

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 50201/2012 Date: 7 March 2014

In the matter between:

L BOTHA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PRETORIUS J.

[1] This is an action against the Road Accident Fund for damages and ancillary relief due to a collision.

[2] In this action the merits of the matter were conceded. The court only has to deal with the quantum. The first day of trial the case stood down as no judge

was available. It is important to note that on 28 February 2014, the first day of trial, the defendant's attorney had not received any instructions from his client.

[3] This caused the plaintiffs attorney to address a letter to the defendant drawing the defendant's attorney's attention to the fact that the defendant's attorney had not yet signed the pre-trial minute. Furthermore it was recorded that the defendant had not appointed any experts to deal with the quantum in the matter. The attorneys for the defendant were warned in this letter that on the day when the trial commences, a punitive costs order will be sought.

[4] On 3 March 2014, the case was allocated to me. On the morning of 3 March 2014, the defendant conceded the merits of the trial. General damages were conceded in an amount of R600,000.00; an undertaking was granted in terms of section 17(4) of the Road Accident Fund Act 56 of 1996. These concessions were made prior to the court's commencement.

[5] This court has to decide past medical expenses and the question of loss of income.

[6] Ms Botha, the plaintiffs evidence was that she had been a teacher for approximately 21 years. She taught English to the seniors and art to the juniors. Her last employment was in 2005, when she had been teaching as a substitute teacher since 2000. It was explained that a substitute teacher did not have a

permanent post, but could teach as a substitute teacher permanently, if there were posts available for substitute teachers.

[7] Ms Botha stopped teaching, according to her evidence, primarily to help her son who had learning difficulties. She worked for her husband during the mornings, but only to drive the workers and some administrative work. Her intention had always been to go back to teaching once her son had completed matric. Her evidence was that at first she would have had to teach as a substitute teacher until a permanent post may have become available. She testified that she would have gone back to teaching fulltime.

[8] She confirmed that the contents of the bundle of medical expenses related to all medical treatment she had received due to the injuries sustained in the collision, which totalled R705,586.27. She was not cross-examined on this amount and the court accepts her evidence. The court accepts her evidence as to the reason why she had stopped teaching. It is clear from her evidence that she had always intended to go back fulltime to teaching and that is what she would have done, once her son had completed matric and she had not been involved in the collision.

[9] It is so that Ms Botha had not indicated to Dr Strydom, the industrial psychologist, that she had stopped teaching to enable her to assist her son, but from the report of Ms Karin Havenga, the psychologist it is clear that she reported:

"Mrs Botha is a qualified teacher, but resigned in 2005, in order to focus on her youngest son's schooling. Mrs Botha states that her son no longer requires her support."

[10] It is so that Ms Botha had attended numerous experts appointments, as she had explained and according to her it is possible that she forgot to mention to Dr Strydom that she primarily stopped teaching to enable her to help her son who had huge learning difficulties. She only mentioned that she was working for her husband.

[11] Dr Strydom confirmed in evidence that it would be hard to find a permanent teaching post immediately, but that the plaintiff would have been able to find a post as a substitute teacher. She further explained that such a post could have lead to a permanent position, when such a permanent post became available.

[12] The defendant did not lead any evidence. The only evidence I have to consider is that of the plaintiff. I find that the plaintiff's intention was clearly to find a permanent position as a teacher, whilst teaching in a substituted post, as soon as her son had finished school.

[13] I can only rely on Mr Sauer's actuarial calculations, as the defendant did not supply any evidence. Mr Dredge, for the plaintiff, correctly argued that a higher contingency deduction should apply due to the fact that the plaintiff would

most probably first have had to teach in a substituted post. I find that a 15% contingency deduction in these circumstances should be applied.

[14] Mr Kokela, for the defendant could not convince the court not to award attorney and client costs as there was no explanation as to why the necessary concessions were only made on 3 March 2014, although summons had been issued on 29 September 2012.

[15] The defendant did not endeavour to get its own experts and waited to the last minute to make certain concessions, not including past medical expenses, although there was no evidence or cross examination to dispute the plaintiff's version at all.

[16] In the circumstances a cost order on the attorney and client scale is appropriate.

[17] I make the following order.

1. The defendant to pay the plaintiff's attorney of record in the sum of R3,747,135.47 as well as the taxed or agreed costs on an attorney and client scale;

The plaintiff's attorney's trust account details are as follows:

Account holder: Van Zyl Le Roux Inc

Branch: ABSA Van der Walt Street

Branch Code: 3.....

Type of account: Trust Account

Account number: 0.....

In the event of default on the above payment, interest shall accrue on such outstanding amount at 15.5% per annum calculated from 14 (fourteen) days after date of the court order until the date of payment.

2. The defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 9 October 2011. If the defendant fail to furnish the undertaking to the plaintiff on due date, the defendant shall

be held liable for the payment of the taxable party and party additional costs incurred to obtain the undertaking.

3. Payment of the plaintiff's costs on an attorney and client scale shall include, but not be limited to the following:

- 3.1 The fees of Senior Junior Counsel;

- 3.2 The costs of obtaining all actuarial- and any other reports of an expert nature, which were furnished to the defendant;

- 3.3 The reasonable taxable qualifying, preparation and reservation fees of all experts, if any;

- 3.4 The above-mentioned payment with regard to costs shall be subject to the following conditions;

- 3.4.1 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's

attorney of record; and

3.4.2 The plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs.

Judge C Pretorius

Case number	: 50202/2012
Heard on	: 3 March 2013
For the Applicant / Plaintiff	: Mr Dredge
Instructed by	: Van Zyl Le Roux INC
For the Respondent	: Adv Kokela
Instructed by	: AP Ledwaba
Date of Judgment	: 7 March 2014