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

- (1) REPORTABLE: ~~YES~~/NO
- (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
- (3) REVISED.

CASE NO: 97446/2015

13/5/2019

In the matter between:

J J DU PLESSIS

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

STRIJDOM AJ

INTRODUCTION

[1] The plaintiff instituted action against the defendant as a result of injuries that she sustained on the 23rd November 2014. The plaintiff alleges that approximately 11h00 and on the N2 highway near Kwambcinambi, a motor vehicle collision occurred when motor vehicle [....] driven by Barry Sparks, and In which vehicle the plaintiff was transported as a passenger collided with motor vehicle [....] driven by SM Mthembu.

[2] As a result of the collision, the plaintiff sustained the following injuries:

- 2.1 A fracture dislocation of the cervical spine C5/C6 and cervical myelopathy as a result of spinal cord injury;

- 2.2 Quadriparalysis at motor level C7 and sensory level T2/3;
- 2.3 Permanent disability and inability to move upper and lower limbs;
- 2.4 Lack of sphincter function;
- 2.5 Respiratory distress requiring intubation and extensive treatment;
- 2.6 Development of diabetes insipidus following treatment;
- 2.7 Extensive lacerations, abrasions and permanent cosmetic disfigurement;
- 2.8 Blow to head and neck;
- 2.9 Extensive pain, suffering and discomfort;
- 2.10 Psychological stress, trauma and depression as a result of permanent state of disability;
- 2.11 Loss of ability to mobilise, walk and to lead a normal life.

[3] The plaintiffs' claim is for an amount of R5 785 161 78 made up as follows:

- 3.1 Past medical, hospital and related expenses; R785 161.78
- 3.2 Future Medical, hospital and related expenses: Undertaking
- 3.3 Loss of earnings/ earnings capacity R2 500 000.00
- 3.4 General damages R2 500 000.00

Total R5 785 161 .78

[4] Merits were previously conceded, the defendant accepting 100% liability to compensate the plaintiff for her agreed or proven damages.

[5] It was furthermore recorded that the defendant shall furnish the plaintiff with an undertaking in terms of section 14(4)(a) and in terms of which it would compensate the plaintiff for the costs of the future hospital, medical and related expenses pertaining to the injuries sustained by the plaintiff as a result of the collision.

[6] General damages were settled.

[7] Past medical, hospital and related expenses were settled in the amount of R438 861.22 .

[8] The parties agreed that the only remaining issues requiring adjudication as part of (past medical, hospital and related expenses) are those in respect of the costs of a wheelchair, accessible motor vehicle, the registration costs, and the provision of a new car battery for the vehicle in total amounting to R732 720.46. The defendant denies that these requirements are the liability of the defendant.

[9] The defendant admitted the contents of the following reports of the plaintiffs' experts.

9.1 Report by A Greeff Occupational Therapist.

9.2 Report by Dr S Buckley, Rehabilitation Specialist.

[10] The defendant belatedly employed **Ms M** Setoaba, Occupational Therapist.

[11] In a Pre-trial dated 16 April 2019 the plaintiff provided the defendant with a bundle of documents which it intends using at the trial. The parties agreed that copies of documents shall be used for this purpose and that the authenticity of the original documents so copied shall not be in issue. It was furthermore agreed that the documents shall be what they purport to be without admission of the correctness of the contents thereof, save as, otherwise agreed.

[12] it was further admitted by the defendants that the plaintiff did not possess her own vehicle in Australia prior to the accident in question and that the defendant had been advised thereof by the plaintiffs' attorneys on 11 April 2019.

[13] The plaintiff called one expert witness, to **wit Ms A** Greeff (Occupational Therapist). No evidence was tendered by the defendant.

The Evidence of s Anneke Greeff (Occupational Therapist)

[14] Ms Greeff testified that she compiled a Medico-Legal Report regarding the plaintiff on 14 March 2019 as well as an addendum dated 9 April 2019.

[15] She testified that the plaintiff demonstrates a cervical level quadriplegia/tetraplegia (C6).

[16] During the inspection in loco done by Ms Greeff at the residence of the plaintiff it was noted that the plaintiff procured a 2nd hand 2009 Toyota Foxy

model vehicle in June 2013. It was further noted that she requires assistance either from her husband or from her care giver to gain entrance into the vehicle via the lift as it is not a hydraulic lift. The ideal would be for her to have a hydraulic lift that she could operate herself thus negating reliance on others.

[17] Ms Greeff further testified that the plaintiff had her vehicle adjusted to a park Ride vehicle as Pre-requisite for a wheelchair dependant individual. The reasons for affording such costs include but are not limited to:-

- 17.1 Avoiding the need for transferring from a wheelchair into a vehicle. This is a risk for pathological fractures for the plaintiff.
- 17.2 The fact that she doesn't have access to fulltime caregiving who can assist with such transfers.
- 17.3 The fact that she does not have sufficient upper extremity strength to facilitate independent transfers.

