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NOT REPORTABLE

IN THE HIGH COURT OF THE REPUBLIC OF  
SOUTH AFRICA NORTH GAUTENG, PRETORIA

Case Number: 27351/08

DATE:04/09/2012

In the matter between:

POPI IRENE SHONGWE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BAM AJ

1. The plaintiff instituted action against the defendant as a result of damages sustained by her during a motor vehicle accident. Due to the defendant's failure to comply with Rules of Court, the defendant's defense was struck out in terms of an order of this Court dated 15 June 2012.

The matter was subsequently enrolled by the plaintiff to prove the quantum of her damages.

2. On 22 August 2012 the matter came before me. Mr Geach SC, for the plaintiff, informed me that the defendant was in default. Mr Monyane then announced that he appeared for the defendant and applied for postponement of the matter to enable the defendant to apply for re-instatement of its defense. This application was opposed.

3. The application for postponement was informal and not substantiated by any documents. Mr Monyane could not explain why a substantive application had not been lodged and could further not advance any information regarding what steps the defendant had taken in respect of its situation since 16 June 2012, when its defense had been struck out. Mr Monyane's address from the bar lacked a basis for an application to postpone the matter. The application for postponement was accordingly dismissed with costs.

4. The plaintiff, Popi Irene Shongwe, was called to testify. According to her she sustained a back injury and certain scratches to her head during a motor vehicle accident which occurred on 3 October 2005. After seven years she still experiences pain in her spinal cord, and it is getting worse. She is unable to walk or stand for lengthy periods of time, neither can she sit for long. She is now 48 years of age. She is employed as a teacher and is experiencing trouble performing her duties. As a result of the injury to her back she is not any more able to coach sport at school. She is also experiences problems having sexual intercourse with her husband, resulting in marital problems. During cross-examination by Mr Monyane she stated that she has not heard of any complaints from her employer.

5. In argument Mr Geach referred me to the summaries of plaintiff's experts contained in the

bundle on quantum regarding, inter alia the calculation of the plaintiff's damages. In respect of the plaintiff's future loss of income, I was referred to the calculation by Robert J Koch on page 231 of the quantum bundles.

It was submitted by Mr Geach that the following awards should be made to the plaintiff:

(i) Past medical expenses:	R 16 849 05
(ii) Loss of future income (contingency of 10%):	R 1 222 082 00
(Hi) General damages	R 700 000 00
Total	R 1938 93105

6. It was submitted by Mr Monyane that the plaintiff's loss of income should be calculated at no more than R451 935 00 and that general damages not to exceed R240 000 00.

7. In considering the amounts to be awarded to plaintiff, under the heads referred to in par 5 above, I took into account the plaintiff's oral evidence and the expert summaries filed by the applicant. The selected expert evidence quoted below, to my mind, encompasses the main issues pertaining to the determination of the amounts to be awarded.

8. The injury to the plaintiffs back was a fracture of the T8 vertebra.

In the report of Dr J J L Heymans, the plaintiff's orthopedic surgeon, dated 12 July 2010, it is stated that the plaintiff, at that stage, still experienced back pain and discomfort. According to this report the plaintiff is unfit to handle heavy objects or to stand for long periods of time.

Certain conservative treatment was prescribed for the applicant that would have resulted in a

"normale arbeidslevensspan".

The radiologist report of Dr A A S Burger, dated 15/06/2010, filed by the plaintiff, reads as follows:

"DORSAL SPINE

A previous compressive injury is seen on the T8 vertebra. It currently has a wedge shape.

No severe disturbance of the alignment of the dorsal spine seen anywhere.

No further bony injuries seen.

LUMBAR SPINE & PELVIS

Alignment not disturbed.

No fractures or dislocations seen.

Disc spaces appear intact.

Pelvic bones and hip joints appear uncomplicated."

9. After having considered all relevant expert reports filed by the applicant, the plaintiff's industrial psychologist, Mr J P Venter, in his report dated 24 August 2010, concluded as follows:

"6.3 Compensation for earning capacity loss.

