

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

11/112016

CASE NO: 84510/2014

NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
REVISED

In the matter between:

WESLEY BESTER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The plaintiff, a 28 year old male, claims damages in respect of injuries he sustained in a motor vehicle collision that occurred on 3 August 2013.

ISSUES COMMON CAUSE

[2] The parties have agreed on the following issues:

- i. the defendant is liable for the damages suffered by the plaintiff as a result of the motor vehicle collision that occurred on 3 August 2013;
- ii. the plaintiff is entitled to be furnished with an undertaking as envisaged in section 17(4)(a) of the Road Accident Fund Act, 56 Of 1996;
- iii. the plaintiff is entitled to general damages in the amount of R 300 000, 00; and

- iv. the plaintiff is entitled to the costs of the action.

ISSUE IN DISPUTE

- [3] The sole issue in dispute pertains to the plaintiff's loss of earnings.

EVIDENCE

- [4] The plaintiff relied on various expert reports in support of his claim for loss of earnings. Save for a few aspects in the reports of the orthopaedic surgeon and the industrial psychologist, the contents of the reports are not in dispute.

- [5] The orthopaedic surgeon, Dr P Engelbrecht, testified, *inter alia*, in respect of the orthopaedic injuries the plaintiff sustained as a result of the motor vehicle collision, to wit:

- i. left radius and ulnar fracture (midshaft);
- ii. fractures of fingers (multiple) left hand;
- iii. open wounds dorsal aspect of second and third fingers; and
- iv. open wounds on palmar aspect of third finger.

- [6] The plaintiff was employed in the metal work industry prior to the accident and has since the accident been unemployed. Ms Adroos, the occupational therapist, reported that the plaintiff, as a result of the injuries, will not be able to cope with the full spectrum of welding i.e he will not be able to return to his previous employment. In respect of alternative employment, Dr Adroos is of the view that the plaintiff will be able to cope with sedentary work for example reception duties, a function he performed pre-accident.

- [7] The problem with sedentary work, however, is the plaintiff's low level of education. He completed a Grade 10 Special Needs certificate, which is equivalent to a mainstream Grade 8 certificate.

- [8] In view of the aforesaid, Mr Kruger, an industrial psychologist, suggested a significantly higher post-morbid contingency deduction. Although the plaintiff relied on the evidence of Mr Kruger, Mr van der Merwe, counsel for the plaintiff, strenuously argued that the plaintiff should be deemed to be unemployable post-morbid.

- [9] Mr Lusenga, counsel for the defendant, did not agree. He submitted that a post-morbid

career path should be calculated and that a significant higher contingency deduction, as suggested by Mr Kruger, should be applied.

LEGAL PRICIPLES

[10] Mr van der Merwe provided a detailed expose of the prevailing legal position in respect of awards for loss of earnings.

[11] Zulman JA, with reference to various authorities, summarised the prevailing legal principles in *Road Accident Fund v Guedes* 2006 (5) SA 583 SCA at 586 H - 587 B as follows:

"It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for example President Insurance Co Ltd v Mathews).² The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO).³ The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is useful basis for establishing the quantum of damages. Even then, the trial Court has a wide discretion to award what it believes is just (see, for example, the Bailey case⁴ and Van der Plaats v South African Mutual Fire and General Insurance Co Ltd)."

DISCUSSION

[12] Having regard to the opinions of the various experts, I am of the view that it is unrealistic to assume that the plaintiff will find employment in future. The plaintiff, due to his low intellectual capacity, embarked on a career in the artisan industry. It should be noted that the plaintiff has no formal training in this field and obtained "hands-on-training" during the course of his career. In the report of Mr Kruger, the following feedback was obtained from the plaintiff's supervisor at his place of employment pre-morbid:

"Mr van Amelsfoort reported that Mr Bester was a 'low average worker' who completed

his tasks. However, Mr van Amelsfoort indicated that although Mr Bester had the necessary skills and experience to complete the tasks, he required close supervision and then he will only complete what was required of him."

