



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

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| Reportable: | NO |
| Of Interest to other Judges: | NO |
| Circulate to Magistrates: | NO |

Case no: 1913/2014

In the matter between:

MINNIE DAWOOD

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: MOROBANE, AJ

JUDGMENT: MOROBANE, AJ

HEARD ON: 29 MAY 2019

DELIVERED ON: 1 AUGUST 2019

- [1] This is an action for damages in respect of personal injuries sustained by the Plaintiff arising out of a motor collision which occurred on 16 February 2012. The Defendant, in terms of the Road Accident Fund Act 56 of 1996, is obliged to pay for all loss or damage wrongfully incurred by a victim of an accident in a motor vehicle.

- [2] The parties had previously settled the merits limited only to the issue of negligence. The Plaintiff's claim for general damages was rejected. At this stage, the only issue to be determined is the quantum for loss of earning capacity.
- [3] The Plaintiff testified in person and led the evidence of four other witnesses who testified on his behalf. They are Mr EM Pitse; Dr PA Olivier, an Orthopaedic Surgeon; Dr EJ Jacobs an Industrial Psychologist; and Mrs N Potgieter an Occupational Therapist.
- [4] The Plaintiff testified that he left school at Grade 5 and obtained a code 8 driver's licence. He was employed as a driver at a Deboning Company doing deliveries in and around Bloemfontein. His other duties were to package meat, load and off-loading boxes and crates, and to pull heavy trolleys. On his injuries, he testified that his left femur was injured and screws were inserted into his left knee. As a result, he was unable to properly control the clutch while driving. In addition, he could not carry heavy objects or stand for more than 10 minutes. Ultimately, he was dismissed from his employment. The evidence of the witness is accepted, except for the parts relating to his dismissal and his other duties other than that of a driver. The rest of his testimony was corroborated by the other witnesses.
- [5] The second witness, Mr EM Pitse stated that he was the Plaintiff's supervisor at the time of the accident. The Plaintiff was earning between R2 000.00 to R2 500 per fortnight. He testified that the Plaintiff was a driver whose duty was only related to driving. He

further testified that the Plaintiff was not dismissed, but he was retrenched by the employer as the business went into liquidation. I found the witness was honest and truthful. I have no hesitation to accept his testimony.

[6] Dr EJ Jacobs testified that his opinion was based on the reports by the Plaintiff's orthopaedic surgeon and the occupational therapist. His opinion was that the Plaintiff's job as a driver was lighter and less physical. But it was not sedentary in nature. He further opined that the Plaintiff was less productive in his work after the accident. He recommended that the Plaintiff be regarded as unemployable. I have no reason to doubt his evidence and the same is accepted.

[7] The fourth witness, Ms Nicolette Potgieter confirmed her report. She testified that the Plaintiff was a functional driver whose other duties were to load and to off-loading medium to heavy deliveries. She recommended that the Plaintiff should only do sedentary type of work. The Plaintiff's back pain was also confirmed by the Defendant's occupational therapist. She conceded that the Plaintiff's knee function was normal as no weight was applied during the assessment. Her conclusion was that the Plaintiff can still drive, but it was not advisable for him to do so. I accept only one part of her evidence. In addition, I reject her evidence relating to Plaintiff's alleged duties other than that of a driver as it was based on incorrect facts.

- [8] According to Dr Olivier's testimony, the Plaintiff will not be able to perform strenuous weight bearing activities. He testified that the injuries resulted in long-term functional restrictions. As a result, the Plaintiff will only be able to do light duty or semi-sedentary duties. I accept the experts' opinion under the circumstance.
- [9] In the light of the available evidence, the Plaintiff could still drive although it would be risky for him due to his leg injuries. Therefore, the Plaintiff has established a *prima facie* case on a balance of probabilities. The Plaintiff is entitled to a sum of money which will place him in a position as he would have been had the accident not occurred. The parties agreed that the Defendant's actuary report should be used to determine the quantum. The actuarial computation forms a useful basis to assist the Court in the calculation.
- [10] The principle to be applied in respect of the deduction of contingencies generally, is set out in ***Southern Insurance Association Ltd v Bailey NO¹*** that where method of actuarial computation is adopted a Judge has "a large discretion to award what he considers right".
- [11] As stated in ***AA Mutual Insurance Association Ltd v Maqula²*** the law is settled in that a trial Court has a wide discretion to award what it considers to be a fair and adequate compensation to the injured party for his bodily injuries and their *sequelae*.

¹ *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A) at 116G

² *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A) at 809A-B

[12] I agree that the contingency deductions of 5% and 15% on uninjured past and future earnings respectively was correctly applied. However, a deduction of 15% should also be applied on the injured future earnings.

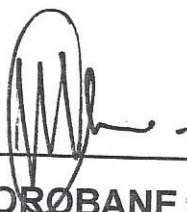
[13] After applying the contingency deductions, the total loss of earnings amounts to R513 646.00. I am convinced that the amount awarded for damages will be appropriate in this case.

[14] In the result I make the following order:

1. The Defendant is liable for payment to the Plaintiff in the amount of R513 646.00 (five hundred and thirteen thousand six hundred and forty-six rand) for loss of earnings;
2. The Defendant is ordered to furnish to the Plaintiff an undertaking in terms of section 174(4)(a) of the Road Accident Fund Act 56 of 1996, of the costs of the future medical expenses of the Plaintiff arising out of injuries sustained by him in the said motor vehicle collision.
3. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs, including but not limited to the costs set out hereunder:
 - 3.1 The reasonable qualifying, reservation, attendance fees, costs of reports and expenses of the experts, including the costs of witnesses duly subpoenaed and costs of counsel.

4. The payment provisions in respect of the aforesaid are ordered as follows:

- 4.1 Payment of the capital amount shall be made within 30 days from date of the granting of this order, directly into the trust account of the Plaintiff's attorneys of record by means of electronic transfer;
- 4.2 Payment of the taxed costs or agreed costs shall be made within 14 days after the taxation or after the agreement, and shall likewise be effected into the trust account of the Plaintiff's attorneys of record;
- 4.3 In the event that costs are not agreed to between the parties, the Plaintiff shall serve a notice of taxation on the Defendant's attorneys of record.
- 4.4 Should payment not be made in respect of any of the aforesaid amounts on or before the stipulated date(s), interest will accrue at 10.25% *per annum*.



V.M. MOROBANE, AJ

On behalf of the plaintiff:

Adv. LR Nortier
Instructed by:
Rosendorff Reitz Barry
BLOEMFONTEIN

On behalf of the defendant:

Adv. PS Mphuloane

Instructed by:

Maduba Attorneys

BLOEMFONTEIN