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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
11/6/2019

CASE NO: 6481/2017

In the matter between:

RAYRLEE PRINSLOO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

NEUKIRCHER J:

1. This is a claim against the Road Accident Fund in respect of a motor vehicle accident which occurred on 10 October 2015 on the N1, near the Mall of the North, Polokwane, Limpopo. The plaintiff was a passenger in the motor vehicle at the time.
2. The merits were settled during May 2017, 100% in favour of the plaintiff and the defendant has provided the plaintiff with a section 17(4)(a) certificate in respect of future medical expenses.
3. The only issues that were left for me to adjudicate were (a) the *quantum* of the general damages to be awarded to the plaintiff and (b) the amount of the

plaintiff's future loss of income.

4. I was provided with joint minutes of the following experts:
 - 4.1. the neurosurgeons;
 - 4.2. the ear, nose and throat specialists;
 - 4.3. the industrial psychologists; and
 - 4.4. the educational psychologists.
5. I was informed that, for various reasons, the joint minutes of the neuropsychologists had not been signed by them. I instructed the two experts to discuss the draft minutes that had already been prepared and, if they agreed to the contents reflected, to sign it. Shortly before argument was finalised, I received those signed minutes. This facilitated a settlement in respect of the *quantum* of general damages and thus the only remaining issue was that of the loss of earnings.
6. Dr Miller and Dr Lewer-Allen are the two neurosurgeons. In their joint minutes they agree that the plaintiff suffered a head injury which they classified as "*mild to moderate*". A brain scan showed no intracranial pathology, but revealed a complex right temporal brain fracture into mastoid air cells and to the middle ear cavity. The plaintiff also injured his right hand. He has a right-sided facial weakness and compromised hearing in the right ear, which necessitates the use of a hearing aid. They agree that the plaintiff would be expected to have some cognitive changes and problems, which are almost certainly present but appear to be relatively mild. The plaintiff has become forgetful and has had a change in personality since the accident.
7. Whilst Dr Miller is of the view that the plaintiff will suffer cognitive defects, he is also of the view that these will be relatively mild and would be easily overcome with extra time, extra effort and extra enthusiasm so that the plaintiff may still achieve the same results as his peers.
8. Dr Lewer-Allen however says that, given the psychometric assessment results reported by the neuropsychologist, Mrs Jonker - in which several test

results fell in the below average to impaired; impaired and severely impaired ranges especially in the domains of concentration, visual mental tracking, mental processing speed, rate verbal and narrative memory, mental flexibility, as well as verbal fluency and concept generation - the plaintiff's educability, work and earning capacity would have to be assessed by the neuropsychologist, occupational therapist, educational psychologist and industrial psychologist.

9. The industrial psychologists are Shuaib Jeewa and Vuyo Nako. In drafting their joint minute they took only the joint minutes of the neurosurgeons and the ENT specialists into account (save for Mr Jeewa who also took into account the neuropsychologist's report). This is truly lamentable as the results of especially Mrs Jonker are particularly relevant to the facts of this matter and the *sequelae* of the injuries reported by the plaintiff.
10. Mr Jeewa was of the view that, based on the findings of the educational psychologist the plaintiff would not possess the necessary potential to cope within a tertiary setting and would be unable to acquire a NQF6/7 level of education. Furthermore, his decreased motivation combined with his emotional difficulties will affect his ability to further his level of education and with his neuropsychological deficits he will be unable to compete on an equal footing with his peers.
11. Ms Vuyo disagrees. She is of the view that the plaintiff passed Grade 11 and 12 "*with no noted difficulties*" and that the educational psychologist Sepenyane found that the plaintiff retained his pre-accident potential postulated as up to NQF7. She opined that the plaintiff could return to school if he wished to and would be able to participate in the open labour market without difficulty.
12. What Ms Vuyo fails to take into account is that the plaintiff passed Grade 11 achieving less of an average than he achieved in Grade 10 and his third term marks (in 2016 after the accident) in Grade 12, had fallen by approximately 9%. He did much better in his final exams in 2016 because he was given extra time and he also had to make extra effort. There is no indication in this joint minute that Ms Vuyo has taken the neuropsychologists' tests results into

account which places the plaintiff in the below average to impaired, impaired and severely impaired ranges. In my view, this will certainly impact on his ability to study further and compete in the open labour market.

