

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

Case No: 5009/2012

Date heard: 19 May 2014 until 21 May 2014

Date handed down: 21 May 2014

In the matter between:

CATHERINE SMITH

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The plaintiff sustained the following injuries in a motor vehicle collision that occurred on 15 August 2007:

- i) a soft tissue injury to her neck, which caused numbness in her left arm immediately after the accident; and
- ii) a soft tissue injury to her thoracic spine.

[2] The plaintiff was a passenger in the vehicle.

[3] In the present action, the plaintiff claims compensation for the damages she has suffered as a result of the aforesaid injuries.

[4] The defendant conceded its liability to compensate the plaintiff for the damages she suffered as a result of the collision and consequently the matter only proceeded in respect of the quantum of the plaintiff's claim.

[5] The plaintiff claims damages under the following heads:

i) Past private hospital	R 20 000, 00
ii) Past medical expenses	R 60 000, 00
ii) Future medical expenses	R 100 000, 00
iii) Loss of earnings / earning capacity	R 3 000 000, 00
iv) General damages	R 250 000, 00

[6] The parties have agreed that the plaintiffs past medical expenses amounts to R 2 738,00.

[7] The plaintiff will receive an undertaking in terms of section 17(4) of the Road Accident Fund Act, Act 56 of 1996, in respect of any future medical treatment that is necessitated by the injuries she suffered as a result of the collision.

[8] General damages have been agreed between the parties in the amount of R 250 000, 00.

[9] The issue pertaining to the plaintiffs loss of earnings and/or earning capacity remained in dispute between the parties.

[10] The parties did, however, agree on the following calculation prepared by the actuary, I B Kramer in respect of the accrued and prospective value of the plaintiffs income:

	but for the accident	having regard to the accident
Gross accrued value		
of income	567 989	31 110
Gross prospective		
value of income	5 584 260	4 880 478

[11] The parties agreed on the following contingency deductions:

- i) in respect of the accrued value of income, but for the accident 15% and having regard to the accident 5%;

ii) in respect of prospective value of income, 20% for the but for the accident scenario.

[12] The crux of the dispute is, therefore, the percentage in respect of contingencies that should be deducted from the having regard to scenario pertaining to the plaintiffs prospective loss of income.

EVIDENCE AND EXPERT OPINIONS:

[13] The plaintiff, born on 14 September 1988, was an apprentice hair stylist at the time of the accident. She was 19 years of age.

[14] At the time of the collision the plaintiff was employed as an apprentice hair stylist. Subsequent to the collision she recuperated for a period of three months whereafter she returned to work.

[15] On a conspectus of the evidence of the plaintiff, Ms Kaveberg, an occupational therapist and Mr Brett Tompsett, the plaintiffs employer at the time, it is evident that the plaintiff, although she completed her hair stylist diploma, will not be able to continue in her career as a hair stylist.

[16] Consequently the plaintiff has embarked on a career path in accounting, which career option is, on the evidence, sedentary of nature and more suitable to the plaintiffs present physical condition.

[17] A career in accounting will entail that the plaintiff is mostly seated in front of computer. Making use of the necessary occupational adaptations, the plaintiffs back, neck and shoulder problems should abate to such an extent that she will be able to cope physically with her work.

[18] According to ms Klaveberg, the plaintiff will, however, still need to take breaks from time to time in order to relax her back and to do stretching exercises.

[19] One further aspect that is of concern, is the fact that the plaintiff suffers from serious headaches when she studies. I presume that the headaches are caused by either her concentrating more and/or the stress associated with examinations.

[20] Dr Raath, a pain management practitioner, concluded as follows in respect of the plaintiffs condition:

'It is my opinion that this patient has whiplash associated disorder or chronic whiplash disorder which is seriously decreasing her quality of life and decreasing her ability to function and to earn a living as she is only 25 year old. She has had to already leave one profession because of this pain and she is battling to qualify herself for another career and so this pain is totally decreasing her quality of life and decreasing her career prospects. Therefore this needs to be addressed and the way to address it is as mentioned above and these procedures needs to be performed regularly over the rest of her

life, it might get less frequent as she gets older, but these will reduce her pain to the extent that she can function normally. These might not get her absolutely pain free but it will definitely give her pain reduction and will definitely reduce the amount of pain medication she needs to ingest in order to control pain. As we know, long term use of pain medication is very detrimental to the kidneys, stomach and liver."

[21] Although the plaintiff will be able to cope with her new career path, she remains an unequal competitor due to her chronic pain syndrome.

[22] Save for the normal contingencies associated with an unsure future, the fact that the plaintiff will remain a vulnerable employee needs to be taken into consideration.

[23] Mr van Tonder, counsel for the plaintiff, suggested a 27,5% contingency deduction in this regard.

[24] Ms Vorster, counsel for the defendant, argued that a 25% deduction would suffice in the circumstances.

[25] I am of the view that a 25% deduction is too conservative, if one have regard to the facts set out *supra*.

[26] I agree with mr van Tonder, that a 27,5% deduction will fairly and adequately compensate the plaintiff in the circumstances.

ORDER

I grant an order in terms of the draft attached hereto and marked "X".

JANSE VAN NIEUWENHUIZEN

JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

Applicants' attorneys: Levin Van Zyl Incorporated

c/o Vorster & Brandt

Applicants counsel: Adv Hugo Van Tonder

Respondent attorneys: Dyason incorporated

Respondent counsel: Adv A Vorster

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

Case No.: 5009/12

BEFORE THE HONOURABLE JUDGE JANSE VAN NIEUWENHUIZEN

ON THIS THE 21st DAY OF MAY 2014

In the matter between:-

SMITH, CATHERINE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

ORDER

It is ordered that:

1. The defendant shall pay to the Plaintiff the amount of R 1635 035, 00 which amount shall be paid into the plaintiff's attorneys' bank account with the following details:

Name of Account Holder: Levin Van Zyl Inc.

Bank Name : Nedbank

Bank Branch: Business Northrand

Account Type: Trust Account

Account Number: 1[...]

Branch Code: 1[...]

2. The Defendant shall pay interest on the amount referred to in paragraph 1 above at the rate of 15,5% *per annum* fourteen days from date of judgement/settlement to date of final payment.

3. The Defendant shall furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, no 56 of 1996, which undertaking shall cover 100% (ONE HUNDRED PERCENT) of the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to Plaintiff arising out of the injuries sustained by her in the motor vehicle collision which occurred on the 15 August 2007.

4. The Defendant shall pay the taxed or agreed party and party costs of the Plaintiff in this action, including any costs attendant upon the obtaining of the payment of the amounts referred to in paragraph 1 supra, and such costs shall include the qualifying and/or preparation fees, if any, addendum reports, joint minutes, as approved by the taxing master of the following experts:

- (i) orthopaedic surgeon, Dr Enslin (attended Court on 20 May 2014);
- (ii) occupational therapist, Kim Kaveberg (attended Court on 16, 19 and 20 May 2014);
- (iii) industrial psychologist, Ms C Du Toit (attended Court on 21 May 2014);
- (iv) chronic pain specialist and anaesthesiologist, Dr Raath;
- (v) neurosurgeon, Dr J Earle;
- (vi) clinical psychologist, Dr J Watts;
- (vii) actuary, Mr I Kramer.

and Counsel's fees, and subject to:

4.1. The plaintiff serving the bill of costs on the defendant's attorneys of record; and

4.2 The defendant shall be allowed 14 (fourteen) days for payment of the plaintiff's bill of cost after allocatur.

5. The Plaintiff does not have a contingency fee agreement with his attorneys of record.

BY ORDER

REGISTRAR