- [13] It appears that, even in the artisan field, the plaintiff had to be supervised to perform optimally. This is a further indication of his limited abilities pre-morbid.
- [14] The plaintiff had to rely on physical work to earn an income. Due to his intellectual ability this was the only option open to him. This ability he has lost as a result of the injuries he sustained in the motor vehicle collision. In my view, he should be adequately compensated for this loss.
- [15] Mr Kruger expressed the opinion that the plaintiff would possibly have worked until the age of 70 years due to a lack of financial planning. I agree and the award will take the aforesaid into account.
- [16] In the premises an amount of R 1 280 147, 00, as per the calculation of the actuary, C Heymans, is awarded in respect of the plaintiff's claim for loss of earnings.

ORDER:

1. The Defendant shall pay to the Plaintiff the sum of R 1 580 147, 00.
2. The amount mentioned in paragraph 1 is to be paid to the Plaintiff within 14 days of the date of this Court order.
3. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.50% per annum, calculated from the 15th calendar day after the date of this order to date of the payment.
4. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 for payment 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 resulting from the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on 03 August 2013, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof.
5. The Defendant shall pay the Plaintiff's taxed or agreed costs on the High Court scale, subject thereto that:
 - 5.1. In the event that the costs are not agreed:

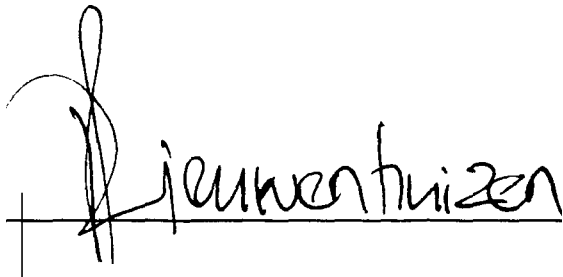
- 5.1.1. The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
- 5.1.2. The Plaintiff shall allow the Defendant 7 (SEVEN) Court days from the date of allocator to make payment of the taxed costs.
- 5.1.3. Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 10.50% per annum on the taxed or agreed costs from the date of allocator to the date of final payment.
6. Such costs shall include but not be limited to:
 - 6.1. The costs of and consequent to the employment of Counsel, including counsel's charges in respect of his full day fee for 11 and 12 October 2016 as well as reasonable preparation and costs for the day of noting judgment;
 - 6.2. The reasonable taxable preparation, qualifying and reservation fees as per account, if any, in such amount as allowed by the Taxing Master, of the following experts:
 - 6.2.1. Dr Engelbrecht - Orthopaedic surgeon; (present at court 12 October 2016, reserved for 11 October 2016)
 - 6.2.2. Abida Adroos - Occupational Therapist; (present at court on 11 & 12 October 2016)
 - 6.2.3. Kobus Prinsloo - Industrial Psychologist; (present at court 11 & 12 October 2016)
 - 6.1.4. A Cramer - Clinical Psychologist (present at court on 12 October 2016)
 - 6.1.5. Dr Pienaar - Plastic Surgeon;
 - 6.1.6. T Doubell - Actuary. (present at court 11 & 12 October 2016)
 - 6.1.7. The reasonable travelling costs of the Plaintiff, who is hereby declared a necessary witness.
 - 6.1.8. The reasonable witness fees for Mr J Rocher an independent eye witness present at court on 11 October 2016.
7. The amounts referred to above will be paid to the Plaintiff's attorneys, Spruyt Incorporated as per Annexure "A" hereto (The consent and instruction), by direct transfer into their trust account, details of which are the following:

Standard Bank

Account number: [...]

Branch code: Hatfield (01 15 45)

REF: SD 1872

A handwritten signature in black ink, appearing to read 'Nieuwenhuizen', is written over a horizontal line. To the left of the signature, there is a vertical line segment.

N JAN E VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

ATTORNEYS FOR THE APPLICANT:

SPRUYT INCORPORATED

COUNSEL ON BEHALF OF THE APPLICANT:

Advocate F J VAN DER MERWE

ATTORNEYS FOR THE FIRST RESPONDENTS:

DIALE MOGASHOA ATTORNEYS

COUNSEL ON BEHALF OF THE FIRST RESPONDENT

Advocate W LUSENGA