

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG

CASE NO: 12/19810

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

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DATE

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SIGNATURE

In the matter between:

MATSANE, Petronella Nkele

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

YACOOB, AJ:

- [1] The plaintiff, Ms Matsane, was a pedestrian involved in a collision in March 2009. She suffered injuries, which are common cause, and was admitted to hospital after the collision, where she remained for three days. She has made a claim against the defendant for future medical expenses, future loss of earnings and general damages.

- [2] The Deputy Judge President ordered on 13 May 2014 that the merits and quantum in this matter are separated, and that the merits of the claim are settled 70% in the plaintiff's favour. The order also provided that the defendant furnish the plaintiff with an undertaking for the costs of expenses arising from her injuries and their sequelae in terms of section 17(4)(a) of the Road Accident Fund Act 56, 1996. The question of general damages was referred to the Health Professions Council of South Africa for determination, and had not, at the time of hearing, been determined yet. The only issue to be determined at this stage is, therefore, the plaintiff's claim for future loss of earnings.
- [3] The plaintiff's counsel, Ms Docrat, indicated at the outset that there was a matter of an outstanding medical expense which had not been paid, an amount of R1680. Ms Strydom, for the defendant, submitted in argument that the evidence regarding that expense is before the court, and the defendant is not disputing the evidence. I was invited to deal with that issue as I saw fit.
- [4] The relevant facts are set out below.
- [5] The plaintiff was born in July 1987. She was therefore almost 22 years old when the collision giving rise to this claim occurred, and is now 28 years old. The plaintiff was unemployed at the time of the collision, having completed a diploma in logistics at the end of 2007, and having started to look for work at the beginning of 2009.
- [6] The plaintiff was crossing the road at a pedestrian crossing when she was hit by a car. She was injured on her spine and right shoulder, she was cut on her forehead, and broke her tooth. She remained in hospital for three days and after her discharge she took tablets for three weeks. Her hand and shoulder were "tied" for a month.
- [7] Her broken tooth was not treated at hospital, she got it attended to later, and it cost R1800, which her mother's medical aid paid part of. She borrowed the

rest of the money from her mother. The plaintiff has initially said she did not have to pay her mother back, but in later said she did have to do so.

- [8] She has not had her scar attended to because she would have to take time off work to attend treatment.
- [9] The plaintiff obtained employment in 2010, as an intern in “supply chain” at the Department of Agriculture. Her responsibilities included preparing spreadsheets for tender committees, printing orders, asset verification, asset barcoding and transport management. She moved from being an intern to being an accounting clerk, within a year, but was doing the same job. She enjoyed the job but her injuries affected her ability to do the job, as she needed to lift items for verifying barcodes.
- [10] The plaintiff testified that right hand (her dominant hand) is weak and her spine gets tired. Her right hand does not lift properly and her back hurts if she sits or stands for a long time. She has to stretch or move about after an hour.
- [11] Despite the difficulties she experienced, the plaintiff only left her job at the Department of Agriculture when she got a new job at the Department of Correctional Services in October 2011. Her problems with her back and arm influenced her to take this new job, because it was difficult for her to lift things. Her job with Correctional Services entailed dealing with payments: receiving invoices from suppliers, capturing on the system and pre-authoriseng payments.
- [12] The plaintiff stayed at Correctional Services for two and a half years. She applied for and received a promotion to the Department of International Relations and Co-operation. She testified that this is a different job, and it entails capturing suppliers on a database on a daily basis. She sits for 8 hours a day, although with a lunch break and comfort breaks. The plaintiff’s previous supervisor at Correctional Services was aware of her injuries and pain, but not her current supervisor.

- [13] While she was at Correctional Services, the plaintiff worked “like the others”. She also applied for other promotions after her move to International Relations, for a supervisor post, but was unsuccessful. The post went to someone who had been at International Relations for 8 months, when the plaintiff at the time had been there for 6 months.
- [14] The plaintiff testified that she feels the accident is limiting her. She would like to get another post, but she would have to do more work, and it will not be easy for her as she is a sickly person. She wanted to be at a managerial position in 5 years, and was willing to work hard, but she has now changed her expectations. She cannot achieve what she initially wanted because of her “illness”.
- [15] The plaintiff stated that she is willing to work on her own initiative, but would not work late without pay. She also stated, in contradiction, that she was prepared to work long hours but cannot manage it.
- [16] The pain the plaintiff experiences brings her down mentally and affects her work, about twice a week, and her supervisor sometimes complains because she makes mistakes, so her supervisor says the plaintiff doesn’t concentrate (however, the industrial psychologist who testified on the plaintiff’s behalf spoke to the supervisor, who said that she had never really noticed the plaintiff’s difficulties or mistakes). The manager tries to support her, telling her not to concentrate on her pain. Her co-workers are not really supportive and think the manager is favouring her. The plaintiff stated that if she gets a supervisor who is not supportive she will make mistakes and no one will help her, and she may be fired.
- [17] Whether she sits or stands, the plaintiff experiences pain after an hour, and has to do something to relieve the pain, whether it is stand up, stretch, go for a walk or otherwise move about. She stated that she would need to walk a distance that the parties agreed was about 50m to relieve the pain. However, she also said that simply moving from sitting to standing while she testified was sufficient for her to “stretch”.

