THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 31588/2015

DATE OF HEARING: 18 OCTOBER 2016

DATE OF JUDGMENT: 31 OCTOBER 2016

In the matter between:

MESHAKE: NTHABISENG EMILY Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

AVVAKOUM IDES, AJ

[1] This is an action in which the plaintiff clams compensation for loss and injury arising from a motor collision. When the case was allocated to me both counsel indicated that only two issues stood to be determined, namely the loss of earnings and general damages. The remaining aspects of the claim, including the merits, had been dealt with previously. In my chambers my attention was drawn to the defendant's intention to refer the question of general damages to the Health Professions Council of South Africa. Both counsel wished to make some remarks about the issues in my chambers but I requested to be addressed in court.

[2] At the commencement of the trial the plaintiff s counsel submitted that all of the plaintiff s medic legal reports were admitted by the defendant, in particular the contents, clinical

findings, conclusions and opinions expressed therein. The defendant's counsel confirmed this agreement.

[3] The plaintiff testified that she had been working as a child minder for Mr. Mabaso and she had earned R2000.00 per month. Her salary was paid monthly in cash and she had not documentary proof to produce to substantiate the income. Her duties included taking care of the Mr Mabaso's children, cooking and cleaning the house. After the collision she was off for a long period of time. Upon her return to Mr Mabaso she experienced difficulty in performing her duties and as a result she and Mr Mabaso would often have words. The plaintiff testified that she lost her job as a result of not being able to perform her tasks as she did before the collision.

[4] When she returned to her work after the collision her income had been reduced to R1800.00 per month and when she was dismissed she was paid R1200.00 for that month. She then tried to go back to school but was attacked once on her way to school and, all in all, her attempt was unsuccessful. The plaintiff became very emotional at this stage of her evidence and I could observe the desperate state she was in. The plaintiff stated that she coped by way of a child grant and the money that the father of her child contributes to the child. Most of the money goes to the child and is she is left with very little to cope with. It is clear that she is near destitute.

[5] The defendant started cross examination by wanting to put to the plaintiff the contents of a letter apparently written by Mr Mabaso about the reasons for the plaintiff losing her employment. When I asked the defendant's counsel whether Mr Mabaso would come and testify he said that Mr Mabaso would not testify. Consequently I could not allow the cross examination on the contents of the letter. The defendant's counsel then indicated that he did not wish to cross examine the plaintiff on anything else. The plaintiff closed her case.

[6] In argument the plaintiff submitted that in the light of the defendant having accepted all the medico legal reports and not having filed any of its own, it must follow that the defendant had also accepted the serious injury assessment. The plaintiff's counsel referred me to the governing Regulation 3 (3) (d) of the Road Accident Fund Amendment Act 19 of 2005 and submitted that the regulation provides that if the defendant is not satisfied with the serious injury assessment, *it must,* (my emphasis) reject the RAF4 form and give its reasons for doing so, or direct that the third part (the plaintiff) submit herself to a further assessment. The defendant clearly did not do so and having accepted the reports which included the serious injury assessment of the plaintiff, could hardly support any contention that it wished to refer the question of general damages to the HPCSA. I enquired from the plaintiffs counsel whether this would be case despite the decision in Raf v Thokozani Duma and Others 2012 ZASCA 169. Plaintiff s counsel submitted that despite the decision in Duma, if the defendant did not follow the wording of regulation 3 (3) (d) it could then not refer the question of general damages to the HPCSA. I do not believe that the issue is as simple as contended.

[7] The defendant's counsel was silent about this issue and made no submissions whatsoever, despite having indicated in my chambers that the defendant wanted to refer the issue general damages to the HPCSA. I enquired from the Defendant's counsel whether he had any further submissions but he did not. I consequently regard the defendant to have abandoned the decision to refer the general damages to the HPCSA. The only submissions made by the defendant's counsel were in respect of the loss and I shall deal with such submissions hereunder. This being the case, I do not intend making any ruling on the issue save to state that the decision in Duma is clear inasmuch as it gives the defendant the right to refer the question of general damages to the HPCSA at any stage before judgment.

[8] On the amount in respect of general damages the plaintiff counsel referred me to the case

of Mohale v Raf 2015 (7A4) QOD 15 GNP, wherein the court considered the general damages of the plaintiff therein. The injuries are arguably similar to the plaintiff's injuries herein. The court in Mohale awarded the sum of R650 000.00 as general damages. The current value of the award is in the region of R722 000.00. The defendant's counsel made no submissions on the quantum of general damages. I am satisfied that an amount of R700 000.00 is fair compensation for the plaintiff's general damages.

[9] Both counsel submitted and were satisfied that, in respect of the contingencies to be applied to the figures provided by the plaintiff s actuary, the court should apply a 10% spread, namely a difference of 10% between the past earnings and future earnings to the figures *"had the collision not occurred"* and a 25% spread, namely a difference of 25% between the past earnings and future earnings to the figures *"having regard to the collision".* The actuarial calculation arrives at a figure of R526 400.00. Iam satisfied that on the facts this amount is fair compensation for the plaintiff loss of earnings.

[10] Consequently, I make the following order:

[10.1] The defendant is ordered to pay a capital amount of R1 226 400.00 to the plaintiff, in full and final settlement of the plaintiffs claim. Payment shall be made into the trust account of the plaintiff's attorneys, details of which are as follows:

Mokoduo Incorporated Trust Account (Now MED Legal)

First National Bank, Rosebank Branch

Account Number: [6...]

Branch Code: 253305

[10.2] The defendant is ordered to furnish the plaintiff with a 100% undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for 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 the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision of 9 July 2013 after such costs have been incurred and upon proof thereof.

[10.3] The defendant will pay the agreed or taxed party and party High Court costs of the action, such costs to include:

[10.3.1] the costs attendant upon the obtaining of payment of the capital amount referred to in paragraph 1 above.

[10.3.2] the preparation expenses of the report and preparation expenses for trial of the plaintiff's experts: Dr Scher, Dr Shapiro, Dr Townsend, Ms Gibson, Ms Ledwaba, MMs Leibowitz and Mr Loots, if any and as agreed or allowed by the Taxing Master.

[10.3.3] the costs of counsel.

[10.3.4] cost of the witnesses if any.

[10.4] The defendant tenders to pay the plaintiff's taxed or agreed party and party costs on the applicable High Court scale subject to the following conditions:

[10.4.1] the plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant attorneys of record; and

[10.4.2] the plaintiff shall allow the defendant 7 (seven) court days to make payment of the taxed costs.

[10.5] The plaintiff has concluded and signed a written Contingency Fee Agreement whereby the plaintiff at no stage carried any risk for fees or any portion thereof.

[10.5.1] The Contingency Fee Agreement complies with the Contingency Fee Act 66 of 1997.

[10.5.2] In terms of such agreement, the plaintiff shall be liable for fees equal to or higher than our normal fee on an attorney and own client scale, provided that such fees which are higher than the normal fees shall not exceed such normal fees by more than 100 per cent and provide further that, as the claim is one sounding in money, the total of any such success fee payable shall not exceed 25% of the value of the claim, which amount shall not purposes of calculating such excess, include any costs.

G. T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

DATE: 31 OCTOBER 2016

Representation for Plaintiff:

Counsel: B. Anderson

Instructed by: Mokoduo Attorneys

Representation for Defendant:

Counsel: A. M. Mametse

Instructed by: Meche Attorneys