



(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

DATE

SIGNATURE

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

19/02/2010
CASE NO: 52566/2008

In the matter between:

MULARISI SELIMAH MOAGI

Applicant

And

ROAD ACCIDENT FUND

First Respondent

JUDGMENT

LEDWABA, J

- [1] This is an application for default judgment. According to the Sherriff's return of service summons was served on the defendant 13th November 2008. The defendant has not filed a Notice to Defend the action.
- [2] In the summons the plaintiff is claiming the amount of R 1 197 000 made up as follows:
- | | |
|--------------------------|-----------|
| General damages: | R 180 000 |
| Future medical expenses: | R 237 000 |
| Future loss of earnings: | R 780 000 |

Total: R 1 197 000.

- [3] The plaintiff's claim arises from an accident that occurred on the 12th September 2006 at approximately 15h50 near Letsetire in the Limpopo province. The plaintiff, a traditional healer born on 20th May 1954, was a passenger in an Isuzu bakkie with registration BDC416N driven by Joel Rikhotso travelling in Letsitere Road. She alleged that the accident was caused by a truck, the particulars are unknown to the plaintiff, which negligently swerved to the right and collided with the bakkie whilst the bakkie was still overtaking. She further alleged that the collision was caused by the sole negligence of the driver of the unknown truck and as a result of the said collision and she sustained bodily injuries.
- [4] She alleged that she suffered the following injuries:
- 4.1 Open transverse fracture through the left distal fibula;
 - 4.2 Rupture of the anterior tibial artery;
 - 4.3 Deep cut wounds over anterior lateral aspect;
 - 4.4 Severed collateral ligaments of the left knee joint;
 - 4.5 Injury to the extensor mechanism of the right knee;
 - 4.6 Cut wounds over the face, forehead, nose and upper lip;
 - 4.7 Soft tissue injuries over the right arm, right leg including the right knee joint.
- [5] The plaintiff was also examined by Dr. Hans B. Enslin an orthopaedic surgeon, on 15th October 2007, who in his medical legal report noted the following injuries:

- head injury with loss of consciousness.
- injury to the anterior tibia artery.
- injury to the ligaments and both knees, with an extension mechanism of the right knee.
- lacerations on the forehead, lip, right arm and left shoulder.
- an injury to her teeth.

The doctor confirmed that according to the documentation presented to him, the plaintiff was taken to Letaba hospital in an unconscious state and was admitted for approximately two months, undergoing treatment specified by Dr. Hoog.

- [6] The medical treatment given to the plaintiff involved: wound suturing and dressing, x-rays of the skull, chest, pelvis, neck, right leg and left leg, a debridement of the left leg was performed and repair of the tibia artery under anaesthesia, collateral ligaments of the left knee was repaired, crepe bandages were applied and was supplied with blood, followed by physiotherapy.
- [7] Plaintiff's complaints involved the following:
- She has pain on daily basis on the right knee, which aggravates when it is cold and she is unable to squat nor walk without crutches,
 - the right knee tends to give way,
 - she experiences an instability on the left knee which also tends to give way,
 - she complains about the disfigurement of her left leg, and
 - she states that these symptoms are not improving.

- [8] According to the doctors, she is left with limited movement of the left lower leg and knee. The right knee reveals atrophy of the quadriceps muscles which are very weak, with the ligaments revealing a grade III instability. She cannot walk without crutches.
- [9] Dr. Enslin concludes that the plaintiff has 50% impairment of the whole person as per the '*Guides to the Evaluation of Permanent Impairment*' 5th edition, by Cocchiarella and Anderson as published by the American Medical Association in 2002. He proposes that the plaintiff needs future ongoing treatment including:-
- an arthrodesis of the left ankle – 10%
 - construction of the medial and lateral ligaments of the right and left knees – 90%
 - he suggests that a 5% chance exists that she will need a knee replacement.
- [10] The prognosis is according to him, a poor one which makes it unlikely that she will come out of the cripple state as caused by the accident. She is likely to remain cripple as the proposed surgeries are unlikely to be completed successfully. The pain and suffering are likely to form part of her daily life for the remaining part of her life.
- [11] An industrial psychologist, Ben Moodie, examined the plaintiff on 28th August 2009 and confirmed the injuries sustained by her as per the report by the orthopaedic surgeon. He performed a psychometric evaluation and

confirmed that the plaintiff has academically completed Grade 5 (standard 3) in 1966 at Daan Primary school in Tzaneen. The psychometric evaluation intended to establish the appropriate position in which the plaintiff could be employed now that the accident occurred. The assessment considered aspects such as educational background, aptitudes, personality, vocational interests. He states that a psychometric test would not be feasible as the plaintiff was already 52 years old and retraining for an alternative career would not be feasible, because of her qualifications and the inability to understand english and afrikaans. He further states that the plaintiff would have relied on physical strength to earn a living all her life.

