

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 15741/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

21 June 2016
DATE


SIGNATURE

21/6/2016

In the matter between

COENRAAD AMINE RACHWALL

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MADIMA, AJ

[1] The plaintiff, a major female school teacher claims damages against the defendant in terms of the Road Accident Fund Act (No.56 of 1996) ("the Act"). The claim is pursuant to a motor vehicle accident on 11 November 2011 in which she sustained injuries. The defendant has accepted liability for 100% of the plaintiff's proven damages.

[2] The plaintiff's past hospital and medical expenses have also been settled in the amount of R4 555.79. The parties have also agreed that the plaintiff will be furnished with an undertaking in terms of section 17(4) of the Act for any hospital and medical expenses she may in the future incur. I do not deal with the injuries sustained by the plaintiff as same are not in dispute.

[3] The issue of general damages will be referred to the Health Professional Council of South Africa ("the HPCSA") for assessment. I do not deal with that as well.

[4] The parties are in further agreement with regards to the following:

- 4.1. That the plaintiff was 44 years of age at the time of the accident;
- 4.2. That the plaintiff was employed at the Talhado Children's Haven, a pre-primary school as a practitioner;
- 4.3. That the plaintiff earned R6 000.00 per month;
- 4.4. That the plaintiff enrolled for a 3 year National Diploma in Education at the Northwest University in 2011;
- 4.5. That the plaintiff resigned her position at the end of April 2013;
- 4.6. That the plaintiff sustained no loss of earnings up to the end of April 2013;
- 4.7. That the plaintiff sustained loss of earnings from 1 May 2013 up to the age of retirement;
- 4.8. That the plaintiff pre-morbid would have been able to work till the age of 65;

[5] The parties do not agree with regards to the plaintiff's pre-morbid educational potential. The defendant is of the view that the plaintiff would take a bit longer than the envisaged three years to obtain her diploma. The plaintiff also had planned to study for an additional one year for the M+4 qualification which was her ultimate goal. The parties also disagreed on the actuarial calculations. The plaintiff's experts stated that she would have been compelled to retire at the age of 60 years instead of 65.

[6] The plaintiff's evidence was that, but for the accident she would have continued with her studies at the Northwest University which she would have completed in the allocated time of three years. Plaintiff's expert did however concede that four years for the 3 years diploma studied on a part-time basis was not inconceivable.

[7] The evidence tendered by the Industrial Psychologist was that the plaintiff would have completed her qualification by 2014. Her salary would increase to R231 264.00 by 1 April 2016 and continue to do so by 1% above inflation each year until the plaintiff's retirement age of 65. The further evidence was that the plaintiff's past loss of income is in the amount of R556 073.00 less a contingency of 5% making it a total of R528 269.00. The latter amount less the income received from the date of the accident equals to R424 679.00. The future loss of income for the plaintiff was in the amount of R3 459 783 less 15% contingency which translates to R2 940 816.00. The total loss claimed by the plaintiff amounts to R3 265 204.00.

[8] A joint minute of the Industrial Psychologists of the parties yielded some disagreements. Ms Donaldson for the plaintiff opined that the plaintiff would have completed her diploma qualifications in the scheduled time because her husband was a school principal and they studied together. Upon completion of her studies the plaintiff would have secured a teaching post in the area because of the short supply of teachers with the requisite qualifications. She would then be entitled to earn a salary based on the 2016 NATOSA OSD 85 level. Ms du Toit for the defendant agreed with this scenario however stated that this would have depended on the plaintiff completing the fourth year of study that is the M+ 4.

[9] Ms du Toit's evidence was that it would have taken the plaintiff between 6-7 years to complete her diploma. The plaintiff would qualify for a salary pegged at REVQ12 notch of R104 127.00 per annum.

[10] The question for this court to answer is whether the plaintiff would have completed her diploma, and the M+4 by the end of 2014 and worked up to the age of 65.

[11] There is no dispute that the plaintiff passed all of her first year courses in 2011. Her evidence was that she achieved her success because of the motivation of studying with her husband, who was also registered for a course. There is also no dispute that in 2012 she was able to pass two of the four courses she was registered for. This was post the accident. She testified that she was not able to concentrate because of the accident and this was the probable cause of her failing the two subjects in her second year.

[12] The plaintiff submitted that the court should accept that she would have been able to complete her M+4 qualification in record time but for the accident. This the plaintiff would have completed at the end of 2014, and commenced working in 2015.