13. The educational psychologists are T.A. Sepenyane and K. Trollip. They agreed that the plaintiff retained his pre accident potential of NQF6 and is still trainable and educable although it will be harder to him and require extra effort from him.
14. The joint neuropsychologists' minutes of I Jonker and E Tromp was handed up to me during argument. They agree that:
 - 14.1. the plaintiff displays difficulties across several cognitive domains on the neuropsychological tests;
 - 14.2. it is unlikely that the plaintiff will complete further studies in light of his cognitive fallouts;
 - 14.3. the plaintiff's neuropsychological shortcomings have rendered him more vulnerable and will likely compromise his future career opportunities and earning capacity.
15. Given these findings, it appears to me that the findings of the educational psychologists do not pass muster nor do those of Ms Vuyo, the industrial psychologist.
16. The question then is, what contingencies should be applied to determine the plaintiff's future loss of income? In February and March 2018, the plaintiff worked as a contract centre operator earning R 9 000.00 per month, but resigned because of the noise levels. Since April 2018, he has worked at Pal Screw Products doing internal sales and presently earns R 6 000.00.
17. The parties, and the experts, are all in agreement that were it not for the accident, the plaintiff would have studied further and obtained a diploma. Thus, Mr Kramer¹ postulated a scenario that is based on this. His calculation is as follows:
 - 17.1. Gross prospective value of income R 8 451 303.00

¹ The plaintiffs actuary

17.2.	Less contingency (15%)	R 1 267 695.00
17.3.	Net prospective value of income	R 7 183 608.00

18. Mr Zidel has submitted that a 25% spread across the contingencies is appropriate given the fact that the plaintiff was unemployed from the time he matriculated at the end of 2016 until approximately February 2018 and that the neuropsychologists agree that it is unlikely he will complete further studies and that the accident has compromised his future career opportunities and earning capacity.
19. Ms Ramela submits that a 15% spread is more appropriate as the experts agree that the plaintiff would have studied further had he had the money and given all the facts of the matter.
20. I agree with Mr Zidel that a 25% spread is appropriate given all the opinions and especially those of the two neuropsychologists in this matter. This then puts the value of the plaintiffs loss of income at R 2 112 827.00.
21. As stated, the parties have agreed on the amount of general damages¹ which is the amount of R 450 000.00.
22. Thus, the total *quantum* to be awarded to the plaintiff is R2 562 827.00.
23. The parties have handed to me a draft order leaving the award blank. I have completed that. The remainder of the draft is in order.

Order

24. Thus, the order I make is the following:

- 24.1. The draft marked "X" is made an order of Court.

NEUKIRCHER J
JUDGE OF THE HIGH COURT

Date of hearing: 10 June 2019
Date of judgment: 10 June 2019

For the plaintiff: Adv I Zidel SC

Instructed by De Broglio Inc

For the Defendant: Adv P Ramela

Instructed by: Marivate Attorneys

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 6481/2017

In the matter between:

RAY-LEE PRINSLOO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

On 10th of June 2019 before the Honourable Justice Neukircher, J; having heard counsel; it is ordered:

1. The Defendant shall pay to the Plaintiff the capital amount of R 2 562 827 – 00 in respect of General Damages and Loss of earnings together with interest *a tempore morae* calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996.
2. Payment will be made directly to the trust account of the Plaintiff's attorneys with fourteen (14) days:

Holder	De Broglio Attorneys
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Account Number	[...]
Bank & Branch	Nedbank - Northern Gauteng
Code	198 765
Ref	51263

3. The Defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse 100% of the Plaintiff for the costs of any future accommodation of the Plaintiff in a hospital or nursing home, or treatment or rendering of service to him or supplying goods to him arising out of injuries sustained by Plaintiff in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.
4. The Defendant is to pay the Plaintiff's agreed or taxed High Court costs as between party and party, such costs to include the costs of 15th February 2019 and 10 June 2019, the costs of preparation and qualifying and reservation fees of the experts, inclusive of the time spent by Experts for preparation for and of the draft joint minute, drafting of proposed joint minute and time spent in finalizing joint minutes consequent upon obtaining Plaintiff's reports, the Plaintiff's reasonable travel and accommodation costs to attend the Defendant's and own experts, and senior counsel. All past reserved costs, if any, are hereby declared costs in the cause and the Plaintiff as well as subpoenaed witnesses are declared necessary witnesses.
- 5A. The Plaintiff shall, in the event that the costs are not agreed serve the Notice of Taxation on the Defendants Attorney of record; and
- 5B. The Plaintiff shall allow the Defendant fourteen (14) days to make payment of the taxed costs.
6. There is a contingency fee agreement in existence between the Plaintiff and his Attorneys.

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BY ORDER

REGISTRAR OF THE HIGH COURT