# IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)

In the matter between:

// 3/20/6

MOLEFE, TP

PLAINTIFF

and

(1) Reportable: No

(2) Of interest to other Judges: No

PEFENDANT

DEFENDANT

# A. <u>INTRODUCTION</u>

STRIJDOM AJ:

- The Plaintiff sues under the Motor Vehicle Insurance Act for damages in respect of the loss of earnings suffered as a result of the motor vehicle accident which occurred on or about 29 October 2012.
- 2. The Plaintiff suffered the following injuries as a result of the accident:
  - 2.1. Bruises to the left foot;
  - 2.2. Low back pain;

- 2.3. Left shoulder pain;
- 2.4. Chest pain.
- 2.5. Moderate to severe head injury;
- 3. The Plaintiff has the following sequalae as a result of the injuries sustained in the accident:
  - 3.1. Pain left foot, which is exacerbated by prolonged standing and walking;
  - 3.2. Chest pain this is worsened in exertion;
  - 3.3. Chronic headaches:
  - 3.4. Low back pain;
  - 3.5. Chronic post traumatic stress disorder with clinical features of anxiety / depression.
  - 3.6. Her chronic pain syndrome has detrimental effect on her selfesteem, body image and self efficacy. The distressing, recurrent, intrusive memory precipitate hyper arousal, sleep disturbances, loss of appetite, anxiety, inertia and poor concentration.
- 4. The Defendant has conceded the merits and is providing an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1994.

# **ISSUES IN DISPUTE:**

5. The issue of quantum (loss of earning capacity) is in dispute.

# **EXAMINATION BY MEDICAL EXPERTS:**

- 6. The following expert reports were obtained by the Plaintiff and Defendant:
  - 6.1. Dr P Kumbirai, orthopeadic surgeon;
  - 6.2. Dr TP Sekati, occupational therapist;
  - 6.3. Dr P Baloyi, industrial psychologist;
  - 6.4. Dr B Tlhabane, educational psychologist;
  - 6.5. George Schwalb, actuarial consultant;
  - 6.6. Munro, forensic actuaries;
  - 6.7. Dr Kobus Biljon, clinical psychologist;
  - 6.8 Dr K Bila, orthopeadic surgeon.
- 7. No viva voci evidence was tendered by the Plaintiff and Defendant.

### LOSS OF EARNINGS CAPACITY:

- 8. The Defendant submitted that the Plaintiff's capacity to work loss has impaired to a certain extent, and therefore the Court should consider the capacity of loss to the extent of her partially diminished patrimony in future. In this regard, the value of the pre-morbid and post-morbid should be considered the same and an appropriate contingency deduction is to be applied.
- The Defendant tendered to the Plaintiff an amount of R1,183,212.50 as a final settlement for the loss of earning capacity.
- 10. The Plaintiff is currently a learner and was a learner doing grade 10 at the time of the accident.

#### **QUANTUM BACKGROUND:**

11. According to the orthopeadic surgeon, Dr Kumbirai, the Plaintiff will not be able to complete fairly in the open labour market. The pain in her left foot, low back, chest and the chronic headaches may limit her choice of occupations which require prolonged standing, walking, lifting of heavy weights may aggravate her pain. Her loss of earning capacity is estimated to be at least 1% in such jobs.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> See page 46 of the paginated index to Plaintiff's expert's reports

- 12. According to the educational psychologist the Plaintiff experienced a slight decline in her school performance during the year in which the accident occurred, meaning that she struggled to cope and focus as she had to endure discomfort due to the accident. Her school performance declined for the period of two years after the accident. This could be related to the accident as she had to take time off to nurse her injuries and lose focus on her work.
- 13. Her 2014 final year Matric results show a bit of improvement as compared to previous results. This is not a significant looking at how she used to perform before the accident.
- 14. Her performance before the accident shows that she could have progressed to NQF7 tertiary level. However, at this stage her results indicates that she has met the requirement to progress up to NQF level 6 Diploma which is not satisfactory.<sup>2</sup>
- 15. According to the clinical psychologist the Plaintiff has Chronic Post Traumatic Stress Disorder which clinical features of anxiety / depression. Her chronic pain syndrome has detrimental effect on her self esteem, body image and self efficacy. The distressing, recurrent, intrusive memories precipitate hyper arousal, sleep disturbances, loss of appetite, anxiety, inertia and poor concentration. She presents with co-morbidity, i.e depression, generalised anxiety disorder, distress and adjustment disorder.

