

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) NOT REVISED

**Case No. 22100/2012**

In the matter between:

**G T M**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---

**MILLAR, AJ**

1. The plaintiff was injured in a motor vehicle collision on 15 November 2009. Action was instituted against the defendant for damages suffered in consequence of those injuries. Liability and all other heads of damage have already been previously resolved.
2. The only outstanding head of damages is the claim for loss of income. The parties were agreed that the plaintiff has suffered no past loss and so the only issue to be determined is the future loss of income.
3. The case was presented and argued on an agreed statement of facts and furthermore the parties agreed that the determination of the quantum,

subject to the court's findings, should be in accordance with the calculations prepared by the defendant's actuary.

4. The plaintiff was born on 13 February 1995 and was 14 years of age at the time of the collision. She suffered a number of serious orthopaedic injuries which included.... She underwent a sacroiliac joint fusion by means of a single cannulated screw and an external fixator to close the pelvis anteriorly, suffers a gait abnormality which is secondary to a mild malunion of the pelvis and there is even now a certain degree of malrotation still present; The plaintiff is at risk of long-term back pain due to the sacroiliac joint injury and experiences ongoing pain in her back, her hips and pelvic area after walking for prolonged periods of time. The plaintiff is showing signs of depression and post-traumatic stress disorder and has been left with extensive, serious permanent disfigurement in the form of scarring as a result of this collision.
5. After the collision the plaintiff was able to complete grade 8, which she was in at the time.  
She has since then been unsuccessful in her endeavors to improve upon her formal educational qualifications, despite three attempts to complete grade 9 and attendance at an ABET (Adult Education) college to obtain a grade 12 equivalent education. Counsel for the defendant also placed on record that the plaintiff had had a baby in the year following the collision. I will return to this aspect later.
6. Opinions were obtained by the parties from Industrial Psychologists, both of whom were agreed that the plaintiff's pre-accident work and earning capacity was within the semi-skilled sphere. Both also agreed that she would have only entered the labour market at the age of 25 earning R39 804,00 per annum. The only difference between them was the earnings the plaintiff would achieve upon reaching her career ceiling at age 45.
7. The one scenario was that the plaintiff would reach a career ceiling earning R150 996,00 per annum - the more optimistic scenario argued for by the plaintiff and the other, less optimistic, and argued by the defendant, a career ceiling of R105 000,00. Retirement was agreed at age 65.

8. In regard to the post-accident scenario, the difference in opinion of the experts was more marked and reversed. The less optimistic scenario was that the plaintiff would reach a career ceiling earning R59 004,00 per annum. The more optimistic scenario that the plaintiff would only suffer a *"reduction in work capacity of between 11% - 20%"*
9. Both of the industrial psychologists opined that both pre and post collision, the plaintiff would not have started working until the age of 25. The plaintiff is presently 23 years of age and is not working. During argument both counsel for the plaintiff and the defendant argued that this should be accepted by the court taking into account the plaintiff's particular circumstances that had been agreed. Included in those circumstances was the birth of her child during her teenage years.
10. The plaintiff was unlikely to have attained a qualification that would have enabled her to enter the labour market at a level other than that of a semi skilled worker. Furthermore, consideration of all her personal circumstances has resulted in the experts agreeing that she would not have in any event, notwithstanding the occurrence of the collision, started working before the age of 25.
11. It was argued on behalf of the plaintiff that she would have reached earnings on the more optimistic scenario. I do not agree, firstly persons in the semi-skilled sphere of work would usually start working between the ages of 18 and 20. This would mean at least a 25-year period to reach the career ceiling. The plaintiff would only have had 20 years to do so and so as a matter of probability I find that had the collision not occurred, her career ceiling was likely to have been the annual income of R105 000,00 - the less optimistic scenario.
12. The actuary calculated the plaintiffs pre-collision income on this basis in the sum of R2 011 440,00. Having considered the matter as a whole, I am unable to find that the plaintiff has suffered a loss of earning capacity that can be expressed by the deduction of a percentage from the pre-accident earnings as contended by the defendant. I accept that that the plaintiff has a residual earning capacity and accept the post-accident income

calculated on the same basis as the pre-accident, with a career ceiling of R 59 004,00 as calculated in the sum of R1 346 024,00. These figures represent the gross figures before the deduction of contingencies.

13. In respect of the deduction of contingencies generally, the principle to be applied is that set out in *Southern Insurance Association Ltd v Bailey* NO<sup>1</sup>-

*"Even where method of actuarial calculations is adopted the trial Judge still has a discretion to award what he considers right - Can make a discount for contingencies - Nature of contingencies that can be taken into account - Such contingencies not always adverse"*

14. In considering the contingencies for the pre-accident scenario, it is stated in the oft cited *Quantum Yearbook*<sup>2</sup> it is stated:

*"The RAF usually agrees to deductions of 5% for past loss and 15% for future loss, the so-*

*called "normal contingencies"*

*And*

*"Differential contingencies are commonly applied, that is to say one percentage applied to earnings but for the accident and a different percentage to earnings having regard to the accident"*

15. This is the basis upon which the actuary was instructed by the parties. Illustrative contingencies of 15% for the pre-collision and 25% for the post-collision earnings respectively were applied. The plaintiff argued that the

---

<sup>1</sup> 1984 (1) SA 98 (A) at 98 E-F; see also *Goodall v President Insurance* 1978 (1) SA 389 (W)

<sup>2</sup> Van Zyl Rudd & Associates, 2018 at page 114 under the headings "Normal Contingencies" and "The unemployed victim" respectively.

pre-collision contingency deduction should be reduced because of the fact that the parties had already agreed that her working life would have been 5-7 years shorter than it would otherwise have been. The defendant argued that the plaintiffs personal circumstances militated for this contingency, notwithstanding the agreement as to when she would have started to work.

16. In regard to the post-collision contingencies, the plaintiff argued that the contingency to be deducted should be substantially higher than 25%. It was argued that the plaintiffs delay in entering the workplace together with the sphere of work and the nature of the injuries meant that this particular contingency should be between 50% and 80%. The defendant argued that a 25% contingency deduction was appropriate.
17. I have considered the matter as a whole and am of the view that an appropriate pre-collision contingency deduction is 10% and a post-collision contingency deduction is 50%.
18. The pre-collision income net of the 10% contingency is R1 810 296,00<sup>3</sup>  
The post-collision income net of the 50% contingency is R673 012,00<sup>4</sup> The amount to be awarded to the plaintiff is the difference between the two, i.e. R1 137 284,00.
19. In the circumstances I make the following order:
  - 19.1 The defendant is ordered to pay to the plaintiff the sum of R1 137 284,00;
  - 19.2 Payment is to be made into the Trust Account of the Plaintiff's Attorney, Frans Schutte Mathews Phosa Inc. held at the Standard Bank of South Africa with account number [....].
  - 19.3 The defendant is to pay the plaintiff's taxed or agreed costs on the scale as between party and party which costs are to include the costs of counsel and of all the medico-legal reports served by the plaintiff on the defendant.

---

<sup>3</sup> R2 011 440,00 less R210 144,00

---

**A MILLAR**

**ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

HEARD ON: 29 JANUARY 2019

JUDGMENT DELIVERED ON: 31 JANUARY 2019

COUNSEL FOR THE PLAINTIFF: ADV F PAUER

INSTRUCTED BY: FRANS SCHUTTE MATHEWS PHOSA INC

REFERENCE: MS D DE JONG

COUNSEL FOR THE DEFENDANT: ADV D WESTEBAAR

INSTRUCTED BY: BRIAN RAMABOA INC

REFERENCE: MS SIBIYA