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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

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

CASE NO: 22663/16 .

30/7/2018

In the matter between:

**L. V. MAGAQANA obo L. M**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**APPLICATION OF LEAVE TO APPEAL**

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**RANCHOD J:**

[1] The trial in this matter which was in respect of quantum only was presided over by Makgoka J who delivered judgment in the matter on 6 November 2017.

[2] The plaintiff applied for leave to appeal but due to the non-availability of Makgoka J, I was asked to deal with the application.

[3] During the hearing of the application, counsel for the plaintiff (I refer to the applicant as the plaintiff for the sake of convenience) submitted, as I understood it, that the plaintiff would abandon grounds 1 - 4 of the application if I were to

accept that the trial Judge made an error in the calculation of the plaintiff's loss of income. It was submitted that the Court applied a 30% contingency deduction to the pre-morbid income and a 50% contingency deduction to the post-morbid income and came to a total loss of R3,444,236.50. However, it was submitted, if one applied the aforesaid contingencies the calculation actually amounts to R5,073,305.60. Hence, if the trial court were to correct the figures, the plaintiff would abandon the application for leave to appeal.

[4] In any event, the plaintiff argued, the globular amount of R3,444,236.50 was not an amount that could have been reasonably awarded in the absence of actuarial calculations, hence the Court erred in this regard.

[5] Contingency deductions are a matter within the prerogative of a court, which it takes into account all relevant factors. The learned **Judge** has set out in his judgment why he was of the view that the amount he awarded in respect of loss of earning capacity was reasonable in the circumstances of the facts of the case (see paragraphs 42 - 48). The learned Judge did not make an error. He had come to a conclusion that the amount he awarded was appropriate in the circumstances of the case. I do not think another court will come to a different conclusion.

[6] A further ground of appeal is that the trial court erred in not finding that the postulations and opinions expressed by the Educational and Industrial Psychologists were admitted and conservative, therefore there was no reason to apply high contingency deductions in respect of pre-morbid income calculations.

[7] It is apparent from the judgment that the learned Judge referred to the absence of pre-morbid school reports and the Grade 8 and 9 reports before the Educational and Industrial Psychologists when they formulated their opinions. The plaintiff submits that the trial court erred in finding them to be of relevance in circumstances where the defendant had already admitted the postulations by the Educational Psychologist (as well as the postulations by the Industrial Psychologist).

[8] In my view, a court is not bound by the experts' opinions. A court may disagree with or reject the views of an expert if it has reason to do so. The trial court has given its reasons and I do not think another court will come to a

different conclusion in that regard.

[9] Having considered all the various grounds for seeking leave to appeal, I am of the view that there are no reasonable grounds for success on appeal.

[10] The application for leave to appeal is accordingly dismissed with costs.

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**RANCHOD J**  
**JUDGE OF THE HIGH COURT**

Appearances:

Counsel on behalf of Plaintiff : Mr C. Dredge

Counsel on behalf of Defendant : Ms N. Moses