REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
DATE **SIGNATURE**

CASE NO: 24720/2013

In the matter between

KM HUMAN Plaintiff

And

RAF Defendant

J U D G M E N T

WEINER J:

INTRODUCTION

[1] The plaintiff has sued the defendant in respect of a road accident that occurred on the date of 16 February 2011, when the plaintiff was injured. Her injuries consist of the following: a head injury with loss of

consciousness, facial injury, lower back injury, left knee lateral tibial plateau fracture and a left foot small toe un-displaced fracture.

ISSUE IN DISPUTE

[2] The issue to be decided is what the retirement age of the plaintiff would have been. The plaintiff gave evidence that she had worked for her son since 2009 doing office work. She was earning R3 800.00 in 2009 and at the time of the accident, R5 000.00.

[3] She had intended to retire at age 65 and her son agreed. I must note that her son did not give evidence and perhaps his evidence would have assisted this court in some way. The plaintiff was divorced in 1994 and from approximately 1996 to 2007 she lived with a man (her partner) and according to her, ran his business until he passed away in 2007. She submits that he supported her. She says before the accident her health was fine and after it she tried to work, but could not.

[4] There was no employment contract with her son according to the plaintiff and she was paid in cash. She says her duties were answering the phone, taking orders, filing et cetera and that she assisted her daughter-in-law in this regard. She was not responsible for running the office. She admitted that she was given this job by her son, because she needed a job and needed to earn money. It also appears to be common cause that the plaintiff was not an ambitious employee at any part of her life.

[5] From about 1990 to 2009, other than helping her partner run his business, she did not have formal employment. She was unemployed until she began working for her son in 2009. It seems clear that she was sympathetically employed by her son. She made certain remarks to the medical experts that her work consisted of 'pouring coke for her daughter-in-law the whole day'

[6] The information that she gave to the medical experts is that since she has been unable to work, her son has been taking care of her and has given her accommodation, food and covered her medical aid. She was being supported financially by her son. It is clear that the plaintiff cannot work since the accident.

PLAINTIFF'S RETIREMENT AGE

[7] The two industrial physiologists in this matter, Dr Kellerman (plaintiff's expert) and Ms Garner (defendant's expert) have differing opinions in this regard. Dr Kellerman says that it is the norm to retire at 65 from informal employment such as that of the plaintiff. In regard to pre-existing medical conditions, there is reference in the report to Dr Gantz, the defendant's orthopaedic surgeon who examined her. Her examination revealed local tenderness and limitation in neck mobility. The x-rays showed advanced degenerative changes and cervical spondylosis. Considering that it takes years for such changes to become apparent on X-rays, it is reasonable to assume that they were already present by the time of the accident and that part of her present condition is age-related and caused by this pre-

existing condition.

[8] It is therefore fair to apportion the reasons for her present symptoms to both the pre-existing cervical spondylosis, and the accident. In Dr Gantz's opinion, the percentage would be 60/40 respectively.

[9] Ms Garner states that it remains unclear if the plaintiff would have continued to work passed her pensionable age of 60. Giving the plaintiff the benefit of the doubt, Ms Garner cannot object to the view that she would have worked up to around age 62 to 63. Although, the plaintiff criticizes this view, where a person is sympathetically employed and not in formal employment, it will always remain unclear if she would have continued to work past her pensionable age of 60 and/or until the age of 65.

[10] In addition, the pre-existing medical condition contributed to a substantial degree to her symptoms. She was in pain and discomfort and it appears that the pre-existing cervical spondylosis contributed to that. She would therefore probably have been compelled to give up work earlier than 65.

[11] Taking all of the above into account, as well as the fact that she was sympathetically employed, and being financially supported by her son, her retirement age be as would the defendant's industrial psychologist, Ms Garner, opined i.e. between 62 and 63 years old.

[12] Giving the plaintiff the benefit of the doubt, as the defendant's industrial psychologist has done, the court is of the view that the retirement age of 62½ is just in the circumstances. Therefore, the total loss of income would be R253 500

[13] An order is accordingly made in terms of the draft order.

S WEINER

JUDGE OF THE HIGH COURT OF SOUTH AFRICA (GLD)

Appearances

For the Plaintiff:	Advocate Thea Londman
Instructed by:	Leon JJ van Rensburg
For the Respondent:	Advocate Themba Malandela
Instructed by:	Nozuko Nxusani Inc.
Date of hearing:	17 September 2014
Date of Judgment:	17 September 2014