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SOUTH GAUTENG HIGH COURT, JOHANNESBURGREPUBLIC OF SOUTH AFRICA

Case No: 12944/07

Date: 14/10/2009

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- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE.....
SIGNATURE

In the matter between

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MOLISE POTLAKO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

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MEYER, J

[1] The plaintiff's claim against the defendant is for payment of compensation for damages suffered by him as a result of bodily injuries sustained by him in a motor vehicle collision that occurred on

11 July 2006. The plaintiff suffered what is commonly referred to as a whiplash injury of the cervical spine. Summons was issued on behalf of the plaintiff on 22 May 2007. The amount initially claimed by the plaintiff was the sum of R772 000.00. On 17 September 2009, the claim was amended and increased to the sum of just over R2.8 million.

[2] The matter was enrolled for trial today. I was advised by the parties that the defendant intended to apply for a postponement of the matter and that there was a real possibility of the matter being postponed. The matter stood down and the parties settled it on the following basis:

- a. The parties agreed that the defendant is to pay an amount of R60 000.00 to the plaintiff in full and final settlement of the plaintiff's claim.
- b. The parties agreed that the defendant would furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accidents Fund Act 56 of 1996 for the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision on 11 July 2006, after such costs have been incurred and upon prove thereof.
- c. The parties agreed that the defendant would pay the plaintiff's agreed or taxed costs of the action until today, which is 14 October 2009.

[3] The only issue between the parties is whether or not the costs to be paid by the defendant should be on the scale applicable in the High Court or on the one applicable in the Magistrates' Court.

[4] I have been referred to various passages in the medico-legal reports. The plaintiff contention is that the value of the undertaking in terms of section 17(4)(a) of the Road Accident Fund is the sum of R42 129.00. The defendant's contention is that the value thereof is the sum of R29 260.00. I accept that the value thereof is probably somewhere between the two figures mentioned by counsel which, in my view,
10 probably brings the plaintiff's claim within the jurisdiction of the Magistrates' Court.

[5] It is always difficult to determine a fair costs order once the parties have settled a matter, because one does not have the benefit of the witnesses and the facts upon which one can ascertain a justifiable costs order are limited. But in all the circumstances, I consider it to be fair to both parties that the defendant should be ordered to pay the plaintiff's costs on the Magistrates' Court scale.

[6] In the result I make an order in terms of the draft order which counsel prepared for me. I have initialled the draft order for
20 identification purposes.
