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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED.

Case No.369/2016

In the matter between:

RIKHOTSO MIXO PEARL

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NF KGOMO J

INTRODUCTION

[1] This is a claim by the Plaintiff' an adult female person born on 20. May 1994, for damages in respect of injuries that she suffered when she was involved in a motor vehicle accident on the 18 February 2012 when she was seventeen (17) years old. She was a passenger of a motor vehicle bearing registration letters [....] ("the insured vehicle") then and there driven by Muzamani John Bvuma ("the insured driver") which hit another vehicle with registration letters and numbers [....], there and

then driven by Calvin Chaulile from the back.

[2] The parties settled the merits in this case at full value in favour of the Plaintiff, i.e at 100% on 17 May 2017. Future medical expenses were also catered for by the Defendant furnishing the Plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund Act, 1996 (Act 56 of 1996) as amended.

[3] This trial is only about the aspect of loss of earnings.

[4] The Plaintiff claimed the amount of R500 000-00 (one and half million rand) for loss of earnings and/or earnings capacity.

PLAINTIFF'S INJURIES

[5] The Plaintiff only suffered a right femur fracture which will not lead to permanent disability even according to her Orthopaedic Surgeon, Dr Frank Peters. According to the Defendant's Orthopaedic Surgeon, Dr TJ Bogatsu, the whole body impairment was a mere 3%. According to the Plaintiff expert, the WPI was 9%. The above prognoses points to the Plaintiff having suffered a not so serious injury which has since healed.

[6] According to the joint minutes of the Occupational Therapists, Ms Rene' Walker and Ms Success Moagi, she need no specific assistance on a physical level currently. Her employment prospects will be directly dependent on the level of education she ultimately obtains. Should she be able to pursue her chosen profession of Social Worker, the experts agreed that she would not have any impediments that could be emanating from the sequelae of the accident. However, should she be employed in a sector requiring medium to heavy physical work and prolonged standing, she may feel some fatigue.

[7] At the time she was seen by the occupational therapists, she was a first year student at Boston College doing studies in Human Resources. The experts also agree that should she finish it and be employed, her employment would be of sedentary nature which she would manage comfortably.

[8] They recommended future vocational guidance to assist her choose the appropriate career path.

LOSS OF EARNINGS

[9] Initially the respective educational psychologists of the plaintiff and the

respondent prepared individual but different prognoses of the plaintiff's future prospects. However, they later signed joint minutes that settle most issues.

[10] Both educational psychologists agreed that the plaintiff's birth and historical development milestones were normal except for speech and language development deficiencies pre-accident. Emotionally post-accident they agreed that she was apparently well adjusted socially.

[11] Academically, they agreed that even pre-accident she was of low average intellectual functioning. She failed Grade 10 twice before ultimately passing in 2012 with a diploma pass. According to these experts, the accident had not seriously affected the plaintiff's prospects. Even post accident according to them, the pass she acquired would have been the same she would have achieved even before the accident.

[12] According to these experts, on her intellectual functioning, they agreed that her intellectual ability generally fell in the low average to an extremely low average range of functioning. According to them further, she presented with significant difficulties in her cognitive functioning suggesting that she was likely to struggle to cope with higher education in general.

[13] Educationally-wise they agreed that her pre-accident performance academically was not good, hence she failed Grade 10 as alluded to above. However, she managed to pass Grade 12 post accident.

[14] As regards her future prospect post-accident, they agreed that her intellectual potential to have obtained an NQF 5 or 6 level was there albeit very low even pre-accident. 'According to her educational psychologist, had it not been for the accident the plaintiff may have been likely to experience, albeit temporarily emotional trauma and physical pains that may initially interfere with her day today functioning, thus compromising her quality of life to some extent. Otherwise, they both deferred to the industrial psychologists.

[15] The industrial psychologists commented that when the accident occurred, the plaintiff was repeating Grade 10 for the third time. Post-accident she continued with schooling until she completed Grade 12 in 2018.

[16] According to her industrial psychologists, pre-accident, the plaintiff would have been able to continue her tertiary education and enter the open labour market at B2 Paterson semi-skilled level and later progressed to the median of C.3 Paterson level

by age 45.

[17] According to the defendant's expert, considering her post accident developments where she continued with her studies and passed her matric albeit failing regularly, her prognosis was that her pattern suggested that she was likely to settle for a matric certificate given her below average proficiency pre-accident. As a consequence she was likely to enter the open labour market on the lower level or quartile of Paterson level A.3, progressing at intervals of 4 years in real terms to eventually plateau at the median quartile of Paterson level B3 / B4 of age 45, with the industry applicable inflationary increases thereafter.

