

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

CASE NO: 2012/12440

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED. <u>✓</u>
.....	<u>13.5.14</u>
DATE	SIGNATURE

In the matter between:

NGOMANE N.O. obo MCDONALD THABO RAMANTSOE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDENT

J U D G M E N T

WRIGHT J

1. The plaintiff, Ms Ngomane is the curator ad litem to a young boy, Thabo. When Thabo was about 10 years old he was involved in a vehicle collision. The Fund has agreed to pay 90% of his damages. The only issues for me to determine the amounts for future loss of earnings and general damages.

2. The matter was argued as a stated case. Thabo suffered a significant brain injury, fractures of the femur, tibia and fibula and ribs. He also suffered a degloving injury to the right heel. He walks with a limp. He will require at least one future operation to his femur. He was hospitalised for about six weeks, the first of which was spent in ICU. He has an occipital scar of 4cm by 3cm with hair loss.
3. Prior to the accident he was a normal healthy boy of at least average ability.
4. His head injury has resulted in:
 - 4.1 An increased risk of epilepsy
 - 4.2 Headaches
 - 4.3 Poor memory
 - 4.4 Slowness in everything he does
 - 4.5 Epistaxis, that is nose bleeding
 - 4.6 Short temperedness, aggressive outbursts without provocation and stubbornness on occasion
 - 4.7 Anxiety in traffic
 - 4.8 Stuttering
 - 4.9 Diminished attention
 - 4.10 Frustration at his slowness
 - 4.11 Below average general intellectual efficiency and verbal comprehension skills
 - 4.12 Difficulty in finding words
 - 4.13 Notable fluctuations in concentration
 - 4.14 Difficulties in working memory
 - 4.15 Poor manual dexterity
5. These problems are permanent.
6. I assess his general damages at R950 000. Neither counsel was able to persuade me differently.

7. On the question of future loss of earnings, two scenarios are presented in the stated case but for the accident. In the first, accepted by the defendant, the agreed loss is R2 319 600 without considering the question of contingencies. On the second scenario, more favourable to the plaintiff the suggested quantum is R3 303 100. In the first scenario Thabo would have entered the labour market two years after matriculating and without any tertiary education. In the second scenario Thabo would have a tertiary education. Nothing in the stated case, nor in argument, persuades me that the second scenario is more likely than the first. As the plaintiff has the onus I am bound to base my award on the first scenario.
8. It is common cause that Thabo's future earnings, having regard to the accident is the sum of R8 200.
9. Mr Patel argued that I should add, rather than subtract, a percentage to the amount that Thabo would have earned after leaving school, but for the accident. Whether or not such a course is legitimate in principle is not a question I need decide in this case. It is common cause that Thabo would have had a working life of about 40 years. In my view it is appropriate to deduct 20% for contingencies.
10. The award is thus (R2 319 600 less R8 200 that is R2 311 400 times 80% which gives R1 849 120 times 90% which gives R1 664 208. To this is to be added R950 000 times 90% giving R855 000. The total is R2 519 208. I make an order in terms of the draft order marked X.



JUDGE OF THE HIGH COURT

On behalf of the Plaintiff:

Adv. M Patel

082 412 7338

Instructed by:

Mafafo Inc

011492 2748

On behalf of the Defendant:

Adv E Venter

083 227 4603

Instructed by:

MSM Inc

011 422 4816/1901

Dates of Hearing:

13 May 2014

Date of Judgment:

13 May 2014