

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 48343/2020

DATE: 13-09-2023

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| <p>DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: YES / NO. (2) OF INTEREST TO OTHER JUDGES: YES / NO. (3) REVISED. <u>DATE</u> <u>SIGNATURE</u></p> |
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10 In the matter between

ANNELIZE SMIT

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MPOFU, AJ: Thank you. We are now handing an *ex-tempore* judgment on this matter of Annelize Smit and the Road Accident
20 Fund. I would like to place on record this fact that Mr Madasela objected to the matter being dealt with by way of default on the basis that they had entered an appearance to defend. But the Court made a ruling in favour of the plaintiff that we will indeed proceed by way of default, and this is what we did.

Mr Smit had promised that he will present a stated case

in accordance with the papers but he in turn decided to call Annelize. The background facts are that Annelize Smit was a passenger on 18 December 2017 in a motor vehicle registration BPC 744 NC. Driven by the plaintiff's mom. Unfortunately, late C Smit passed as a result of this collision and one Gawe Eswe.

The two drivers were deemed negligent in accordance with the accident report. As they say here the collision was caused by the negligent driving of first and second insured drivers in that they failed to keep a proper lookout and all of that.

10 As a result of this accident Annelize suffered a whiplash on the left femur, which was fractured, a bilateral [indistinct] fracture, a fracture, how can there be a fracture of bladder and kidney? There was in fact an injury on the bladder and the kidney and rib fractures, a long contusion with pneumothorax on the right side.

She was admitted to Kathu where she was extensively treated and was moved to another hospital. Today as she stated her case. She does not remember the accident or the hospitals
20 that she went into and no told her what happened at the hospitals.

I would like to place on record that these particulars were amended at a later stage to say that she will suffer future damages in the amount of R8 219 428.22. The total was this amount that I read out now. And Mr Van Rensburg is the attorney who instructed Mr Smit.

I have had opportunity through CaseLines to see the report of Professor C T Frey the orthopaedic surgeon as well as Madeleine Dick the occupational therapist. The industrial psychologist Dr Johan De Beer, the actuarial reports through Gerrit Jacobson.

And you know it was a bit difficult, but settlement was ultimately reached on the merits. Issues raised initially by Mr Madasela was that "we do not have jurisdiction" if I am not mistaken. But this was sorted out at the end of the day.

10 Hence, I found it amazing when Mr Madasela awarded or agreed to general damages of a R1 000 000 but later on wanted this matter to be removed on the basis that they have now since defended and I indicated he cannot have his cake and eat it, or he cannot have it both ways. As a result, we proceeded on default.

Annelize is a young woman who is now 30 years of age. She worked for a cruise ship as a beautician and massage lady before the accident. However, due to the accident she suffered enormously. She has now reverted to live with her dad in a farm in the Northern Cape. Her plans were that she would go back to
20 the cruise ship, and she would work as a beautician or a masseuse.

And I would like to indicate that the orthopaedic surgeon Professor Frey indicated in his report that there was extensive loss of consciousness with retrograde and anterograde amnesia. As a result, she has no connection of the accident which is

supported by her own *viva voce* evidence.

There were also multiple extensive facial scars. For example, a 12-centimetre, 16-centimetre rugged scar over the chin, facial scars, sutured in Kimberley on the same day. She suffered broken teeth both on the upper and the lower jaw as well as the jawbone. She has a cervical spine injury called whiplash and she had serial rib fractures, ribs 2 and 5 and she suffered on her chest which also suffered injuries and the finger, the wrist she testified today also is injured as well as the femur which is the
10 thigh. Her forearms both left and right are not in good functioning condition. If she has to type, she will not be able to do that as a result.

The actuary Ryan Immelman made a sound and objective quantification of loss of income which the plaintiff will suffer as a result of this.

I required Mr Madasela to address the Court, but he did not want to address the Court because he feels the matter is on default and there is no need to say anything. He left everything in the hands of the Court.

20 Mr Smit addressed the Court. Referring the court to the reports. During her evidence it emerged that Annelize will not be able to in future sustain herself financially for the following reasons that she has lost use let us say of her forearms left and right and when she sits or stands it cannot be for a long time. If she sits or stands, she is nauseous and she suffers headaches

which comes on a weekly basis. Sometimes very serious headaches ones a week at least.

