IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 70963/2013

DATE: 10 JUNE 2014

In the matter between

NICOLAAS MARTHINUS BASSON **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

LEDWABA DJP:

[1] The only issue raised by the parties is the nature and extent of the undertaking which the Defendant should issue to the Plaintiff in terms of Section 17(4) of Act 56 of 1996 (The Act') having regard to the backcloth of the facts set out hereunder.

1.1 The Plaintiff instituted two action proceedings against the Defendant arising from two separate accidents involving motor vehicle in which the Plaintiff was involved.

1.2 The first accident occurred on 6 September 2007, hereinafter referred to as the first claim, and the second accident occurred on 30 January 2009; hereinafter referred to as the second accident.

1.3 The first claim was settled and finalised on 13 September 2012 and the Court, having heard Counsel in respect of the so-called future medical certificate or undertaking granted the following order:

> "2. *The Defendant must furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) for the costs of the future accommodation of the Piaintiff in a hospitai or nursing home or treatment of or rendering of a service or supplying of goods to him after the costs have been incurred and or proof thereof, resulting from the accident that occurred on 6 September 2007, limited to 20%."*

[2] Of importance is that in both the first and the second claim the defendant admitted 100% liability for the Plaintiffs proven or agreed damages.

[3] What triggered the issue *in casu* is that the undertaking in respect of the first claim was limited to 20% because the expert's reports at the time stated that the Plaintiffs injuries could be attributed to 20% for the first accident and 80% for the second accident. The report of Dr Mare on which the first court order was based after the Plaintiff and Defendant' Counsel addressed the court stated the following:

> "*In beide gevalie was van agter af in sy motor vasgery met gevolglik ekstensie beserings van die rug en nek. Die tweede botsing het baie meer pyn veroorsak en wat (sic) teen baier hoer velositeit. Eiser reken 80% vir die tweede en 20% vir die eerste botsing. "*

[4] However it should also be noted that one Dr du Plessis in respect of the injuries of the first claim's injuries and the sequelae stated that:

> "*With regard to the 50% apportionment between the first and second accident (sic) I agree with Dr J J du Plessis that the first accident account (sic) for 50% of his current status."*

[5] The Defendant's Counsel submitted that on pages 108 -109 of the Plaintiffs bundle of expert reports, the Plaintiffs neurologist, Dr J A Smuts, and the Plaintiffs orthopaedic surgeon, Dr Deodat More agreed that 50% of the sequelae the Plaintiff currently experiences is attributable to

the injuries sustained in the second collision.

[6] Based on the said report, the Defendant tendered to pay 50% of the Plaintiffs future medical expenses relating to the injuries sustained in the second collision by providing an undertaking in terms of section 17(4) of the Act, limited to 50%.

[7] It should be further noted that that the Plaintiffs experts that recommended that the undertaking be limited to 20% in the first accident are the same experts who recommend that the undertaking should be limited to 50% in the second accident.

[8] The experts were not requested to comment on why they initially recommended that the undertaking should be limited to 20% and in the second accident it should be limited to 50% only. More particularly the experts should have been requested to state why should the Defendant not be liable to pay the difference of 30% future medical expenses since ail the injuries were related or cause by the first and the second accident.

[9] The Defendant's Counsel further submitted that if the plaintiff does not accept the undertaking offered, the Plaintiff should first seek a variation of the first court order.

[10] The Defendant never submitted that the injuries could have been caused or aggravated by something other than the aforesaid two accidents.

[11] The old and the new Acts have been enacted for this benefit of persons who sustained injuries caused in a motor collision(s).

[12] I cannot find any sensible legal basis upon which the Plaintiff should be deprived 30% of future medical expenses. Furthermore in both accidents Plaintiff sustained a soft tissue injury to his neck and back. The determination of exactly what percentage should the Defendant compensate when the claim is submitted for future medical expenses would be difficult to determine, if not impossible if this court is to order that the Defendant should furnish an undertaking limited to 50% *in casu.* The Defendant admitted liability for 100% of the Plaintiffs proven or agreed damages. I see no reason why the defendant should not give an unlimited undertaking.

[13] To avoid unnecessary confusion regarding the undertaking and since the injuries are accident related to Defendant should be furnish the Plaintiff with an unlimited undertaking.

I therefore make the following order:

1. The Defendant shall pay the sum of R 1 195 601.00 (One million one hundred ninety five thousand six hundred and one rand only) to the Plaintiffs attorneys, Erasmus-Scheepers Attorneys, in settlement of the Plaintiffs claim, which amount shall be payable by direct transfer into their trust account, details of which are as follows:

Bank: ABSA BANK, LYNWOOD ROAD

Account holder: ERASMUS-SCHEEPERS ATTORNEYS

Account number: 4[...]

Reference: B[...]

2. The Undertaking in terms of Section 17(4)(a) granted in terms of the Court Order dated 13 September 2012 in case number 58104/2009 is hereby withdrawn or set aside.

3. The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) for a 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him after the costs have been incurred and on proof thereof resulting from the accidents that occurred on 6 September 2007 and 30 January 2009, as provided for in the medico legal reports filed on behalf of the Plaintiff.

4. The Defendant must make payment of the Plaintiffs taxed or agreed party-and-party costs on the High Court scale, which costs shall include the following:

4.1 All fees of Senior-Junior Counsel on the High Court scale, including the costs of preparation of the Plaintiffs heads of argument (if any);

4.2 The reasonable taxable costs of obtaining all expert/medico-legal and actuarial

reports from the Plaintiffs experts which were furnished to the Defendant;

4.3 The reasonable taxable reservation, preparation and qualifying fees, if any, of the following experts of whom notice have been given, being;

4.3.1 Dr D Maré;

4.3.2 Ms A Greef;

4.3.3 Schoombee & Wessels;

4.3.4 Dr J A Smuts;

4.3.5 Dr C Hearne;

4.3.6 Mr G Whittaker.

4.4 The reasonable taxable transportation costs incurred by the Plaintiff in attending medico-legal consultations with the parties' experts, subject to the discretion of the Taxing Master;

4.5 The reasonable taxable costs of preparing the trial bundles in terms of the Practice Directive dated 8 June 2010;

4.6 The reasonable taxable travelling costs, costs of preparing for pre-trial conferences and preparation of pre-trial minutes and the costs for attendance of pre-trial conferences of the Plaintiffs attorney;

4.7 The reasonable costs of the Plaintiffs attorney for the preparation for trial.

4.8 The above costs will also be paid into the aforementioned trust account.

5. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

5.1 The Plaintiff shall serve the Notice of Taxation on the Defendant's attorneys

of record;

5.2 The Plaintiff shall allow Defendant 7 (seven) court days to make payment of the taxed costs from date of settlement or taxation thereof;

5.3 Should payment not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 15.5% on the taxed or agreed costs from date of allocator to date of final payment.

6. It is recorded that no contingency fee agreement exists between Plaintiff and his attorney.

LEDWABA DJP

DEPUTY JUDGE PRESIDENT

Appearing on behalf of the Plaintiff: Adv R Ferguson

Instructed by: Erasmus-Scheepers Attorneys

Appearing on behalf of the Defendant: Adv. L Coetzee

Instructed by: Maponya Attorneys

Date of Judgment: 10 June 2014