[18] She testified that the plaintiff does not wish to be able to. drive and prefers a Park Ride vehicle. The plaintiff noted that she does not trust her hand function, nor does she trust her vision to allow for independent driving. The plaintiff has a L sided glass eye.

[19] Ms Greeff testified that the daily routine of the plaintiff can be summarised as follows:

- 19.1 On Mondays the plaintiff will go to a shop that is 500 m from her house. She is expected to cover this area with her electric wheelchair. Online shopping at this stage is not a option.
- 19.2 On Tuesdays she will spend 2 hours involved with administration due to problems with affording delivery costs.
- 19.3 On Wednesdays she normally tries to go to Bible study with her friend that takes her. In the last 6 months she also started attending church every 2nd Sunday with her caregiver taking her to church.
- 19.4 On Thursdays she has 4 hour extra caregiving normally between 10h00 and 14h00 alternatively between 11h00 and 15h00. On these days her caregiver will take her for a haircut at the Salon or she will attend her scheduled medical or therapeutic appointments.

19.5 On Fridays she will attend sessions with the Physiotherapist or the Exercise Physiologist at sporting Wheelies Gym.

19.6 Most of her weekends are spent at the house, sitting in her wheelchair or lying in her bed.

[20] Ms Greeff concluded that the plaintiff needs to at all times have access to a vehicle and cannot afford to have car trouble. She further concluded that the plaintiff did not have a vehicle for her own use prior to the accident and that post-accident she is only able to be transported with a vehicle that is wheelchair accessible. She is not able to transfer herself independently and her caregivers are not able to assist with transfers unless they can use the mobile hoist which cannot be taken into the garage or outside to assist with such transfers.

[21] The evidence of Ms Greeff was not seriously contested by the defendant in cross examination. She was able to logically substantiate her evidence thereby reinforcing it. Her evidence is also corroborated by the expert opinion of Dr Buckley (Rehabilitation Specialist). In my view Ms Greeff was a reliable witness who made a favourable impression on the court.

The Evidence of Dr D Buckley, Rehabilitation Specialist.

[22] Dr Buckley stated that the plaintiff demonstrates a cervical level quadriplegia (tetraplegia) at the C6 level. Her injury is described as "complete" because there is no significant movement below the level of the lesion, and no preservation of sensation in the sacral or perineal region. As a result she has paralysis of her legs, trunk and hands. She has a neuropathic bladder, bowel and sexual function and neuropathic pain. She is totally dependent upon the care of others in every function and her condition is permanent.

[23] He concluded that the plaintiff must have a wheelchair accessible vehicle and the vehicle should have the following specifications:

"Wheelchair access should be from the side, and there should be an electric hoist to gain access to the vehicle. There should be appropriate tie down points for the wheelchair in the vehicle. The vehicle should have windows so that the wheelchair bound person and passenger/carers do

not get car sick, being unable to see out the windows, and the vehicle should have appropriate passenger style suspensions as stiff suspension in delivery vans causes excessive head movement and neck stress for the tetraplegic, with poor musculature. The vehicle should be equipped with a mobile phone to allow the carers to summon assistance should any difficult arise. He is in agreement that the plaintiff requires a wheelchair accessible vehicle."

[24] Ms M Setoaba, occupational therapist in paragraph 4 of her report, page 9 thereof, concluded that.

"Thus I agree to the purchase of a WAV and the vehicle registration thereof. Having a WAV allows for her caregivers to be able to drive her to her appointments and other areas without having to book for a hired wheelchair accessible vehicle."

[25] A notice in terms of Rule 35(9) dated 28 November 2018 was served on the defendant indicating the 'Essential Equipment' needed by the plaintiff and the costs for inter alia the wheelchair accessible motor vehicle, a new battery and the registration of the vehicle.

[26] It was submitted by counsel for the defendant that the plaintiff can be compensated for the costs of the conversion of the vehicle but the defendant is not liable to compensate the plaintiff for the purchase of the vehicle and a new battery. It was further submitted that the plaintiff was already compensated for general damages and that it would be unreasonable to compensate plaintiff for the purchase of a vehicle and a new battery. I disagree with this submission. The Past medical expenses does not form part of General damages and must be adjudicated separately.

[27] Section 17(1) of the Road Accident Fund Act 56 of 1996(as amended) provides as follows:

"The Fund or an agent shall

(a) subject to this Act, in the case for a claim for compensation under this

section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) ..., be obliged to compensate any person (the third party) for any loss or damage which the third party had suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person, at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver..."

[28] The facts in this matter present a depressing picture. Disabled people are often unable to access or participate in public or private life because the means to do so are designed for able bodied people. The result is that disabled people can without positive action, easily be pushed to the margins of society.

[29] Section 9 of The Bill of Rights provides that:

"(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal employment of all rights and freedom. To promote the achievements of equality, legislative and other measures designed to protect or advances persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

[30] To deny compensation for the plaintiff in respect of essential equipment can constitute unfair discrimination on the grounds of disability and would be unreasonable.

