

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 30579/2008

CONSOLIDATED UNDER CASE NUMBER: 6342/2009

DATE: 3 SEPTEMBER 2014

In the matter between:

S L KRUGER

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MODIBA AJ:

1.

This is a damages claim for personal injuries sustained by the plaintiff. The claim arises out of two motor vehicle accidents that occurred in 2007 and 2008. The plaintiff was a driver in both motor vehicle accidents. He instituted separate actions. These were subsequently consolidated in 2012 in terms of an order granted by my brother van der Merwe J. The merits were adjudicated at 90/10% in favour of the plaintiff. All reports have been consolidated into a join minute which form part of a bundle handed into court during the quantum trial. The defendant has admitted the plaintiff's reports. The contents of these reports are therefore common cause between the parties.

2.

General damages were settled between the parties at R450,000. Past medical expenses in the amount of R24,721.74 are not disputed by the defendant. On 27 August 2014, my brother Ledwaba DJP granted an order for

an interim payment in terms of Rule 34A of the Uniform Rules of Court for an amount of R1, 950,000.00, comprising of R450, 000 in respect of general damages and a portion of loss of earnings yet to be proved by the plaintiff.

3.

The remaining issue in dispute is past and future loss of earnings. Both parties have filed actuarial reports. Although the parties' actuarial calculations were made on the basis of the plaintiff's reports, they arrived at different calculations. The plaintiff's attorney submitted that two reasons account for the different calculations. The plaintiff works in Mozambique and earns in the Mozambican metical. The plaintiff's industrial psychologist converted the plaintiff's salary in her report yet the defendant's actuary worked on the actuarial calculations on the basis that the figures provided by the industrial psychologist were in metical. Although the defendant's actuary filed an amended actuarial report correcting this error, he based the defendant's actuarial calculations on Patterson scale D1 despite the fact that the plaintiff has proof of current earnings. The plaintiff's current earnings is R87, 401.09 according to a salary slip dated 21 July 2014. This puts him at salary level D2 on the Patterson scale. The plaintiff's industrial psychologist expressed the view that the plaintiff has reached his career ceiling.

4.

The plaintiff's attorney further submitted that the plaintiff suffered past loss of earnings in the amount of R54, 526. This amount comes to R46,347 less 10% contingencies. The future loss of earnings are calculated at R14,275,235 pre-accident and R3,320,667 post accident, amounting to a total loss of R10,954,558. After applying 15% contingencies both ways, and adding the past loss of earnings, he has sustained loss of earnings in the amount of R10,021,857.

5.

Counsel for the defendant submitted that the plaintiff submitted past loss of earnings in the amount of R21,950.00. His pre-morbid future earnings are estimated at R10,320,100 and post-morbid earnings are calculated at R3,975,100 with a total loss of earnings of R4,361,240 after allowing 25% and 15% contingencies respectively.

6.

The Plaintiff's attorney submitted in reply that given that the plaintiff has to stop working and re-skill himself for employment in different sector where he will perform sedentary work, that at his age he will be an uncompetitive entrant in the job market as well as the fact that he will be living with sequelae from the two

accidents, a contingency of 35% for post accident loss is unreasonable. He submitted that a 10% contingency will be reasonable in these circumstances. I agree with the plaintiff's attorney in this regard.

7.

I am of the view that an award of R6,956,809 in respect of loss of earnings, R450.000 for general damages and R24,721.74 in respect of past medical expenses less 10% in respect of the apportionment, and less the amount of R1,950,000 paid in advance is appropriate in these circumstances.

I therefore make the following order:

1. The defendant shall pay to the plaintiff the following

Past medical expenses	R24 721.74
Loss of Income	R6 856 809.00
General Damages	<u>R450 000.00</u>
Total	7 331 530.74
Less: 10%	<u>733 153.07</u>
	6 598 377.67
Less: interim payment	<u>R1 950 000.00</u>
TOTAL	<u>R4 648 377.67</u>

(FOUR MILLION SIX HUNDRED AND FOURTY EIGHT THOUSAND THREE SEVEN SEVEN RAND, SIX SEVEN CENTS)

2. The total amount in 1 above is payable on or before 28/10/14 into the bank account of P A S Attorneys with banking details as follows:

PAS ATTORNEYS

FNB, ERMELO

ACCOUNT: 6[...]

CODE: 270 344

REF: **DER004/3**

3. The defendant will not be liable for any interest on the instalment payment if payment is made as stipulated in 2 above. If no payment is received on or before 28/10/14 interest shall be calculated at 9% from date of court order up until date and final payment.

4. The defendant will pay the plaintiff's taxed or agreed party and party cost on the applicable high court scale subject to the following conditions:

a) The plaintiff shall in the event that the cost are not agreed serve a notice of taxation on the defendant's attorneys of record; and

b) The plaintiff shall allow the defendant 14 court days to make payment of the taxed or agreed cost;

The cost shall include the cost to the date of this order, which cost shall further include the cost of the attorney and correspondent attorney which include necessary travelling costs and expenses, attendance at Court, costs for pre-trial conferences and formulation of the pre-trial minutes and of actual attendances to pre-trial conferences, cost previously reserved. The cost shall also further include:

4.1 Travelling cost and expenses for the plaintiff to attend the court as necessary witness on 02/09/2014.

4.2 The cost of Mr D J Marx, in his capacity as senior attorney with right of appearance in the high court which cost also includes his day fee for 02/09/2014.

MODIBA AJ

Attorney for the Applicant: Mr D J Marx

Instructed by: PAS Attorneys

For the Respondent: Mr G f Jansen

Instructed by: MNRE Dial Mogashoa Attorneys

Date of hearing: 2 September 2014

Date of judgment: 3 September 2014