

**REPUBLIC OF SOUTH AFRICA**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

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

**Case Number: 2015/96222**  
**21/5/2018**

In the matter between:

MZIZE, NOBONGISO

Plaintiff

and

ROAD ACCIDENT FUND

Respondent

---

**JUDGMENT**

---

**MOKOSE AJ**

- [1] This is an action for delictual damages against the Road Accident Fund arising out of an accident which occurred on 21 March 2015 in which the plaintiff sustained serious injuries as a passenger.
- [2] The merits have already been settled so too the general damages. The defendant has also furnished the plaintiff with an undertaking in terms of Section 17(4) of Act 56 of 1996.
- [3] The outstanding issue to be determined by this court is the plaintiff's claim

for loss of earnings in the sum of R1 000 000,00 (one million rand) as per the particulars of claim.

- [4] At the commencement of the trial, it was brought to the court's attention that at a pre- trial conference which was held on 25 April 2018 counsel for the defendant undertook to revert to the plaintiff's legal representatives before the 4 May 2018 on whether the expert reports are admitted. Counsel for the defendant further stated that should they not revert by that date, the expert reports can be considered as having been admitted.
- [5] The defendant failed to revert to the plaintiff on the admission of the expert reports. However, at the commencement of the trial, counsel for the defendant advised the court that the reports have not been admitted due to there being factual inaccuracies in the reports. It is also to be noted that the defendant failed to file any reports.
- [6] Counsel for the defendant intimated to the court that the issues were three-fold. On the one hand, whether the plaintiff was employed at the time of the accident and if so, in what capacity and at what salary.
- [7] The plaintiff's first witness was Mrs Dunyiswa Takata, her former employer who testified that the plaintiff had been in her employ from January 2014 to March 2015. She confirmed further that the plaintiff's employment was terminated after the accident as she could not perform her functions as a domestic worker in her home. She also confirmed that she paid the plaintiff the sum of R1500,00 per month.
- [8] In cross-examination, Mrs Takata clarified that she does not run a hairdressing salon but performed the functions of a hairdresser during her free time. She confirmed further that Mrs Yingwana was a neighbour.
- [9] The second witness was the plaintiff who confirmed Mrs Tokota's evidence that she was employed as a domestic worker earning the sum of R1500,00 per month. She testified further that she did not run a business as a hairdresser but that she did do people's hair for no fee from time to time. This usually happened during her free time during the weekend.
- [10] In cross-examination, the plaintiff confirmed that she had been interviewed by several experts and noted that two of the experts had reported that she worked as a hairdresser at a salon and earned the sum of R1000,00 per

month, which she could not explain. The court's attention was also brought to the affidavit of the plaintiff which was signed on 17 May 2018 at Bizana wherein she confirmed her employment and her earnings.

- [11] In re-examination, the plaintiff confirmed that she had indeed been employed by Mrs Tokota and earned the sum of R1500,00 per month as a domestic worker. She reiterated that she did people's hair during her free time and at no charge. She testified further that she had been employed by Mrs Yingwana during 2012 for a period of 6 months during which time she assisted her with domestic duties. At no time did she work for both Mrs Yingwana and Mrs Tokota during the same period.
- [12] The plaintiffs case was closed. The defendant did not call any witnesses.

#### QUANTIFICATION OF PLAINTIFF'S CLAIM

- [13] The general approach to assessing loss of earnings was stated in the matter of **Southern Insurance Association Ltd v Bailey NO<sup>1</sup>** where the court acknowledged that any enquiry into damages for loss of earning capacity is of its nature speculative because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. The court can only make an estimate which is often a very rough one of the present value of the loss.
- [14] Matters which cannot otherwise be provided for or cannot be calculated exactly, but which may impact upon the damages claimed are contingencies and are usually provided for by deducting a stated percentage of the amount or specific claims. **De Jongh v Gunther<sup>2</sup>**
- [15] A trial judge, in assessing compensation has a large discretion to award what he considers just and equitable. He may be guided by but not tied down by inexorable actuarial calculations.
- Legal Insurance Company Ltd v Botes<sup>3</sup>**

- [16] In the event of conflicting evidence from actuaries, a court is not bound to

---

<sup>1</sup> 1984 (1) SA 98 (A) at p113G

<sup>2</sup> 1975 (4) SA 78 (W) at p80F

<sup>3</sup> 1963 (1) SA 608 (A) at p614F - G

accept any evidence in its entirety. It can take any evidence and from the probabilities be assisted by them to arrive at a finding between the two extremes.

- [17] No actuarial report was furnished by the defendant.
- [18] The actuarial report submitted by the plaintiff takes into consideration the normal contingencies of 5% in respect of past loss of earnings and 15% in respect of future loss of earnings. Furthermore, two scenarios were depicted by the actuary the first of which indicates what she would have actually earned in her present job and the second, what she would have earned in the cleaning sector in general.
- [19] The defendant's counsel rejected the plaintiff's submissions and averred that the claim by the plaintiff should not be a claim for loss of earnings but should be a claim for loss of earning capacity. Not only did he fail to furnish the court with an actuarial report, but also failed to support his claim with any substantive evidence that the plaintiff was not employed. He merely speculated about the plaintiffs employment and made unsupported submissions from the bar.
- [20] In view of the uncontested evidence before the court and there being no serious challenges by the defendant in its closing argument as to the calculation, I am of the considered view that the calculation as submitted by the plaintiff is fair and just in the circumstances.
- [20] In the premises, the draft order marked "X" and attached hereto is made an order of court.

