is able work like his counter parts, however those that employed him eventually rejected him because he was slower than others and he was not able to reach the terrain that the other candidates in his position were able to do so.

[18] The evidence of the plaintiff is that he had planned to work and extended his career until *"his last breath"*. He persisted that he was going to do so as he had specialised skills at his advantage and was in demand in the labour market in his field. This was evident from the various employment contracts that he had signed with companies abroad. These contracts clearly illustrate no termination period in respect of retirement and this is in the case of every one of the plaintiff's contracts signed abroad.

[19] The defendant argued that the normal age of retirement in South Africa was age 65, as such this should be applied in the plaintiff's case and this court cannot go on the say so of the plaintiff that he wished to work till his last breath, as he had said when he testified.

[20] Mr Lance Marias, the plaintiff's Industrial Psychologist, when he gave evidence, apologised he had not ventured into questions of retirement age with the plaintiff when he consulted with the plaintiff. In hide sight he took responsibility for creating the issue that now had to be determined by the court.

[21] Mr Lance Marias unwavering evidence was that the plaintiff truly is a specialist in his field whose services were in such demand that he could dictate terms in respect of his employment contracts. This is evident from the various agreements which the plaintiff provided him with. He also confirmed that in all these contracts the issue of retirement was not addressed. This was an indication that the retirement of the plaintiff would be negotiated between him and his employer. The contract says that much as the termination clauses provided that anyone of the parties to the contract could pursue the avenue of terminating the contract when they so wished.

[22] He conceded that the age of retirement in South Africa was indeed 65 and this

he noted in his report. However he stressed that he had stated that *“Based on the claimant's specialised skills and knowledge, occupational experience and general skills and abilities, the claimant would have continued working as a Railway Safety Manager until retirement age or for as long as his health permitted”*. He explained that the later was inserted to cater for a consultancy scenario after retirement. As the plaintiff was a specialist in his field, persons of this calibre go on to engage with their previous employer, after retirement, on a consultancy basis. Thus the *“probability”* is that the plaintiff would have worked beyond age 65.

[23] The occupational therapist Shirley Tudor recorded in her report the follow, “I am of the opinion that the accident places Mr Bruwer in a vulnerable position in the open labour market. He was hoping to work for another 7-10 years prior to retiring and was at the pinnacle of his career.”

[24] At the time of the assessment with Ms Tudor the plaintiff was 59 years of age and if he was hoping to work another 7-10 years that will take him clearly beyond 65 years of age.

[25] On my examination of the uncontested evidence of the plaintiff, the assertion made to had Ms Tudor and the evidence of Mr Lance Marias there is a strong probability that the plaintiff would have worked beyond the age of 65 years. On his own he advanced that he would have liked to have worked another 7-10 years and that takes him to age 66 and 69 respectively, if one takes into account that he was 59 years of age when he made those utterances. There is nothing advanced by the defendant to the contrary. He also evidenced that he would have loved to work until his last breath and though this is not always possible it indicates the drive and work ethos of the plaintiff.

[26] In the circumstances of this case it would not be unreasonable to conclude that the plaintiff would have worked beyond age 65 and in fact I can concluded that age 70 would most likely have been his age retirement.

[27] The parties have agreed the basis of the actuarial calculation of MUNR forensic actuarial however the age of retirement was the bone of contention. That being the

case the amount of R 2 595 600.00 is duly granted in terms of the calculation to retirement age 70 as per MUNR forensic actuarial calculation.

[28] Consequently the order attached and marked X is made an order of court.

W. Hughes Judge of the High Court

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

CASE NO: 4951/2014

In the matter between:

BRUWER: HERMAN

PLAINTIFF

And

ROAD ACCIDENT FUND

Defendant

~~DRAFT~~ ORDER

BEFORE THE HONOURABLE JUDGE ~~LEDWABA DJP~~ HUGHES

DATE: ~~19-AUGUST~~ 02 SEPTEMBER 2015

COUNSEL FOR THE PLAINTIFF: U Jordaan

COUNSEL FOR THE DEFENDANT: Adv Z.S. Rasekgala

HAVING HEARD COUNSEL for both parties;


**THE ABOVE HONOURABLE COURT GRANTS JUDGMENT in favour of the Plaintiff
against the Defendant in the following terms:-**

1. The Defendant shall pay the sum of **R3 095 600.00 Three million and ninety five thousand five hundred rands** in delictual damages to the Plaintiff arising out of a motor vehicle collision, which occurred on 10TH day of December 2012.
2. The sum as mentioned in 1 (one) above is payable within 44-days to the Trust account of the Plaintiff's attorneys of record with the following details:

UYSJORDAAN ATTORNEY
NEDBANK-BUSINESSACCOUNT
ACC. NR: [..]
BRANCH: CRESTA
REF: HBRUWER/RAF

3. The Defendant shall furnish the Plaintiff with an undertaking as envisaged in Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, for of the costs of the future accommodation of the Plaintiff in a hospital or ~~nutg~~ home or treatment of or rendering of a service, or supplying of goods to ~~le~~ Plaintiff arising out of the injuries sustained by the Plaintiff in the motor vehicle collision which occurred on 10th December 2012, after such costs have been incurred and upon proof thereof.
4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the ~~High~~ Court scale, which costs shall include:
 - 6.1. The reasonable taxable costs of obtaining all expert, medico-legal RAF4 and actuarial reports from the Plaintiff's experts which were furnished to the Defendant;
 - 6.2. The reasonable taxable preparation, qualification, transportation and reservation fees, if any, of the following experts of whom notice has been given, being:-
 - 6.2.1. OCCUPATIONAL THERAPIST - MS. MEGAN SPAVINS
 - 6.2.2. INDUSTRIAL PSYCHOLOGIST - LANCE MARAIS INC
 - 6.2.3. ACTUARY - MUNRO ACTUARIES
 - 6.3. The ~~reasonab~~ taxable transportation (inclusive of airfares) and accommodation costs incurred by the Plaintiff in attending medico-legal consultations with both parties' experts, as well as consultations with his legal representatives and court proceedings, subject to the discretion of the Tax Master;

5. Should payment of the aforementioned taxed or agreed costs not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 15,5% on the taxed or agreed costs from date of allocatur to date of final payment.
6. In the event that costs are not agreed the Plaintiff agrees as follows:
 - 6.1. the Plaintiff shall serve the attorney of record; and
 - 6.2. the Plaintiff shall allow the Defendant 7 (seven) court days to make payment of the taxed costs
7. There is a valid contingency fee agreement entered into between the plaintiff and attorney.
8. The claim for past Hospital and Medical expenses is postponed sine die.

7/9/2015 

**BY ORDER
REGISTRAR**