- [18] The plaintiff did go to a physiotherapist at a public hospital, which didn't cost her anything, but it didn't help and she stopped after three weeks because the physiotherapist said she was fine.
- [19] Since then she has not sought treatment, save for going to a pharmacy to ask for medication last year, which she did not buy because it was too expensive. She did not go to a doctor for a prescription, also because it was expensive. This is despite the undertaking that has been furnished by the defendant, and the fact that she has medical aid. However, she testified that she did try to find another physiotherapist, even though she found physiotherapy did not help her, but was unable to find one that would see her on a Saturday, and she did not want to take time off work.
- [20] The pain is there all the time, and stays the same, it has not got worse. However her concentration problem is getting worse. The plaintiff is not aware of pain when she is asleep. She is unable to walk long distances or do washing because of the pain.
- [21] The plaintiff testified that the pain has caused her to change what she wanted to do in her life. She is a sporty person and wanted to pursue a career in netball but cannot do that anymore. At work, she does not see her future in the same way as before. She thinks she will now retire earlier than 65 years of age. She would not be able to be a manager because that would require her to attend long meetings which she can't do because she can't sit for a long time. The plaintiff intends to remain where she is, because another job will be difficult because of her pain.
- [22] It is clear that the plaintiff's life has been negatively affected by the injuries she has suffered, and that her career choices impacted. However, the issue is not whether the plaintiff is able to do the kind of job she initially wanted to do, or whether her life is more difficult, as general damages are not before me. The only thing before me is whether the plaintiff can show loss of earnings as a result of the injuries she suffered in the accident.

- [23] The plaintiff called Ms Ngoako, an industrial psychologist, to give expert evidence on this issue. Her evidence regarding the earning potential the plaintiff would have had before the accident was based on the Paterson scale. The plaintiff would have entered the labour market at Paterson level A2 or A3, within 12 to 18 months after she obtained her diploma. She would have progressed to a B4 or B5 salary scale within a five year period, and would have progressed at three to five year intervals to reach a career ceiling at a C3 or C4 salary scale.
- [24] Ms Ngoako testified that the plaintiff's needs for accommodation would result in her being less competitive, and her need to take breaks and seek medical treatment, as well as her pain, would make her less productive. The plaintiff would be even less competitive in a corporate environment. Although she would still progress to the same career ceiling, her progression would be slower.
- [25] Ms Ngoako acknowledged that the plaintiff had already reached a C1 salary scale. She expressed surprise the the plaintiff's job was characterised as being at that level, but the question whether the plaintiff's employer is paying too much or too little for specific jobs is not before me. The fact is that, at the age of 28, the plaintiff has progressed to just two Paterson levels below her career ceiling, which she is expected to reach at the age of 45. She has actually progressed faster than it was envisaged she would do had she not suffered the injuries she has.
- [26] Ms Ngoako had no information about whether the plaintiff would be more easily accommodated in a public service environment than in a corporate environment. Even as far as a corporate environment is concerned, she was unable to say that the plaintiff's requirements would definitely have a negative effect in the workplace, saying that it depended on the people that were involved.

- [27] The plaintiff gave no evidence about whether she wanted to move out of the public service. She did say she wished to attend “corporate meetings”, but from her description what she understood this to be, this could equally be management meetings within the public service.
- [28] Although the plaintiff had been denied one promotion, which went to a senior colleague, she has obtained employment within the public service at an expected level, and has been promoted twice, exceeding her expected progression.
- [29] I was referred to a number of judgments by counsel in argument, but the most determinative in setting out the principles regarding income earning capacity and loss of earnings appears to be the unreported judgment of Bizo AJ in the matter of *Deyse v RAF*, case number 2483/09 (24 June 2011), in which the relevant judgments preceding that one are summarised.
- [30] According to Bizo AJ in *Deyse*, if the plaintiff shows loss of earning capacity as a result of a change in “employment situation”, which in turn resulted from the sequelae of the accident, she would then be entitled to succeed in her claim.
- [31] Although loss of future earnings is, by necessity, somewhat speculative in its nature, in this particular case, I find that the speculation which leads to a conclusion that the plaintiff has lost earning capacity and will suffer loss of earnings is not based on a sound foundation. The facts which emerge from the evidence adduced on the plaintiff’s behalf themselves contradict the assertion that she has, and will, suffer loss of earnings.
- [32] The plaintiff has already progressed faster than she was expected to, and there is no evidence that her progression will now slow to the extent that her predicted progression will not be realised.
- [33] For these reasons, I find that the plaintiff has not proved loss of earnings, and is not entitled to succeed in her claim for loss of earnings.

[34] As far as the plaintiff's past medical expenses are concerned, the plaintiff has proved those expenses and is entitled to them.

[35] I was also asked to determine the question of the costs of the reports of the plastic surgeon and maxillo-facial surgeon. These reports do not deal with the injuries suffered by the plaintiff which affect her at work. They are therefore not relevant to the enquiry before me.

[36] Ms Docrat, for the plaintiff, contended that this hearing is to determine everything that remains for determination in this case, excluding general damages.

[37] I find this argument without merit. If the plaintiff is found to have a claim for general damages, these reports should be dealt with together with that claim.

[38] It is a pity that this matter was set down before the plaintiff's entitlement to a claim for general damages has been determined by the Health Professions Council of South Africa. This means that the plaintiff's claim is dealt with piecemeal, which is both undesirable and unfortunate. However, it is this court's duty to deal with the matter that is before it, and no more.

[39] For the reasons above, I make the following order:

1. The plaintiff's claim for loss of income is dismissed with costs.
2. The defendant is to pay to the plaintiff 70% of the plaintiff's past medical expenses of R1680, within 14 days of this judgment.

S YACOOB

Acting Judge of the South Gauteng
High Court, Johannesburg

APPEARANCES

PLAINTIFF:

FF DOCRAT

Instructed by Noko Attorneys

DEFENDANT:

I STRYDOM

Instructed by Kunene Rampala Botha

DATE OF HEARING:

14, 15& 22 May 2015

DATE OF JUDGMENT:

24 August 2015