[31] Having considered the various medico-legal reports, the legal approaches and the submissions by both counsel for the parties, I am persuaded that the defendant must be held liable to compensate the plaintiff for the purchase of a vehicle, the conversion, a new battery for the vehicle and registration costs.

[32] In the result, I make the following order,

The draft Order annexed hereto and marked "X" is made an order of this court.

JJ STRIJDOM
ACTING JUDGE OF THE HIGH COURT

Matter heard on	18 April 2019
Judgment delivered:	13 May 2019
Counsel for Plaintiff:	Adv G W Alberts SC
Attorney for Plaintiff:	Savage Jooste & Adams Attorneys
Counsel for Defendant:	Adv M Kekana
Attorney for Defendant:	Diale Magoshoa Attorneys.

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

BEFORE THE HONOURABLE STRIJDOM (AJ)

18 APRIL 2019

CASE NO: 97446/2015

In the matter between:

J DU PLESSIS

PLAINTIFF

-and-

THE ROAD ACCIDENT FUND

DEFENDANT

DRAFT COURT ORDER

AFTER HEARING COUNSEL FOR BOTH PARTIES, the following order is made:

1.

The Defendant is to pay the Plaintiff a total Capital amount **R 732, 720.46 (Seven hundred and thirty two thousand seven hundred and twenty rand and forty six cents)** respect of the Plaintiffs claim for past medical, hospital and related expenses, which amount shall be paid into the trust account of Savage Jooste & Adams, Nedbank name: NEDCOR - ARCADIA, Branch code: 16-33-45-07, Account no: [...], under Reference: RGH/RF63

1.1 The above mentioned amount consists of the following:

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- 1.1.1 R438 861.22 (Four Hundred and Thirty Eight Thousand Eight Hundred and Sixty One Rand and Twenty Two Cents) in respect of past medical hospital and related expenses as settled between the parties;
 - 1.1.2 R 293, 859.24 (two hundred and ninety three thousand eight hundred and fifty nine rand and twenty four cents) in respect of costs relating to the wheelchair accessible motor vehicle, the registration costs of this vehicle and the provision of a new car battery for the said vehicle, as ordered by the Court.
- 1.2 The capital amount shall be paid into the above-mentioned trust account of Savage Jooste & Adams within 14 (FOURTEEN) days from the date of this order;
 - 1.3 Should the Defendant fail to make payment of the capital within 14 (FOURTEEN) days from the date hereof, the Defendant will be liable for interest on the amount due to the Plaintiff at the prescribed rate per annum, from the 15th (fifteenth) day from the date of this order, to the date of final payment;

2.

The Defendant is ordered to pay the Plaintiffs costs of suit to date on the party and party High Court scale, which costs include (but not be limited to):

- 2.1 The costs of the following expert reports:
 - 2.1.1 Dr Stephen Buckley, Rehabilitation Specialist;
 - 2.1.2 Ms Anneke Greeff, Occupational Therapist.
- 2.2 The costs of Ms Greeff's attendance in Brisbon (Australia) during January 2019 to conduct an inspection of the Plaintiff's residence as well as a consultation with the Plaintiff for purposes of a medico-legal assessment, which includes the reasonable attendance costs, accommodation costs and flight costs;
- 2.3 Ms Greeff is declared a necessary witness to give evidence in Court on 18 April 2019 and the Defendant is ordered to pay her reservation fee for 18 April 2019, reasonable travelling costs and attendance fee at Court on 18

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April 2019;

- 2.4 The costs of the preparation of 4 trial bundles as per the Gauteng High Court Directives;
- 2.5 The costs of Senior counsel;
- 2.6 The costs of the Plaintiffs attorneys, which includes reasonable travelling costs, costs for preparing for Pre-Trial Conferences, and costs for actual attendances to Pre-Trial Conferences, Pre-Trial Agenda's, and Pre-trial minutes, all costs for preparing for trial and attendance to trial, costs of formulating the draft order, Request for Further Particulars and all Rule 35(9) notices to date;
- 2.7 The reasonable costs for preparation for trial for Plaintiffs attorneys;
- 2.8 The reasonable costs associated with consulting the experts.

3.

Should the Defendant fail to pay the Plaintiff's party & party costs as taxed or agreed with 14 (fourteen) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at the prescribed rate per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

4.

The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 2 above, serve the notice of taxation on the Defendant's attorneys and shall allow the Defendant seven court days to make payment of the taxed costs.

5.

The taxed or agreed costs, as referred to above, shall be paid into the trust account of Savage Jooste & Adams: NEDCOR -ARCADIA, Branch code: 16-33-45-07, Account no: [...], under Reference: RGH/RF63

6.

There is no contingency fee agreement applicable.

By order

Registrar

Obo Plaintiff - Adv G W Alberts (082 499 2000)

Obo Defendant - Adv Morgan Kekana (073 160 1256)