She will probably earn the same pre and post-accident. However Ms Bekker opinion that she has become a more vulnerable employee is noted. She can cope without making expecting huge accommodations from her employer. The government has clearly published policies regarding their sympathy and intent to accommodate disability. So she would not need to seek a sympathetic employer - they are already.

And she would not have sought employment outside of State according to her plans. So I would suggest something like a lump sum payment would probably be the type of

compensation that would be suitable.

I defer to medical opinion regarding possible future complications. From my understanding of the stated medical opinion it would not affect her employability."

10. Taking into account all relevant information, I am not persuaded that the plaintiff will suffer any future loss of income. The question whether the plaintiff would have been likely to be promoted in future, without having suffered the injury to her back, must be evaluated taking into consideration the plaintiff's education, her work performance in the past etc.

It appears to me that before the accident, the plaintiff, on the probabilities, had prospects to be promoted some time in future. However, the more important issue is whether, now, after the accident, due to her present physical condition, the plaintiff has no, or lesser, prospects to be promoted. The plaintiff did not adduce any oral evidence in that regard at all. She did not tell me that she has no prospects to be promoted. The only aspect she did emphasize, was that she finds it difficult to perform her normal or usual duties as teacher. This evidence is somewhat contradictory to the findings of the experts alluded to above and does not prove that she would probably not be promoted in future. The facts that the plaintiff is experiencing pain, that she cannot stand for long periods and that she cannot participate in sport anymore, do not mean that she is disqualified from being promoted or that, on the probabilities, she will not be promoted in future.

11. Accordingly I am unable to find that the plaintiff has proved that she will suffer future loss of income as submitted by Mr Geach. The fact that it was conceded by the defendant that the plaintiff should be compensated for future loss of earnings, albeit for a lesser amount than what was suggested on behalf of the plaintiff, is clearly not binding on this Court.

12. In considering the amount to be awarded for general damages, it is obvious that the nature and extent of the injuries sustained by the plaintiff, and the pain she has suffered and is still suffering, is the most important consideration. The injury to the plaintiff's back was without doubt very painful. The evidence, which is uncontested, proves that the plaintiff is still suffering from pain and discomfort. However, the amount of R700 000 00 in that regard, suggested by Mr Geach, is glaringly excessive. A fair amount for general damages, in my opinion will be R300 000 00.

13. In view of the nature of the injury sustained by the plaintiff, the standard undertaking regarding future medical expenses, in terms of section 17(4)(a) of Act 56 of 1956 should also be ordered.

14. The amount awarded to the plaintiff is therefore the amount of R300 000 00 for general damages plus R16 849,05 for past medical expenses; a total amount of R316 849,05. The latter amount, the undertaking in terms of section 17(4)(a) of Act 56 of 1996, and the costs order is J reflected in the attached order marked X.

A J BAM

ACTING JUDGE OF THE HIGH COURT

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

Case Number: 27351 /2008

In the matter between:

POPI IRENE SHONGWE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

C<sup>A</sup>RAFJ ORDER

By agreement between the parties it is ordered THAT :

1. The Defendant pays the Plaintiff the sum of R 316 849,05 by way of delictual damages directly into the trust account of the Plaintiffs Attorney, viz GP VENTER ATTORNEYS, STANDARD BANK, HATFIELD BRANCH (BRANCH CODE : ....., ACCOUNT NUMBER : .....
2. The Defendant furnishes the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996.
3. The Defendant pays the Plaintiff's taxed or agreed party and party cost of suit to date hereof on the High Court scale which costs will include the costs of Senior Counsel and the

costs of the report of and consultations with as well as the preparation and reservation fees, if any, of the expert witnesses DR JJL HEYMANS, ELZETH JACOBS, DR. PL LE KG WAR A, HENK STEYN. DR. ROBERT. J KOCH. DR. AJ TROSKIE. , as well as the travelling cost of the Pontiff to attend at trial and subsistence costs as well as the Plaintiff's travelling costs and subsistence costs to attend to all medico-legal appointments.

BY ORDER

REGISTRAR