

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED

Case No.49021/2013

5/3/2018

In the matter between:

GROINING, A obo FT K

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MILLAR. AJ

1. The plaintiff brought an action for damages on behalf of her son France T K "T") for damages arising out of injuries suffered in a motor vehicle

collision. The action was brought against the defendant the statutory body 2 responsible for such claims.

2. It is common cause that all issues between the parties, save the quantum of loss of earnings and the costs of this hearing, have already been resolved between the parties. No evidence was led, and the issue was argued, it being agreed between the parties that the expert reports filed by the respective parties were admitted into evidence and I could have regard thereto as though those experts had testified. The minutes prepared by the experts and in particular between the educational psychologists and industrial psychologists were similarly admitted.
3. The injured, T was born on 28 January 2006 and was 6 years old at the time of the collision and of his injuries on 25 November 2011. The injuries suffered were extensive and included an open depressed skull fracture, a fracture of the left femur, lacerations on the right foot, left knee, left arm, chin and forehead. He also suffered conjunctiva! hemorrhages in both eyes, a contusion of the right lung and abrasions to his abdomen.
4. The seriousness of the injuries is not in dispute and neither are their sequelae. T would but for the injuries have completed a grade 12 education, a matric, and had the potential to obtain a further qualification but will now only be able to complete the equivalent of a grade 8 level of education at a special school. He has for all intents and purposes been rendered virtually unemployable on the open labour market.
5. What is in dispute is whether he would, had he not been injured been

educated beyond grade 12 and if so to what level. The industrial 3
psychologists agreed on a grade 12 pre- morbid career path and the
earnings commensurate with this as derived from the Patterson scales.
They also agreed that there was a "realistic possibility" stated to be 50% of
him obtaining a further post grade 12 qualification. In regard to his post-
morbidity earning potential they agreed that he was a vulnerable individual
who was best suited to unskilled labour. The quantification of his post-
morbidity earnings was recommended in accordance with the Quantum
Yearbook 2015, by Koch and was stated to be from "R7 300- R18 600 -
R53 500 per annum". Put differently this would be an income of R608 per
month at the lower end of the spectrum to R 4 458 per month at the upper
end of the spectrum.

6. The plaintiff has a post grade qualification and the two siblings of T have both attained a grade 12 level of education and it seems probable that had he not been injured he would have attained the grade 12 and possibly progressed further. I am fortified in my view having regard to his current age and the improved access to further education for children from modest backgrounds, that the possibility that he would have progressed beyond grade 12 is a realistic one.
7. The parties presented actuarial calculations based on the scenarios postulated by the industrial psychologists. The calculation presented by the plaintiff for the post grade 12 qualification scenario amounts to R3 175 508,00 and that presented for the defendant to R3 124 989,00. The difference arises from the application contingencies.
8. The principle to be applied is that set out in Southern Insurance

"Even where method of actuarial calculations is adopted the trial Judge still has a discretion to award what he considers right - Can make a discount for contingencies - Nature of contingencies that can be taken into account - Such contingencies not always adverse"

9. Another factor to be considered and which weighs heavily in this particular matter, is the age of the T².
10. The plaintiff's calculation provides for the deduction of a 15% pre-morbid contingency and 35% post morbid contingency whereas the defendant has applied 20% to both. The difference in calculation is not material.
11. While given the age of T, I am of the **view** that the pre-morbid contingencies deducted by both the plaintiff and defendant appear low³, I am mindful of the fact that similarly the contingencies in respect of the post-morbid scenario are also too low.
12. Adjustment to the respective contingencies by this court, by increasing the pre and post morbid contingencies is likely to yield substantially the same result and, in the circumstances, there is no need for me to interfere with the calculations. I am however inclined to accept the calculation prepared on behalf of the plaintiff for the reasons set out above.
13. In the circumstances, I make the following order:

13.1 The Defendant is ordered pay to the Plaintiff the amount of R3 175

¹ 1984 (1) SA 98 (A) at 98 E-F

² Goodall v President Insurance Co. Ltd 1978 (1) SA 389 (WLD)

508.00 (Three million one hundred and seventy-five thousand five ⁵ hundred and eight rand only) on or before the 20th day of March 2018.

13.2 The Defendant is ordered to pay interest on the aforementioned sum from the 21st March 2018 at the rate of 10.5% per annum to date of payment.

13.3 The aforementioned amount shall be paid into the following bank account:

Name of Account Holder: NS Swan Attorneys

Trust Account Bank Name: Nedbank

Branch Code: 160345

(Gezina) Trust Account

Number: [....]

13.4 The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs, which costs are to include all costs not previously recovered in terms of an order of this court together with the costs of senior-junior counsel.

13.5 The Plaintiff's attorney is ordered to pay the net proceeds, after the deduction of taxed attorney and own client costs in terms of the Contingency Fees Act 1997 into the FT K Trust.

³ ibid

A MILLAR

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON: 16 FEBRUARY 2018

JUDGMENT DELIVERED ON: 5 MARCH 2018

COUNSEL FOR THE PLAINTIFF: ADV AA LUBBE

INSTRUCTED BY: NS SWAN ATTORNEYS

REFERENCE: MR N SWAN

COUNSEL FOR THE DEFENDANT: ADV S MATHABATHE

INSTRUCTED BY: TAU PHALANE INC

REFERENCE: MR K RACHUENE