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REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: Yes

Date: 14/09/21

CASE NO: 6914/2018

In the matter between:

LAWRENCE MG

Plaintiff

- and -

ROAD ACCIDENT FUND

Defendant

(This judgment is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 14 September 2021.)

JUDGMENT

Khumalo AJ:

[1]. This matter comes before this court by way of default judgment in that this court on 14 April 2021, issued an order striking off the defendant's plea.

[2]. At the commencement of the proceedings, counsel for the plaintiff advised that the only issues to be determined by this court are the loss of earnings and future medical expenses all other issues having been resolved prior.

[3]. The issue of future medical expenses should not detain this court further as it can be resolved by an order that the defendant give an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 (the "Act").

[4]. In the circumstances I believe I need to deal only with the issue of loss of income. To this end, plaintiff is claiming a capital amount of R2 688 596.00 which is in respect of the Plaintiff's claim for loss of earnings, together with interest a tempore morae calculated in accordance with the prescribed rate of interest Act 55 of 1975, read with section 17(a) of the Act.

[5]. I am confined to the evidence provided by the plaintiff in the light of the fact that defendant's plea was struck off and this matter comes before me by way of default judgment proceedings.

EVIDENCE OF THE INJURIES SUSTAINED BY THE PLAINTIFF

[6]. Ms. Lawrence is alleged to have sustained a mild head injury as well as soft tissue injuries to her cervical and lumbar spine that will benefit from conservative management.

[7]. Assessment by Ms. R Hovsha the Clinical Psychologist revealed numerous cognitive deficits, ranging from below average to severe impairment in areas of attention and concentration, speed of information processing and visuopraxis.

[8]. Prior to the accident, Ms Lawrence is alleged to have been functional in all areas, namely physical, cognitive, occupational, emotional and social. These findings, it is said are consistent with those typically found in individuals with traumatic brain injuries.

[9]. The neurologist and the neurosurgeon are ad idem in their conclusions that Ms Lawrence suffered a mild brain injury and is now probably a vulnerable employee albeit that she has employed compensatory and adaptive measures to try to survive in her original or any alternative job.

[10]. Ms M Gaspar, the Speech and Language therapist and Audiologist concludes that the plaintiff suffers with a moderate to severe receptive and mild to moderate expressive language impairment.

[11]. With these impairments, counsel argued that it is unlikely that plaintiff will be able to perform in complex or linguistically demanding work environments and her limitations will prevent her from progressing professionally to her pre-accident potential.

[12]. The Occupational Therapist, M Georgiou states in her report that the plaintiff is a 24-year female with a Grade 12 level of education. She obtained an N4 certificate in the Introduction to business Management and is currently completing a B.Com degree in Financial Management.

[13]. It is reported that she registered four modules and failed three of them.

[14]. With regard to job match, her functional capacity is alleged to have been impaired by her reduced load handling. At the time of her accident, she was employed as a Trainee Accountant and is currently employed as a Junior Accountant.

[15]. It is argued that her future work should be limited to that of light physical demand level with accommodation in the form of regular rest breaks, avoiding static postures, the use of recommended assistive devices, and the application of ergonomic and biomechanical assistive principles.

[16]. With all the above limitations, it was concluded that she remains a competitive candidate within the open labour market from a pure physical perspective. However, it is argued that from the various expert reports, the cognitive aspects present a problem. Plaintiff complains of difficulties concentrating within her current occupation along with blurry vision and haziness.

[17]. Of more interest to this court are the summations of the Industrial

Psychologist and the calculations of the Actuary Lewis Rosen and Ivan Kramer respectively.

[18]. According to the report of Lewis Rowen, the plaintiff changed employers three times since her accident. From July 2018 to February 2019, she worked for Raphael Waldorf School and earning a salary of R6,500.00 per month. She then joined Hudson Accounting Services and her salary was R9,200.00 per month. In July 2019 she joined VDV Booking Services and was remunerated R12,000.00 per month.

[19]. Rosen suggests that the changes in jobs are likely attributable to problems from the accident.

[20]. Despite the fact that there is no evidence to the contrary from the defendant, I cannot wholly agree with Rosen suggestion that the rapid changes to her jobs are likely attributable to problems from the accident.