---

MOKOSE AJ

Acting Judge of the High  
Court of South Africa  
Gauteng Division,  
Pretoria

For the Plaintiff:

Adv L Haskins instructed by

Kotlolo Attorneys

For the Defendant:

Adv Mthombeni instructed by

Maponya Inc

Date of Hearing: 18 May 2018

Date of judgement: 21 May 2018

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**ON 18 May 2018**

**BEFORE HIS HONOURABLE JUSTICE LEDWABA DJP I**

**N COURT 8E**

CASE NO .:96222/2015

21/5/2018

In the matter between:

**MZIZE NOBONGISO**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

---

**DRAFT ORDER**

---

**BY AGREEMENT BETWEEN THE PARTIES** the following order is made:

1. The Defendant is ordered to pay the Plaintiff a amount of **R1 188 861.30** ("**ONE MILLION ONE HUNDRED AND EIGHTY-EIGHT THOUSAND, EIGHT HUNDRED AND SIXTY-ONE RAND AND THIRTY CENTS**") only, in respect of the Plaintiffs claim with regards to **LOSS OF EARNINGS**, which amount shall be paid to the credit of the trust account of the Plaintiff's Attorneys of record, Kotlolo Attorneys, whose trust account details are as follows:

Bank name: ABSA Bank

Account number:       [....]  
Branch code:           632005  
**REF.:**                   **ddk/k256/15**

3. The Defendant is ordered to pay the Plaintiffs taxed, alternatively agreed costs of the suit on a High Court party-and-party scale, in respect of the quantum, which costs shall include costs up to, but not be limited, to the following:
  - 3.1. The costs consequent upon the employment of counsel, including all costs in order to attend to and finalise the trial on **18 MAY 2018**;
  - 3.2. The reasonable taxable qualifying, reservation and preparation fees of the Plaintiff s expert witnesses, as well as the costs of all the reports and/or addendum reports, including RAF4 assessments and or radiological reports of the expert witnesses of whom notice was given, or whose reports are in the possession of the Defendant and/or the Defendant's attorneys, including the costs of obtaining the reports of the expert witnesses served on the Defendant or in its possession, including any special investigations, traveling fees incurred by and/or on behalf of the Plaintiff to obtain the reports concerned, and attendance of any expert witness's consultation(s) and/or investigation(s), if any;
  - 3.3. The reasonable taxable costs and expenses of transporting, subsistence and accommodation of the Plaintiff to all attended concerned medico-legal examinations on behalf of the Plaintiff;
  - 3.4. The costs of the preparation of **6 ("SIX")** trial bundles as per the Directive issued by his Lordship Mr Justice W van der Merwe, former Deputy Judge President of this Division, or as agreed by the parties at any Pre-trial conference and/or Meeting, if any;
  - 3.5. The costs which costs shall further include the reasonable costs and expenses of the Plaintiff and the witness (the plaintiffs previous employer), which costs and shall also include all necessary travelling and accommodation costs and/or expenses, in order to

attend Court.

- 3.6. The costs to date of this order, which costs shall further include the reasonable costs and expenses of the Plaintiff's attorney, correspondent attorney and assessors (if any), which costs and shall also include all necessary travelling costs and/or expenses, such costs further to include time spent and kilometres travelled concerning attendance to Court and preparation for trial;
  - 3.7. The costs and expenses of preparing, travelling and attending to all pre-trial conferences, as well as round table meetings between the legal representatives for both the Plaintiff and the Defendant, costs for the formulation and/or drafting of any Pre-trial Minutes;
  - 3.8. The costs incurred in consulting with the Plaintiff to discuss any settlement offer made by the Defendant, the costs incurred in accepting any such offer, as well as any costs involved in making any such offer an Order of Court;
  - 3.9. The costs of an interpreter, if any;
  - 3.10. The costs in respect of obtaining documents and lodging of the Plaintiffs claim.
4. In the event that the Plaintiffs costs are not agreed to:
- 4.1. The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
  - 4.2. The Plaintiff shall allow the Defendant **14 ("FOURTEEN")** days from date of allocatur to make payment of any taxed costs; and
  - 4.3. Should payment of the taxed costs not be effected timeously, the Plaintiff shall be entitled to recover interest on the taxed *alternatively* agreed costs at the rate of 10% *per annum* from the date of allocatur to date of final payment.
5. The Plaintiff has entered into a Contingency Fee Agreement.



---

BY ORDER OF THE COURT

On behalf of the Plaintiff: **Adv. L D HASKINS**

079 512 3754

On behalf of the Defendant: \_\_\_\_\_