REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	**REPORTABLE: *NO***
(2)	OF INTEREST TO OTHER JUDGES: ***NO***
(3)	REVISED: **NO**
Date:	**14 October *2024*** Signature: _____

Case no. **A2023-123915**

In the matter between:

M[…] N[…] C[…] **APPELLANT**

And

ROAD ACCIDENT FUND **RESPONDENT**

Coram: **Dlamini J (Makume J et Fisher J concurring)**

Date of hearing: 4 September 2024 (Courtroom 11A)

Delivered: 14 October 2024 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 14 October 2024

JUDGMENT

DLAMINI J

Introduction

[1] This is an appeal against the whole judgment and order made by Ford AJ, delivered on 7 September 2021, sitting as a court of first instance (the court *a quo*). This appeal is with leave of the court *a quo*.

[2] The appeal concerns the claim for damages by the appellant against the Road Accident Fund (the RAF) due to the injuries that the appellant sustained in a motor vehicle accident that occurred on 15 April 2015. The court *a quo* awarded the appellant various amounts for general damages and in respect of the appellant's pre- and post-morbid loss of earnings.

General Damages

[3] Before I deal with the main issue that stands to be determined in this appeal, I want to dispose of the issue regarding the award of general damages by the court *a quo*. Having considered the nature and sequelae of the appellant's injuries, the court *a quo* awarded the appellant general damages in the sum of R 400 000.00.

[4] Before us, counsel for the appellant submitted that the court *a quo* erred in ordering the respondent to pay general damages to the appellant in circumstances where the respondent had not accepted that the appellant's injuries were serious. The appellant's counsel advised this court that the claim for general damages has been referred to the HPCSA and according to the HPCSA resolution dated 3 August 2023, it was found that the appellant's injuries are classified as non-serious. Consequently, the appellant has now abandoned her claim for general damages.

[5] Having regard to the pleadings and the judgment of the court *a quo*, the appellant's concession is in fact and law correctly made. Nothing more need be said on the issue.

The background

[6] The common cause facts are that the appellant Ms. N[…] M[…] aged approximately 17 years at the time of the accident, was involved in a motor vehicle collision on 15 April 2015. Because of this collision, she sustained various bodily injuries and then launched this claim for damages against the Road Accident Fund.

[7] As a result of the accident, the appellant avers that she suffered the following injuries: A head injury, a back injury, a right leg injury, and a left foot injury. Additionally, the appellant avers that she sustained an injury to her abdomen.

[8] On 11 August 2021, the respondent conceded liability in favour of the appellant.

[9] What remained outstanding was the determination of the appellant's past and future loss of earnings. The plaintiff, according to her actuarial calculations, was claiming an amount of R 6 620 054 for her future loss of earnings. Having considered the evidence, the court *a quo* proceeded and awarded the appellant general damages in the sum of R400 000.00 and awarded the appellant a sum of R 802 630 80 in respect of loss of earnings. I have already dealt with the issue of general damages above.[1]

[10] Not satisfied with the order, the appellant launched this appeal. On 31 October 2023, as I indicated earlier, the court *a quo* granted the appellant leave to appeal to the Full Court of this division.

Issue for determination

[1] See paragraphs 3,4, and 5.

[11] The appellant accepts the court *a quo's* finding in respect of the appellant's post-morbid earning potential. The issue for determination in this appeal concerns the appellant's pre- morbid earning potential.

[12] In this regard, the court *a quo* embarked on an extensive analysis of the pleadings and the appellant's various expert reports. After analysis, the court *a quo* concluded at para [105] that *"I am not persuaded that the plaintiff would, pre-morbid have obtained a qualification at NQF Level % for either Engineering or Business management."*

[13] The court held further at [*107*] that *"I am not persuaded that the plaintiff would have obtained an NQF Level 5 qualification in engineering. To have done so, the plaintiff ought to have demonstrated a pre-morbid, a factual basis for such a conclusion. It is generally accepted that a person pursuing an engineering qualification would at the very least demonstrate considerable aptitude for Mathematics and Natural Science."*

[14] Finally, after analysing the evidence, the court *a quo* concluded that the appellant has not made out a case for pre-morbid loss of earnings based on the postulation that she may have achieved an NQF Level 5 qualification in engineering or business studies.

[15] Before us, Counsel for the appellant contends that the court *a quo* erred by not accepting the uncontested evidence of her experts, Ms. Gaydon and Ms. Theron. In doing so, the argument goes, the court *a quo* misdirected itself by making a finding on evidence not before the court.

[16] The appellant insists that her expert's opinion in respect of her pre-morbid potential is not premised on engineering or business management.

[17] Lastly, based on the expert calculation including applying contingencies, the appellant argues that she is entitled to a sum of R6 620 045 for her past and future loss of earnings.

[18] It is trite that a court of appeal may only interfere with a decision of the court *a quo* in the event of a demonstrable and material misdirection of law or fact.

[19] Whilst the Supreme Court of Appeal did not take away the Trial Court's wide discretion as what it believes to be just, the Supreme Court of Appeal in the matter of Road Accident Fund v Guedes[2] set out the circumstances under which an appeal court is entitled to interfere with the trial court's award for damages where the amount of damages is a matter of estimation and discretion. The instances are where: (a) there has been an irregularity or misdirection (for an example the court considered irrelevant facts or ignored relevant facts; (b) the appeal court is of the opinion that no sound basis exists for the award made by the trial court; (c) where there is a substantial variation and striking disparity between the award made by the trial court and the award which the appeal court should have made.

[20] In my view, there is no merit to the appellant's submission in this regard. This issue was dealt with comprehensively and in my view correctly so by the court *a quo*. This is so because on the pleadings, evidence, and having due regard to the reasons of the court *a quo*, I am satisfied that the court *a quo* was correct in concluding that the appellant's pre-accident academic record did not demonstrate that the appellant possessed sufficient aptitude to achieve qualification in either engineering or business studies. Therefore, I am not persuaded and could not find any evidence that the appellant's pre- morbid academic record justifies the amount that the appellant claims for her pre-morbid loss of earnings.

[21] Furthermore, the court *a quo* advanced cogent reasons why it rejected the evidence of the various experts of the appellant and in particular the evidence of Gaydon and Theron. The court *a quo* advanced cogent reasons and methodology of how the court *a quo* arrived at the amount that it did. I therefore find no reason why this court should interfere with the award of the court *a quo*.

Costs

[2] [2006] ZASCA 19; 2006 (5) SA 583 SCA

[22] The trite principle of our law is that costs follow suit and are awarded to the successful party. In so far as the costs of this appeal are concerned, I find no reason why each party must not pay its own costs. This is because the respondent neither opposed, nor partook in this appeal. Therefore, each party must bear its own costs.

[23] In all the circumstances alluded to above, I am satisfied that the appeal ought to be dismissed, and I make the following order.

ORDER

1. The appeal is dismissed.
2. There is no order as to costs.

J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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