<sup>&</sup>lt;sup>2</sup> See page 70 of the paginated index to Plaintiff's expert's reports

- 16. The occupational therapist is of the opinion that the Plaintiff will continue to struggle with physically based occupations. She has never been pain free since the accident.<sup>3</sup>
- 17. As far as the industrial psychologist is concerned the Plaintiff maintained the ability to progress to NQF 7 level scholastically before entering the open labour market pre-accident, then the following likely scenario would suit the Plaintiff's profile:

"She would enter the labour market of B4/B5/C1 level earning advancing to maximum earnings level of D1+ at the age of approximately 45 years. She would then receive annual inflationary increases until retirement."

- 18. Having regard to the accident. It is the industrial opinion that the Plaintiff will not be able to reach her pre-accident potential. The educational suggest that she might be able to qualify for a Diploma, however, in a less demanding position as she has physical challenges.
- 19. Earnings in those positions are limited to the categories in the B2/B3 to C3/C4 Paterson levels. This implies that she will be limited to lower paying positions as compared to how she would have earned when her preaccident scenario is considered.

<sup>&</sup>lt;sup>3</sup> See page 37 of the paginated index to Plaintiff's expert's reports

- 20. In light of the findings by the clinical psychologist the industrial is of the view that she may be at risk of experiencing fluctuating drive or motivation to study or work as well as fluctuating success to build and maintain effective relations with other people in a working situation.
- 21. Due to her physical and psychological challenges, these challenges may limit, delay or restrict her scholastic, academic and career prospects and further affect her chances of recurring herself employment in the open labour market.<sup>4</sup>

### **ACTUARIAL CALCULATIONS:**

Future:

22. The summary of the actuarial results are as follows:

## 22.1. Summary of results:

<u>Uninjured</u>	<u>Injured</u>	Loss of
Income:	<u>Income:</u>	Income:
R9,465,700	R6,810,600	R2,655,100

Total loss of Income: R2,655,100

<sup>&</sup>lt;sup>4</sup> See page 74 of the paginated index to Plaintiff's expert's reports

23. Having considered the various medico-legal reports, the different legal approaches and the submissions, by both counsel for the Plaintiff and the Defendant, I am persuaded that:

23.1. The total loss of earnings / income suffered by the Plaintiff is R2,597,365.00.

24. In the result,

The Draft Order annexed hereto marked "X" is made an Order of Court.

JJ STRIJDOM

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

**HEARD ON:** 

**DELIVERED ON:** 

#### **APPEARANCES:**

Counsel for Plaintiff:

Adv MG Senyatsi

Attorneys for Plaintiff:

MT Makwela

Counsel for Defendant:

Adv DM Matlabegoane

Attorneys for Defendant:

T Molaba

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

On this the 20<sup>th</sup> November 2015

BEFORE HONOURABLE Strydom A	
$\mathcal{O}$	Case Number: 31533/15
In the matter between: -	
MOLEFE: TJELANE PRIMROSE	PLAINTIFF
And	
ROAD ACCIDENT FUND	DEFENDANT
DRAFT ORDER	THE SAME STATE OF THE SAME STA
After having heard both Counsel and having peru follows:	used the papers, it is ordered as
<ol> <li>That the Defendant is liable for 100% of the damages.</li> </ol>	e Plaintiff's agreed or proven
2. That the Defendant is liable to make paymon R 2597 365 00 (Two and minety seven a such fure frand) for the F	million five hundred

suffered as a result of the injuries sustained in a motor vehicle accident

which occurred on the 29th October 2012, which amount shall be payable

within 14 days of this order into the Plaintiff's Attorneys of record trust account as follows:

: M.T MAKWELA ATTORNEYS
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:

- 3. The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund No.56 of 1996, to compensate Plaintiff for the cost of future accommodation in the hospital or nursing home treatment of a service or supplying of good to Plaintiff from injuries sustained by him/her as a result of the accident that occurred on 29<sup>th</sup> of October 2012, after the costs have been incurred and on proof thereof.
- 4. That the Defendant shall pay the Plaintiff's party and party costs on High Court scale as taxed or agreed, which costs shall include the costs of the 19<sup>th</sup> November 2015 detailed as follows: -
- 4.1. Reasonable costs emanating from court attendance and pre-trial, preparation, research and perusal of medico legal reports;
- 4.2. Costs for a Counsel:
- 4.3. The Plaintiff's travelling costs to and from all medico legal appointments;
- 4.4. Costs for all travelling expenses incurred in respect of the Plaintiff's claim;

- 4.5. The reasonable costs in respect of the preparation of all the medico legal reports and addendum of such medico legal reports;
- 4.6. Reasonable costs incurred in obtaining the joints minutes of all available Reports, if any;
- 4.7. Costs for all Medico-legal reports furnished to the Defendant as well as the reservation and qualifying fees for the Experts.
- 5. That the Plaintiff shall afford the Defendant 14 court days to make payment of such costs.

BY ORDER
THE REGISTRAR

For Plaintiff: Adv M.G SENYATSI

For Defendant: \_\_\_\_\_