[21]. Plaintiff in her curriculum vitae states her reasons for leaving her employers. For instance, she states that she left Hudson Accounting because VDV Bookkeeping Services offered her a better offer. She left Taxsmhart because her learnership agreement came to an end.

[22]. Her reason for leaving VDV Bookkeeping Services CC was her sourcing new opportunities for 2021 due to VDV not being able to pay her a full salary on time at the end of the month since March 2020. She received a job offer at another company Pocock Accounting but did not return to the office there because she was of the view that the director was arrogant and caused her a nerve wreck and did not go back to the office. Currently she is employed at Gridworx.

[23]. It is difficult for this court to accept that her future earning capacity is as severe as is suggested by Rosen if one is to consider that in a period of no more than three to four years the plaintiff was able to almost double her earning capacity from R6,500.00 to R12,000.00.

[24]. Her reasons for leaving the various employments that she held do not support in my view the suggestion that this may have to do her erstwhile employers, it becomes hard to accept the accuracy of the expert opinions of the industrial psychologist and the actuary in terms of her future loss of earnings.

[25]. Whilst this court accepts that her timeline for qualification may have been delayed by at least four years and that her career lagged accordingly. However, this court does not accept that her current performance is compromised as alleged and that this is evidenced by her changes in employment. Her reasons for the changes as suggested in her curriculum vitae are about her seeking better pay and her employers having challenges paying her on time. This court takes judicial notice of the fact that most private small to medium employers have been struggling to pay employees since the advent of the COVID 19 pandemic. Despite the down turn in the economy and everything else, the plaintiff's earning capabilities does not seem to have been affected greatly by the accident she suffered.

[26]. In the light of the above, I cannot agree with the amount proposed in the draft order submitted by the plaintiff that it is fair.

[27]. This court notes that the actuarial calculations are based on a fairer award to both parties would in the amount of R2 028 406.00 (Two million twenty-eight thousand four hundred and six rand only) having applied a 25% contingency to the gross earnings having regard to the accident.

[28]. The principle remains that the award of this court should be fair to both sides - it must give just compensation to the patient, but 'not pour out largesse from the horn of plenty at the defendant's expense'. See **Pitt v Economic Insurance Company Limited 1975 (3) SA 284 (N) at 287.**

[29]. In the light of the above, I am of the view that the award below will be fair to both the Plaintiff and defendant and the following order is made:

29.1 The Defendant shall pay to the Plaintiff a capital amount of R2 028 406.00 (Two Million Twenty-Eight Thousand Four Hundred Six

Rand Only) which is in respect of the Plaintiffs claim for Loss of Earnings, together with interest a tempore morae calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996.

29.2 Payment will be made directly to the trust account of the Plaintiffs attorneys within a hundred and eighty (180) days from the granting of this order.

Provided that interest shall start running on the capital amount within 14 days of the granting of this order.

Holder	:	De Broglio Attorneys Inc
Account Number	:	[....]
Bank & Branch	:	Nedbank - Northern Gauteng
Code	:	198 765
Ref	:	L515

29.3 The Defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse 100% of the Plaintiff for the costs of any future accommodation of the plaintiff in a hospital or nursing home, or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by plaintiff in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.

29.4 The Defendant is to pay the Plaintiffs agreed or taxed High Court costs as between party and party, such costs to include the preparation and qualifying and reservation fees of the experts, consequent upon obtaining Plaintiffs reports, the Plaintiffs reasonable travel and accommodation costs to attend the Defendant's and own experts, the costs of all the Plaintiff's expert reports, addendum reports, and confirmatory affidavits and costs of counsel. All past reserved costs, if any, are hereby declared costs in the cause.

29.5 The Plaintiff shall, in the event that the costs are not agreed:

29.5.1 serve the Notice of Taxation on the Defendant's; and

29.5.2 allow the Defendant fourteen (14) days to make payment of the taxed costs.

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

HEARD ON	:	4 MAY 2021
DATE OF JUDGMENT	:	14 SEPTEMBER 2021
FOR THE PLAINTIFF	:	ADVOCATE JUSTIN ERASMUS
INSTRUCTED BY	:	LEGAL AID SOUTH AFRICA
FOR THE DEFENDANT	:	NONE