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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 7489/2015

1. Reportable: No
2. Of interest to other judges: No
3. Revised: Yes

(Signature)

In the matter between:

M[...]: N[...] O.B.O O[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGEMENT

ALLY AJ

INTRODUCTION

[1] This is a representative personal injury claim by Plaintiff for damages arising from injuries sustained by the minor child, O[...], in a motor vehicle collision on 7 September 2013 in which the minor child was a passenger.

[2] At the outset the Court was informed that the merits in this matter had been settled previously 100% in favour of the Plaintiff.

[3] The following heads of damages were also previously settled¹:

3.1. Future medical and hospital expenses; and

3.2 General damages

[4] The Court was accordingly only required to deal with the issue of future loss of earnings.

[5] At this point it is apt to mention that the Defendant was not represented although there were Attorneys on record. These Attorneys were aware of set down and had not withdrawn as Attorneys of record. The less said of this conduct, the better.

¹ Caselines: 074-1

[6] I had requested Counsel for the Plaintiff to liaise with officials of the Defendant to ascertain their position in the matter. I was informed that an offer would be emailed to Plaintiff's representatives and the matter stood down for this purpose.

[7] After reconvening, Counsel for the Plaintiff indicated that an official dealing with the matter had made an offer within her mandate but that said offer was rejected and that Plaintiff intended proceeding with its case. The matter thus proceeded without representation of the Defendant.

[8] Plaintiff's Counsel requested the admission into evidence of all medico-legal reports as well as the Joint Minutes of the overlapping expert witnesses, which was then admitted into evidence.

FACTUAL MATRIX

[9] The minor child, sustained the following injuries:

9.1 Moderate to severe traumatic brain injury with a possible increased risk of late onset post traumatic epilepsy;

9.2 preserved cognitive abilities and deficits.

[10] Plaintiff's Counsel called one witness on behalf of the Plaintiff which was Ms Elzette Keenan, an Industrial Psychologist and expert witness. The crux of

Ms Keenan's evidence, is that, based on the Addendum Joint Minute of the Educational Psychologists, Lida Möller and Lisa Swart², the minor child would have attained a qualification of NQF Level 5 pre-morbid and a qualification of NQF level 3 post-morbid.

EVALUATION AND ANALYSIS

[11] Ms Keenan was questioned as to the differences between her report and that of Defendant's Industrial Psychologist, Mr Henry Van Blerk. The main difference, in my view, arises from reports prepared by the Educational Psychologists for the Plaintiff and Defendant.

[12] However, it must be pointed out that as reflected above, the Educational Psychologists agreed on the pre-morbid post-morbid qualifications of the minor child.

[13] Counsel for the Plaintiff submitted that reliance should not be placed on the report of Defendant's Industrial Psychologist for the reason that, *ex facie* his report, he had not considered the Joint Minutes of the various experts and importantly the Joint minute of the Educational Psychologists. Counsel further submitted that Mr van Blerk's report be rejected *in toto*.

² Caselines 011-3

[14] In my view, the correct approach, in this matter would be to accept the views expressed by Ms Keenan where they differ from that of Mr van Blerk. The ultimate purpose of experts, in these circumstances, is to express opinions on the facts as relayed to them and on an assessment of expert reports outside of their fields of expertise. Accordingly, where the opinion of Mr van Blerk accords with common sense and logic, it will be accepted.

[15] Accordingly, if one has regard therefore to the evidence of Ms Keenan as read with the medico-legal reports admitted, one must accept the opinion of the Education Psychologists in respect of the qualifications pre-morbid and post-morbid of the minor child as expressed above.

[16] This brings the Court to the assessment of the minor child's loss of earnings as a result of the injuries sustained and the resultant educational and employment opportunities.

[17] I have accepted the calculations provided in the Addendum Actuarial report³ of the Plaintiff. However, as is trite⁴, the Court is vested with determining the contingencies to be applied in the given circumstances.

[18] The Court accepts that the minor child would have retired at the age of 65 years and earned **R6 552 350 – 00** pre-morbid. In respect of the post-morbid position, the minor child would have earned an amount of **R671 929 - 00**.

³ Caselines 005-23

⁴ Southern Insurance Association v Bailey NO 1984 All SA 98 at 113G

[19] In applying contingencies in this matter, I have taken into consideration the present economic situation, which includes the availability or not of corporate sector employment, as well as the COVID 19 pandemic as factors influencing the ultimate percentages to be applied. In so doing I am of the view that it is fair and reasonable in the circumstances to apply the percentages represented hereunder.

CONCLUSION

[20] In the result I have decided to apply a 25% contingency pre-morbid and a 30% post morbid which amounts to the following:

Pre-morbid:	R6 552 350 – 00
Less:	R1 638 088 – 00
Total:	R4 914 262 – 00
Post-morbid:	R671 929 – 00
Less:	R201 579 – 00
Total:	R470 350 – 00

Total loss of future earnings: R4 914 262 – 00 – R470 350 – 00 = R4 443 912 – 00

COSTS

[21] There is no reason why costs should not follow the result in this matter.

Accordingly, the following Order will issue:

- a) Defendant to pay the Plaintiff the amount of **R4 443 912 – 00**;
- b) Interest thereon at the prescribed rate from date of judgment to date of payment;
- c) Defendant to pay the Costs of suit.

G ALLY

Acting Judge of High Court

Gauteng Local Division, Johannesburg

APPEARANCES

HEARD : 30 July 2020

DELIVERED : 18 September 2020

Applicant : Adv. B. Mologoa

Mathopo Attorneys

Legae La Ditlou

Crown Gardens

tshepo@mathopo.co.za

082 643 5831

Respondent : No representation