[12] Prior to the accident, the plaintiff completed four month training in 1993 in Julesburg and became a Sangoma. She used to work as such for seven days in a week. It is alleged that she use to consult 35-40 patients per week at R70 per consultation. She was therefore earning about R 2 652 per week.

[13] She further stated that she provided herbal medicine which she personally obtained from mountains to some of her patients. She earned an extra income of about R250-R1000 per consultation depending on the illness of the patient. She mentioned that on average she was earning about R7000 per month. She said she worked strictly on cash basis and has no documentary proof of her income.

- [14] Dr. Ben Moodie states that according to a discussion paper: *'Traditional Medicine and Traditional Healers in SA'* dated 27th November 2003, the **Traditional Health Practitioner's Bill of 2003** does not provide details on what minimum requirements are or what training or practice criteria have to be fulfilled for a person to be regarded as a traditional health practitioner. It is his opinion that the mentioned income is in line with the suggested guidelines thereof and is therefore realistic.
- [15] According to Dr. Enslin reports, examinations and evaluations, he is of the opinion that the plaintiff is unlikely to secure any position in the open labour market due to her age and limited work experience. He recommends that the plaintiff and should be compensated for the difference in her pre and post accident income and potential income.
- [16] The plaintiff was a passenger and therefore needs to prove the proverbial one percent on the part of the truck driver for her unlimited claim to succeed. There is nothing on the documents before me to contradict that the plaintiff's claim on the merits should succeed.
- [17] The plaintiff has attached in her papers a letter from the greater Tzaneen Traditional Practitioner Healers Association dated 14th December 2007, confirming that she indeed practice as such and made an average of R 7000, 00 per month. The industrial psychologist telephonically consulted with Ms. Noma Kgopyane of the Association, and she

confirmed that the alleged income is possible and realistic. She further confirmed that the plaintiff is now unable to practice as such.

[18] It appears reasonable to accept that the plaintiff cannot post morbidly travel around, climbing mountains to dig medicine according to her orthopaedic injuries. However, in my view, she can still consult with her patients in her house as this practice is alleged to be taking place at her home. In essence, the plaintiff should be compensated for loss of income accordingly. I think it would be fair and reasonable to calculate plaintiff's loss of income in the amount of R2 800 per month having regard to the aforesaid.

[19] It appears from the industrial psychologist that the plaintiff cannot be gainfully employed post accident. The orthopaedic surgeon also stated that the plaintiff will endure pain for the rest of her life.

[20] There are two reports calculating the plaintiff's loss of earnings by Robert Koch, on instructions for the plaintiff's attorneys. I think it is proper to use the report dated the 16th November 2009 based on the loss of income of R 2 800 per month because I think the plaintiff can still consult with her patients even though she cannot make more income in selling herbs. The plaintiff would therefore lease about R 3 3600 per year. It appears that this assumption is not unreasonable as the income falls within unskilled level earnings.

- [21] Past loss of income was calculated at R122 493 and future loss of earnings was calculated at R334 588 by the actuary. The income was assumed to be earned until the age of sixty-five. No contingencies were applied.
- [22] It is a general practice that a contingency of 5% to 7% is applied to past loss of earnings. However, there is no claim for past loss of earnings in the particulars of claim. Plaintiff has also not claimed for past medical expenses.
- [23] On the future claim of loss of earnings, it is reasonable to apply normal contingency of 15% since her practice as a sangoma had been going on for many years since 1993. The claim where contingency of 15% is applied would be reduced to R 284 399, 88.
- [24] Dr. Enslin has foreseen medical expenses and outlined some in his report. This head of damages should be compensated in terms of **section 17(4)(a)** certificate.
- [25] I think that the reasonable amount for the general damages should be R 180 000, R284 399.88 for future loss of income and a certificate to be issued by the defendant for future medical expenses.
- [26] **I therefore, make the following order:**
- (i) **defendant is liable to pay plaintiff the sum of**
R 464 399, 80,

- (ii) defendant to furnish plaintiff with the relevant certificate for future medical expenses, (undertaking in terms of Section 17(4)).**
- (iii) defendant is liable to pay plaintiff's costs.**

A. P. LEDWABA
JUDGE OF THE HIGH COURT

derendant to furnish plaintiff with the rele
certificate for future medical expenses,
(undertaking in terms of Section 17(4)).

defendant is liable to pay plaintiff's costs.

A handwritten signature in blue ink, appearing to be 'A. P. L.', written over a circular stamp or seal.

A. P. L

JUDGE OF THE HIGH