And he addressed me on the future loss of expenses. It is now settled that the general damages would be a R1 000 000 for Annelize and she now seeks loss, future loss of earnings. According to Mr Smit this lady will not be able to carry on her job as a masseuse because she has to bear her arms on whoever she is massaging and when that happens then it is difficult for her to carry out the functions. She thought of going to Cape Town to
10 pursue her trade as a result of this accident she is unable to do that. Several cases were referred to. The Court has taken note of those cases. If she drives or sits long in a position she cannot function.

She has assumed limited use of both her right and left forearm. There is a pin on her wrist which impedes her from carrying any middle-sized package. During cold weather the conditions becomes serious. She has to take painkillers to reduce the pain. And she, although this was not canvassed very clearly whether it is arising from the
20 accident or not, but she says her one leg is longer than the other. As a result, this brings challenges whenever she has to stand or sit.

She has a post matric qualification in that she has a diploma from a Camelot International School. She also has an advanced diploma in health and beauty which you do in

the final year as a course, and this is sort of advanced. She has received accolades from Camelot in that she was awarded and ambassador for 2015 and based on her performance as an outstanding student.

And her plans to work in the cruise ship have now been shattered because she thought she would do that. She worked in February 2016 for four months and she, the different amounts of monies that she would have earned up to now have been canvassed.

10 To cut a long story short the Court has assessed the evidence of Annelize and is of the view that indeed she will never be able to practice her trade. This coupled with the fact that she suffered injuries on her face as well.

I saw somewhere on CaseLines there was mention that beauticians would want to deal with a person who is kind of perfect facially. They would not want anybody who has issues on their face to, you know they would question "but you are like this, and you want to deal with us." So, all of these factors taken together would really reduce her
20 chances to compete in the open market.

I have taken into account all of these factors and I make the following order as per draft order that she will be paid R1 052 325.80, one-million-fifty-two-thousand-three-hundred-and-twenty-five rand and 80 cents in full and final settlement out of the motor vehicle accident which occurred

on 6 March. This amount is for general damages. And when it comes to future loss the Court awards her an amount of 3 000 000.

I am sorry I was reading from a completely different paper. What I needed to say in regard to Annelize let me retract, is the following. That the defendant is liable for 100 percent of the proven damages and the plaintiff's claim for general damages and loss of income the defendant shall pay to the plaintiff an amount of R1 000 000. That is for general
10 damages. And R3 000 000 for past and future loss of income.

These monies will be paid into the account of Leon J. J. Van Rensburg, ABSA Bank in Germiston. And the defendant shall be liable for interest on the aforesaid amount at the rate of 10.25 per annum calculated from 14 days at the date of his order to the date of payment. Both days inclusive.

The defendant shall furnish the plaintiff with an undertaking certificate in terms of section 17(4)(a) of the
20 Road Accident Fund as Amended for 100 percent of the cost of the future accommodation of the plaintiff in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods [indistinct] arising out of injuries sustained by her in the motor collision.

The defendant shall pay the taxed or agreed cost on

the high court pay party and party scale up to and including the 13 September 2023. The travelling cost of the plaintiff to and from the medico legal appointments including all attendances therewith or in connection thereof.

The cost on trial of counsel and on attorney with the right of appearance, including counsel and or attorney's consultations with experts and the preparation.

Reservation and qualifying fees of the following experts together with their consultations with counsel and or attorney if any and as determined by the taxing master namely Professor Frey, Madeleine Dicks, Johan de Beer and Gerhard Jacobson.

The parties shall first attempt to settle the plaintiff's party and party cost in the event that costs are not agreed.

The parties agreed as follows that the plaintiff shall serve a notice of taxation on the defendant's attorneys of record and the plaintiff shall allow 14 days to make payment of the tax cost. The aspects of the past hospital and medical expenses are postponed sine die.

I am so sorry for reading into record the wrong report. It is because everything is done in a rush. This is an *ex-tempore* judgment, and a wrong order was sitting in front of me. Thank you very much.

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MPOFU, AJ

JUDGE OF THE HIGH COURT

DATE: