



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

(1) REPORTABLE: YES / <u>NO</u>
(2) OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3) REVISED
DATE <u>11/8/2017</u>
SIGNATURE <u>[Signature]</u>

11/8/17

Case No: **14047/2010**

In the matter between:

DIBAKISO ROSE MOFOKENG (KWEBU)

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

NGOBENI, AJ:

INTRODUCTION:

[1] This is a personal injury claim arising from damages sustained by Plaintiff, as a result of two motor collision on the 1st of October 2006 and the 5th of December 2010. On the first incident the Plaintiff was a passenger and her husband was driving. They were busy stopping at a stop street when another vehicle came from behind and collided into their vehicle. She lost consciousness and the Jaws of Life had to be used to free her from the wreck. Their vehicle was pushed forward a few meters away from the stop street. The Plaintiff was off work for 1 month after the accident. She went back to work but could not do her work as before the accident and resultantly lost her job. On the second incident the Plaintiff was a passenger in a vehicle and while they were driving and slowing down for a speed bump, a drunken driver emerged from a yard and smashed into the side of her on the passenger side. She was stuck in the car for over thirty minutes and

she had loss of consciousness for several minutes before being taken out of the car and then taken to hospital in an ambulance.

[2] Both cases appeared before court on a consolidated basis and accordingly adjudicated at the same time.

[3] The parties settled the merits at 100% in favour of the plaintiff.

[4] The Plaintiff did not claim past medical and Hospital expenses. The Defendant tendered an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for future medical and Hospital expenses. It was agreed that she does qualify for general damages however, the court was requested to determine the extent thereof. The court was requested further to adjudicate on the past and future loss of earnings.

[5] The plaintiff sustained the following bodily and psychological injuries:

5.1 Soft tissue injury to the back that left her with ongoing sequelae.

5.2 Soft tissue injury to her neck.

5.3 Medial condyle fracture of the left knee; and

5.4 A mild traumatic brain injury.

[6] At the time of occurrence of the collision, the plaintiff was 34 and 38 years old respectively. She is currently 45 years of age.

[7] It is common cause that the plaintiff sustained a serious long-term impairment or loss of a body function. She is depressed and has no motivation to work and unemployed. She lost her job as a result of the sequelae of the accident.

[8] The Plaintiff passed Grade 12 and thereafter she did a Home Nursing and first aid course for one year. She was working as a Child Care Worker for ten years at Etembeni Children's Home. She used to do gymnastics before the accidents but can no longer participate.

[9] The opinion and recommendations of Wilma van der Walt (Occupational Therapist) is that the Plaintiff struggles with psychological and emotional problems relating to poor coping with pain an emotional reaction to pain. She has become despondent and forgetful since the accident. She would need occupational therapy in future. It was also further recommended that the Plaintiff attend Pilates training session using a rehabilitative approach. She is vulnerable and displays poor motivation for work. She can do sedentary work with intermittent light physical exertion and intermittent change of posture to include short duration standing and walking. Due to her chronic neck and back pain, load handling is not advisable. She will be able to engage in work that is of an administrative nature and that has sedentary work demands. It is unlikely that she will be able to endure medium duty load handling for prolonged periods. Her high levels of pain would affect her endurance for seated work and her ability to engage in work tasks with load handling and physical elements. As a result of the injuries sustained and remaining deficits, she has experienced a loss of productivity. Considering that her previous job was that of a childcare worker and that she only has experience as a childcare worker, she has also experienced a loss of employability. It is unlikely that she will be able

to secure employment of an administrative nature and or to resume work as a childcare worker because of the physical demands of the job, for example, carrying children.

- [10] Dr. LA Oelofse (Orthopaedic Surgeon) examination revealed that the Plaintiff is tender in the whole cervical area. She has muscle spasms in the neck. She has local pain with restricted movements which are painful. She is very tender L4/5 which the expert believes to be a disc lesion at that level as well as possible damage to the interspinous and supraspinous ligaments. No surgery is foreseen for the Plaintiff' neck in future. As she has a 10% chance of surgery to the neck. Her future earning capacity has been compromised by the accident as she will have to be careful not to hurt her neck by handling heavy children. She will only be able to work until normal retirement age if someone can assist her in picking up the children or else she will have to do work in an office environment which she will not have to handle any heavy objects.

[11] According to Dr. Irma Walters (Industrial Psychologist) the Plaintiff has been rendered a vulnerable employee as a result of the injuries sustained and the subsequent emotional difficulties. Because of the accident the Plaintiff's injuries resulted in limiting her capability in following her original career path. But for the accident, the plaintiff would have been able to earn a salary of a semi-skilled employee and would have been able to progress to the level of a supervisor. The plaintiff is currently unemployed and her career choices have been truncated. The accident and the effects of the resultant injuries have resulted in limiting the plaintiff's capability in following her original career path.

[12] The following precedents of case law are examples where the plaintiffs sustained bodily and psychological injuries of a similar nature and the awards thereof:

12.1 Whiplash injury - Nhantumbo v Road Accident Fund 2014 (7C5)

QOD 12 (GSJ): A 49-year-old panel beater sustained a soft tissue injury of the lumbar spine and cervical spine. He also sustained lacerations on the left hip. He suffered severe pain for approximately two to three weeks subsequent to the collision

and obvious discomfort and loss of amenities immediately after the collision. He will not be free of pain throughout his life, treatment notwithstanding. His work involves standing and bending, which he is unable to do as a direct result of the accident. He cannot sit for long or walk for long distances since the accident. The Plaintiff was awarded an amount of R200,000.00 the current value of which amounts to R236,000.00.

