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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 58104/15

28/11/2019

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

DATE

SIGNATURE

In the matter between:-

M[....] M[....] M[....] obo T[....]

Plaintiff

M[....]

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

RANCHOD, J

[1] The plaintiff's minor child, T[...], sustained bodily injuries whilst a passenger in a motor vehicle which was involved in a collision with another vehicle on 27 July 2013. The child was 4 years old at the time. The child sustained a mild concussive brain injury and a right femur fracture which has left him with a scar on his right thigh approximately 20cm long.

[2] Liability has been conceded by the defendant as to 100% in favour of the plaintiff.

[3] The only issues for determination by me was the contingencies to be applied to the amount for future loss of earning capacity and general damages.

[4] Both parties agreed that scenario 3B in the actuarial report of Manala Actuaries and Consultants should be applied to loss of earning capacity.

[5] It was common cause or within dispute that a contingency deduction of 25% should be applied to the pre-morbid scenario. Plaintiff's counsel submitted that a contingency of 50% should be applied post-morbid, while counsel for defendant submitted it should be 30%.

[6] Having considered all the submissions with reference to the expert reports, I agree with defendant's counsel that post-morbid should be 30%.

According to the uncontested calculations of the plaintiff's actuary, the child's loss of earning capacity equates to R9,667,926.00 pre-accident. Hence:

| | | |
|------------------------------|----------------------|----------------------|
| Pre-accident | R9,667,926.00 | |
| Less 25% contingency applied | <u>R2,416,981.50</u> | |
| | | R7,250,944.50 |
| | | |
| Post-accident | R7,605,663.00 | |
| Less 30% contingency applied | <u>R2,281,698.90</u> | |
| | | <u>R5,323,964.10</u> |
| | | |
| Nett loss | | <u>R1,926,980.40</u> |

[7] Insofar as general damages is considered, I have had regard to certain cases including those cases provided by counsel for both parties. No two cases are alike on the facts. In any event I have considered the case law and the eroding effect of inflation on money awards. I also take into account that awards for general damages tend to be more on the conservative side.

In my view then, an amount of R350,000.00 would be adequate in the circumstances.

[8] In particular, I have had regard to the plaintiff's cases:

8.1 *Zibi v Road Accident Fund* 2008 6 QOD B4-1 (ECG)

Injured person: A 29-year-old female clerk. Synopsis of injuries and after-effects: Plaintiff suffered a severe head injury and a fracture of the skull,

causing acute recurrent headaches and intermittent loss of memory which made it difficult to discharge routine duties in the sphere of her employment. Based on the evidence of a neurosurgeon it was accepted that there no possibility of improvement in plaintiff's neurologic status. She could no longer function in her former capacity as senior clerk and required assistance from another clerk to function at all. She was regarded as a candidate for medical boarding. The only reason why she was still employed was because she has been protected/ accommodated by her station commander and other staff at the police station where she was employed. The plaintiff was awarded an amount of R120,000.00 which in 2019 value amounts to R215,000.00.

8.2 *Bikawuli v Road Accident Fund 2009 6QOD B4-17 (ECB)*

Injured person: 16-year-old boy, 30 years old at the time of the trial. Synopsis of injuries and after-effects: Traumatic brain injury of moderate severity resulting in cognitive deficit; behavioural changes; dizziness; memory impairment; fatigue; and headaches. Facial disfigurement. Employment prospects adversely affected. The plaintiff in that case was awarded R135,000.00 which in 2019 value amounts to R226,000.00.

8.3 *Sterris v Road Accident Fund 2009 6 QOD B4-26 (WCC)*

Injured person: 41-year-old male security officer, 37 years old at time of injury. Synopsis of injuries and after-effects: Brain injury of moderate severity; fractures of the femur, scapular and clavicle. Hip replacement and knee replacement procedures would be necessary in the future. Obligated to use stick to aid mobility. Headaches, dizziness, fatigue, concentration difficulties,

and personality changes. Career in security industry compromised. The plaintiff was awarded an amount of R250,000.00 , which in 2019 value terms translates to R419,000.00.

[9] It is evident from the cases cited that the lowest amount awarded for general damages was R215,000.00 (in 2019 value terms) and the highest amount awarded was R419,000.00 (in 2019 value terms). Cognisance should also be taken of the fact that all the stated cases relate to head injuries categorised as serious or moderate to severe. However in the current case the minor child sustained a mild concussive head injury. Furthermore it is clear from the above-mentioned cases that the claimants in those cases not only suffered head injuries but also sustained significant head injuries which had serious sequelae. In the *Sterris* case, over and above the moderate brain injury the plaintiff had fractures of the femur, scapular and clavicle. Hip replacement and knee replacement procedures was foreseen. In this case before me the only physical injury which the minor child sustained is fracture to the femur which does not indicate any significant sequelae. There is, of course, a 20cm scar on his thigh. Looking at the above-mentioned cases as guidelines, that an amount of R300,000.00 would be fair and reasonable awarded for general damages. In coming to the conclusion I take cognisance that the minor child was (even though he sustained a mild concussive head injury) relatively young (4 years) and that should have created considerable discomfort to him.

[10] I accordingly make the following order:

1. The defendant is ordered to pay the plaintiff R2,326,980.40 (two million three hundred and twenty six thousand nine hundred and eighty rands and forty cents) which award comprises of R1,926,980.40 for loss of earning capacity and R400,000.00 for general damages, in accordance with the amended draft order which is attached and marked 'X' and made an order of court.

RANCHOD, J
JUDGE OF THE HIGH COURT

Appearances

Appearance for the Applicant : Adv PM Leopeng
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Appearance for the Respondents : Adv G Mashaba
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