[13] Contingencies applied in the calculation of future loss of income are subjective estimations. There are no objective criteria to be employed. Not by the actuaries. Not by the court. The court, just like the parties is not in a position to can effectively and accurately predict what the future held. If it did, every party's life would be a lot easier. This was confirmed in *Shield Insurance Co Ltd v Booysens* 1979 (3) SA 953 (AD) at

page 965G when it was held that "*The determination of allowance for such contingencies involves, by its very nature, a process of subjective impression or estimation rather than objective calculation...*"

[14] Contingency deductions are the prerogative of the court. Like all other discretions exercised by the court, same must be exercised judiciously. This means that all objective facts must be taken into account before a decision is arrived at.

[15] Our courts in *Guides v RAF* 2006 (5) SA 583 (A) have held that*to assist in such calculation, an actuarial computation is useful a basis for establishing the quantum of damages.*

[16] The plaintiff submitted that when applying the plaintiff's age and the possibility of her obtaining her qualification the general contingency should be between 11% to 15%, considering the plaintiff's age and other risks.

[17] The plaintiff's academic prospects pre-morbid appear average to good. This I deduce from her first year diploma results. The plaintiff was not in a position to present an impressive academic record pre 2011. The plaintiff was last in an academic environment in 1989 when she obtained her N1 qualification. It is therefore difficult for the court to assess whether or not the plaintiff is one to start and finish her courses on schedule.

[18] I am inclined to hold that the plaintiff would have eventually completed her M+4 qualifications, albeit not in the envisaged four years. I would allow a period of 5 years

from 2011. This means that the plaintiff would have studied till 2017 to obtain her M+4 qualification. I arrive at this view because the plaintiff was not able to impress me as a witness. She was unable to explain simple issues arising out of her academic record. She did not know what certain codes represented. This, I find had nothing to do with her current condition. Instead it represented her scholastic abilities. For example how is it that a student does not know what "DECLINED" entailed in her academic transcript?. The plaintiff also was not able to explain what the M+4 qualification meant?

[19] The reason she would not have completed her Diploma in scheduled time is not all ascribed to her intellectual ability or lack thereof. There are other factors that unfortunately are the reality of part-time students. These include the fact that the plaintiff was a mother, wife with other domestic responsibilities. These are real factors that unfortunately impact on the progress of women and hold them back in their careers so as to compete on an equal footing with their male counterparts.

[20] Another important factor that I take into account is that there is no guarantee that upon completion the plaintiff would walk straight into a job that would have been designed specifically for her. The plaintiff would have had to wait in the queue like all applicants for posts in the public service. I doubt she would have been the only applicant for the position. There is no telling that she would have been appointed to the teaching post.

[21] The plaintiff's actuarial report states that the plaintiff's claim regarding the loss of past income should be in the amount of R556 073.00. The experts have allowed a deduction of 5% contingency, thus bringing the amount of loss to R528 269.00. A

further amount of R103 591.00 of the value post morbid is deducted, leaving a total of R424 679.00 representing the loss. The defendant does not contest this amount and formula.

[22] Regarding future loss the plaintiff claims a premorbid income of R3 459 783.00. To this amount a 15% contingency is deducted leaving a net future loss of R2 940 816.00.

[23] The above mentioned past and future losses of income are calculated pre the application of the Amended Act. The post amendment figures are slightly lower. These are R379 885.00 and R2 885 319 respectively for past and future losses.

[24]. Taking into account all of the factors alluded to above regarding the circumstances of the plaintiff, I am inclined to err on the side of caution and allow a contingency of 20% instead of the 15% proposed by the plaintiff. I shall not intervene and interfere with the 5% contingency regarding the past losses of income of the plaintiff. The defendant also does not have any objection to that percentage and amount.

[25] A 20% contingency deduction with regard to the future loss of the income of the plaintiff from the amount of R2 885 319.00 after the application of the amendments to the Act leaves an amount of R2 308 255.00.

[26]. The total amount owing to the plaintiff by the defendant is therefore R379 885.00 (past loss of income) and R2 308 255.00 (for future loss of income).

[27] In the circumstances I make the following order

1. The plaintiff's claim succeeds
2. The respondent to pay the plaintiff the amount of R2 688 140.00
3. The respondent to pay the costs of the action which costs shall include the preparation and reservation fees of the plaintiff's experts.



TS MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

On behalf of the Plaintiff:

Instructed by:

Adv S Meyer

Joseph's INC

Dunkeld

Ref: Sarina Snyman/J051/0132

Tel: 012 344-1445

On behalf of the Respondent:

Instructed by:

Adv Binase

Rambevha Morobane Attorneys

Pretoria

Ref: T Kgomommu/km/AA0404

Tel: 012 452-35710

Dates of Hearing:

26 May 2016

Date of Judgment:

21 June 2016