[18] In support of this prognosis, the educational psychologist, Zanele Kubheka stated among others as follows on the plaintiff's pre-accident intellectual abilities educationally:

"... informing from all surrounding circumstances which inter alia include the family educational progress, psycho-social factors and pre-accident scholastic history, it is considered that in all likelihood, Ms Rikhotso (plaintiff) would have most probably taken longer to achieve her academic goals. IN fact, the possibility of her dropping out before completing the NQFG cannot be excluded with certainty ..."

[19] The industrial psychologists agreed that pre-accident the plaintiff would have been able to work until retirement age 60 - 65 depending on the retirement policy of the company she would *have* been working for at that time.

[20] Post-accident the industrial psychologists were ad idem that the plaintiff's employment prospects would be directly dependent on the *level* of education she attains ultimately, which at the moment is Grade 12. That should if she is able to pursue a career as a social worker as she wishes or dreams for, it is expected that she will be able to meet the psychical requirements of the job, touch and go.

[21] They agreed that her current rate of work, rate of qualification profile and physical capacity does not meet the physical requirements for activities that require medium to very heavy types of work category as well as those that require the whole body range of motion, agility and stamina through gross body movements like squatting or crouching. However, she is suited for sedentary to light type of work category with her mobility constraints.

[22] They also agreed that she would benefit from adequate vocational counselling and career guidance from appropriate functionaries to realise a proper

choice of career path.

[23] Her own industrial psychologist also opined that she would need a lot of consultations with practitioners, which may impact her work and thus her competitiveness in the work sphere. Furthermore, that her promotability prospects may be affected.

[24] The Defendant's industrial psychologists saw issues differently. She opined that the accident seems to have had very slight effect on the Plaintiff's ability to participate in the open labour market. Deferring to the educational psychologist Ms Kubheka's findings post-accident, she stated that the possibility of her dropping out of school or further studies cannot be ruled out, and that this is not accident related. She agreed with the further prognosis that the Plaintiff's pre and post-accident academic prospects were almost similar. That she can do herself a favour by taking psycho-therapy sessions to enhance her low academic and emotional functioning.

[25] By the by, we are dealing here with a claimant whose only injury is a thigh fracture and that fracture had healed. Furthermore, she will benefit from a section 17(4) Undertaking that is part of the package here, which brings us to the actuarial calculations.

[26] According to the defendant's counsel the circumstances here are such that the Plaintiff should at worst not be awarded loss of earnings compensation and at best, be awarded the Scenario 2 calculation prognoses of the actuary, which is an amount in the region of R355 000-00.

[27] The plaintiff's counsel argued for an amount as set out in the actuary's scenario 1, which is the amount of R747 450-00.

[28] The Plaintiff's educational prospects and emotional sequelae are very low. In fact, there is no much difference in her pre and post-accident scenario's. She is practically healed. Any niggling sequelae of her injuries will be taken care of by the section 17(4) Undertaking.

[29] I have applied my mind to the contingency regime applied by the actuary here. In my considered view and finding, the actuary was assuming a more seriously injured person.

[30] After careful consideration and evaluation, it is the finding of this Court that the actuary's scenario 2 should be the basis of the calculations for the loss of income here. Furthermore, the Plaintiff's peculiar circumstances should attract a

contingency of 20% on uninjured income and a 30% contingency on the injured income. The outcome of that exercise would amount to the following: Uninjured Income will amount to R2 842 160-00 (one million eight hundred and forty-two thousand one hundred and sixty rand) and Injured income would be R2 486 960- 00 (two million four hundred and eighty-six thousand nine hundred and sixty rand). Loss of income would thus be R355 200-00 (three hundred and fifty-five thousand two hundred rand).

ORDER

[31] The following order is made:

31.1 The defendant is ordered to pay to the Plaintiff the amount of R355 200-00 (Three hundred and fifty five thousand two hundred rand) as loss of earnings.

31.2 The defendant is also ordered to pay the costs of the action.

NF KGOMO

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

APPEARANCES

1.	For the Plaintiff	:	Adv. TC Maphlela
	Instructed by	:	B Seshibe Attorneys
		:	c/o Coxwell, Steyn, Vise & Naude Incorporated

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2. For the Defendant : Adv G Mokonoto
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- Telephone Number : 0155160116
3. Date of hearing : 9 February 2019
4. Date of Judgment : 29 March 2019