IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 12181/2019

DATE: 2023-08-14

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
DATE
SIGNATURE

In the matter between

G MODAU Plaintiff

and

RAF Respondent

EX TEMPORE J U D G M E N T

HOLLAND MUTER, J:

[1] Having had the opportunity over the weekend to acquaint myself with the heads of arguments of both the Respondent and the Plaintiff with the relevant case law, which [inaudible due to cell phone interference], copies thereof in line of the view that there is substantial compliance with section 24 of the Act the reason why I am saying that is because the medical practioner who

completed the RAF 1 form had at his disposal the full medical reports from the hospital where the plaintiff was, hospitalised and treated after the accident.

[2] Without, if necessary, could requested later stage there will be reference to specific case law but I failed to see that it can be argued by the fund that there were no substantial compliance with section 24. The matter proceeded today, the issue of general damages cannot be assessed by this Court there has not been any offer forthcoming from the Defendant they have not rejected or made any movements out of the blocks in this regard, in all probability this matter the general damages are the issues, will stand over to be determined by the HPSA.

[3] With regards to the merits the Plaintiff was the only witness who testified and he gave a comprehensive explanation of what happened. His vehicle became stuck because of the pool of water he drove into late night, which caused his vehicle to cut out and he parked next to the lane in which he was travelling on to the pavement.

[4] It was around about midnight or past midnight that the

second vehicle who past, stopped, reversed back and was busy trying to assist him when another vehicle from behind the driver of that vehicle properly got the fright of his life when he saw this stationary vehicle in his lane. That is the vehicle of the person assisting the Plaintiff and he swerved properly to avoid a collision but he swift to the incorrect side, and swift to the pavement where he collided with this stationery vehicle of the Plaintiff cause the Plaintiff to be injured.

[5] The sum total of the injuries of the Plaintiff is not denied by the Defendant, although the Defendant had three experts there were no joint minutes forthcoming because in all probabilities the fund, and which is not strange did not give the necessary instructions for the experts to convers with the experts of the Plaintiffs so that they can bring out the joint minutes in this regard.

[6] The uncontested evidence of the Plaintiff is confirmed by the industrial psychologist used by the Plaintiff. The injuries that he sustained, were serious injuries to his leg, *inter alia* he needs to be in the employment of a person who would be very accommodating towards him, he could no longer perform his duties as a petrol attendant at the filling station.

[7] The owner of the filling station gave him the opportunity to do sedentary work on site of the filling station, the Plaintiff returned to this after the accident and he started doing this up until 21st December 2022, when because of the serious pain he was constantly enduring he could no longer continue even in a sedentary administrative post.

[8] That is undenied from the Defendant side, the question with regards to the injuries of the Plaintiff, is whether in view of the lack of any expert evidence reports from the Defendant side but which were argued from the bar, Ms Motata that he voluntarily resigned, therefore it should not be taken into consideration and into calculation. I disagree.

[9] For reasons, it is uncontested that he was in a lot of pain he could no longer continue, and in the calculations by the Defendant done the Plaintiff council in applying the necessary continuities in my view went far, far beyond what was necessary.

[10] The calculations premorbid and the contingencies applied thereto, I have no problem with that the

postmorbid is taken to a 30 percent although it was a fifteen percent that were done by the actuary. The difference between the calculations after 30 percent the postmorbid is applied by the Plaintiff council, amount to R 241 831.00 while the calculation done by Ms Motata without referring that to industrial psychologist and or actuary on their behalf her calculation is R 169 281.70.

[11] I'm reluctant to accept the calculation done by Ms Motata because there is no basis therefore, there is no evidence expert supporting the view that the voluntarily retirement of the Plaintiff must be taken into account and must be penalised therefore.

[12] I felt that the reasoning thereto was wrong and I disagree under the circumstances. The order which I propose is that the merits is 100 percent; in favour of the Plaintiff and undertaking in terms of sections 17(4) of the Act is a 100 percent, the question of general damages is postponed *sine die* the question of loss of income is the amount of R 241 831.00.

[13] With regards to cost, it is so that the matter was here on trial last Friday prior to the 11th and for reason already alluded to above with regard to the alleged non-

compliance section 24 postponed until today.

[14] I have given my judgment on the alleged non-compliance. I might add in this regard that the Defendant in paragraph 13 of their plea, in reply to the Plaintiff averments in the particulars of claim, that they were in compliance with section 24, the Defendant accepted that.

[15] The aspect of non-compliance with section 24 were done, somewhere in March 2023, informally in letters or emails which were sent from the curator of the Defendant.

[16] That is not how it works if they wanted to raise a special plea and the special plea is not unknown to them because they raised two special pleas, with regard to the provisions of section 3(3) (a) of the Regulations. I in my view they could have or they should have raised no-compliance with a further special plea as part of their plea, the informal raising thereof is not part of the pleadings before Court it is not how it is done. I am not going to be bound by that.

[17] That cause the matter to be postponed from Friday, up

until today the question of cost is in the discretion of the Court. The Court take into the consideration the circumstances under which a postponement was made. The Court can, in voicing its disapproval with the conduct of the party consider the punitive cost order, or cost order extra ordinary not a normal party and party scale.

[18] I am of the view that the one day, the first day of the 11th of August 2023, the cost be borne by the Defendant on a party-party scale but the cost of today is squarely because of the conduct of the Defendant in this regard by forcing the Plaintiff to come back for a second day.

[19] Therefore, the cost for today of the 14th of August 2023 will be on an attorney and client scale.

19.1 Draft order for case number 1218/2019 G Modau and the Road Accident Fund the draft order which I mark “XYZ” is made an order of court.

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HOLLAND-MUTER, J

JUDGE OF THE HIGH COURT

DATE: ……..