12.2 Knee injury - *Rabe v Road Accident Fund* 2011 (6E7) QOD 13

(GNP): A senior male protection officer doing work of a physical nature sustained a left-supra-orbital laceration, abrasion of the left forearm, fracture of the left clavicle and a tibial plateau fracture of the right knee. The most serious injuries were the fracture of the right knee joint and the fracture of the shaft of the left clavicle. An open reduction and internal fixation of the right tibial plateau and a plate fixation with an L-type plate were performed. Plaintiff resigned due to incapability of dealing with the physical requirements of his job. The Plaintiff was awarded an amount of R180,000.00 the current value of which amounts to R265,000.00.

12.3 HEAD INJURY - *Sauerman v RAF* 2004 5 C&B B4 – 190: A 36-year-old policeman sustained a concussive head injury with a whiplash injury of neck – no significant permanent after effects. The concussive syndrome became irreversible. He experienced failure to cope with demands of daily living & work. He had poor attention & memory. He was irritable and experienced eadaches, dizziness, fatigue and anxiety. His neuropsychological and intellectual functioning and concentration were severely impaired. The Plaintiff was awarded an amount of R20,000.00 the current value of which amounts to R42,436.00.

12.4 PSYCHOLOGICAL INJURIES - *Daniels v RAF* 2000 5 C&B C3 – 1: A 33-year-old female sustained whiplash injury of the neck, severe psychological disturbance in the form of post-traumatic stress disorder, panic attacks & agoraphobia. She had neck and shoulder pain, headaches, diminished range of neck movement. She suffered from anxiety, she had suicidal tendencies and afflicted self-mutilation. The Plaintiff was awarded an amount of R80,000.00 the current value of which amounts to R209,600.00.

[13] It will be fair and reasonable if in accordance with Professor HLM du Plessis' actuarial report, in particular that a higher post contingency deduction be applied and that the Plaintiff be awarded an amount of R1,143,742.00 (one million one hundred and forty-three thousand, seven hundred and forty-two rand) in respect of her claim for loss of earnings (past and future) and R600 000, 00 (Six Hundred Thousand Rands) in respect of general damages.

[15] I make the following order:

1. The defendant is ordered to pay the amount of R1,743,742.00 (One million Seven Hundred and forty – three three thousand, seven hundred and forty –two rand) in respect of loss of past and future endings to the plaintiff into the following trust check bank account of Ackerman Swart Incorporated, Standard Bank Trust Account number 28 269 6679 with reference number K5084;

- 1.1 should the failed to pay the above-mentioned amount on or before 14 days from date of this court order, the will be liable to pay interest on the said amount at the rate of

10.5% per annum calculated from date of this order to date of payment.

2. The defendant is ordered to provide the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for payment of 100% of the cost of the future accommodation of the plaintiff in a hospital or nursing home or treatment of all rendering of a service to her or supplying of goods to her arising out of the injury sustained by her in the motor vehicle collisions which Orchid on 1 October 2006 and 5 December 2010, after such costs have been incurred and upon proof thereof.
3. The defendant will pay the plaintiff's taxed or agreed party and party costs on a High Court scale, including reasonable costs of one consultation with the plaintiff to consider the offer made by the defendant, the cost incurred to accept this offer and to obtain payment of the amount and all the undertaking mentioned in paragraphs 1 and 2 above as well as any costs reserved.

4. The costs referred to herein above in paragraph 3, shall also include the plaintiff's costs and expenses as far as expects and counsel are concerned, including the following:
 - 4.1 The fees of senior and junior counsel on the High Court scale, inclusive but not limited to councils full, reasonable day fees and fees for preparation;
 - 4.2 The cost of the trial held on the ace of August 2017;
 - 4.3 The reasonable, taxable costs of obtaining all medico-legal/expert reports including RAF4 Serious Injury Assessment and Actuarial report from the plaintiff's experts which were finished to the defendant;
 - 4.4 The reasonable consultation, preparation, qualification, travelling and reservation fees, if any, of the expects of whom notice have been given, in terms of rule 36;
 - 4.5 The costs of all consultations between the plaintiff, his/her attorney and/or Counsel in preparation for hearing of the action to discuss the terms of this order;
 - 4.6 the reasonable, taxable accommodation and transportation costs (including Toll and E-Toll charges)

incurred on behalf of or by the plaintiff in attending medico-legal consultations with the party's experts, consultations with the plaintiff's legal representatives and the court's proceedings, subject to the discretion of the taxing master;

4.7 The reasonable fees of the plaintiff's experts related to the discussions with the opposing experts of the defendant and become piling of the joint minutes.

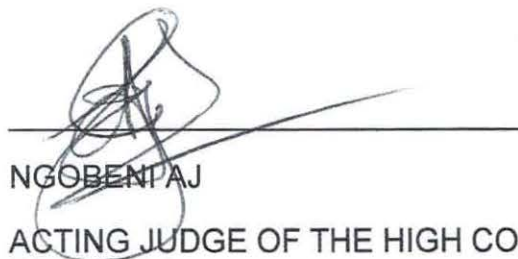
5. The plaintiff agrees to the following:

5.1 In the event that costs referred to in paragraphs 3 and 4 are not agreed upon, the plaintiff agrees to serve notice of taxation on the defendant's attorneys of record;

5.2 The plaintiff shall allow the defendant 14 court days to make payment of the taxed costs from date of settlement of taxation there of;

6. The costs referred to in paragraphs 3 and 4 above shall be paid into the aforementioned trust account of Ackerman Swart Incorporated.

7. All amounts shall bear interests at the rate of 10.5% per annum from the date that the due and payable.
8. The contingency fee agreement which is in accordance with the rules signed on 20 February 2007 and 15 September 2011 respectively is in operation.



NGOBENTAJ
ACTING JUDGE OF THE HIGH COURT