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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 92059/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 8 November 2021 E van der Schyff

In the matter between:

THOBEKILE SINGADU

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Van der Schyff J

[1] The following cursory reasons underpin the default judgment granted in this matter.

[2] The information conveyed to the court and contained in the Counsel's heads of argument does not correspond with the information contained in the Industrial Psychologist's report. Counsel argued that the plaintiff left teaching due to experiencing difficulties as an educator due to injuries sustained in the accident and the sequelae thereof. Thereafter she left teaching to sell Forever Products, became a manager, and earned a salary of R 16 358.90 per month. She could not keep up this activity due to the sequelae of the injuries suffered. Counsel submitted that the plaintiff was left functionally unemployable. This submission is, however, not supported by the Industrial Psychologist's report.

[3] From the Industrial Psychologist's report, the following information is obtained:

- i. The plaintiff was employed as the Head of the Department, Mathematics and Natural Science at the Lingeletu Senior Primary School from 2014 "to date".
- ii. Payslips are attached for 20 March 2014, 20 May 2015, 19 June 2015 and 20 July 2015; 20 April 2016, 20 February 2017, 18 December 2017, 19 January 2018, and 20 January 2021.
- iii. The accident occurred on 9 June 2015, and due to her injuries, the plaintiff was absent from work for one month. She was, however, fully paid during this period;
- iv. Though the plaintiff has been able to sustain her employment since the accident, she reportedly struggles to carry out her duties;
- v. Although the plaintiff planned to retire at 65, she is considering early retirement; the principal suggested that she should retire at 55;
- vi. Her pre-accident performance was rated 4/5, and her post-accident performance was rated 3/5
- vii. The plaintiff earned commission for selling Forever Products from October 2014 until July 2015. She progressed into the role of a Team Manager at the time that the accident occurred. The accident is reportedly the reason for leaving Forever Products behind.

- [4] The evidence indicates that 'but for' the accident, the plaintiff had the potential to progress into the post of a Principal. Unfortunately, the evidence does not indicate the probability of this is determined in relation to the availability of posts. The Industrial psychologist concedes that it cannot be said with certainty that the plaintiff would have progressed into a Principal's post.
- [5] In the event of her remaining in the Head of Department position, the Industrial Psychologist opined that the plaintiff would have continued to receive only inflationary increases plus an additional 1% notch increase until she reached her pre-accident age at retirement. Her current basic salary of R432 129.00 per annum is on par with that of Notch 252 on the applicable scales. It is submitted that she would have continued to receive inflationary increases plus an additional 1% notch increase per annum until she reached her pre-accident age of retirement. Despite conceding that it cannot be held with certainty that the plaintiff would have progressed into a Principal's post, and without providing any factual basis for such a submission, the Industrial Psychologist submits that there is a 70% probability that the plaintiff would have been appointed a Principal and only a 30% probability that she would have remained a Head of Department.
- [6] As for the commission-based income generated from selling Forever Living products, the plaintiff would have been able to earn an income until she was 70. It is significant to state that the plaintiff did not provide any evidence as to why she did not continue with selling Forever Living products. It is only the information provided in the Industrial Psychologist's report that provides guidance. It is stated in the Industrial Psychologist's report that 'due to the pain and difficulties which Ms. Sinqadu has struggled since the accident and the adverse impact that these have had on her ability to travel prolonged distances and stand and walk for prolonged periods of time, she was unable to resume her work at Forever livings. Ms. Sinqadu noted that although the rest of her team continued working for approximately six months after her accident, which is why she continued to earn an income, the courier service they used was too expensive, and as a result, many team members lost customers. She stated due to this, both she and her Senior Manager, Ms. Toyo – who was involved in the accident, decided to disband their teams'. The question that arises is whether the expensive courier services would

not eventually have caused the demise of the business. If it is considered that the Industrial Psychologist reports that the plaintiff travelled three times a week from port Edward to Durban to collect stock and deliver it at her team's houses, the question arises as to whether she would have been able to continue with this routine in the event that she was appointed as a Principal, or whether she would have applied for a Principal position if it would have a negative impact on her very lucrative second income. The question also arises as to whether the plaintiff would have been able to travel these distances until she reached the age of 70.

- [7] I have to consider that Dr. Oelofse stated in his report that the plaintiff would have benefited immensely from physiotherapy. If these interventions did not alleviate the pain sufficiently, he suggested obtaining a 'facet joint block'. There is no indication that these therapeutic interventions were implemented. A plaintiff is to limit its damages, and a plaintiff should indicate that recommended therapeutic interventions were implemented to limit the damages suffered.

- [8] The actuarial calculations are premised on the basis that the plaintiff would have earned an income with Forever Living until she reached the age of 70. And on the basis that there is a 70% probability that she would have been appointed as a principal.

- [9] I cannot ignore the effect that the Covid pandemic would have had on the plaintiff's Forever Living income, and the factb that she would not have been able to spend as much time on sales if she was promoted to the position of school principal.

- [10] In light of the evidence produced, as confirmed in the plaintiff's affidavit filed in my request, I am of the view that it is just and fair to determine the claim for loss of income on the following basis:
 - i. A 40% probability of the plaintiff to have been appointed as a Principal when she reached the age of 55, and a 60% probability that she would have remained a Head of Department;
 - ii. The Forever Living income to have been earned and progressing along the line as determined by the actuary until the plaintiff reached the age of 65;

- iii. Regarding future loss contingency deductions of 5% (but for the accident) and 20% (taking account of the accident);
- iv. Since she is still employed as HOD no past loss regarding her income as HOD.

[11] As for the claim for general damages, the experts are *ad idem* that the plaintiff will continue to suffer pain. The defendant conceded that the injuries sustained were serious- therefore, they offered a settlement for general damages. However, the plaintiff's pain can be managed by therapeutic interventions, which will enhance the plaintiff's quality of life. Having considered the facts of this case and the case law I was referred to, I am of the view that compensation in the amount of R700 000.00 will be just and fair to both parties.

ORDER

In the result, the following order is made:

1. The defendant is liable for the plaintiff's proven damages;
2. The actuary is to recalculate the plaintiff's claim for loss of earnings on the basis set out in paragraph 10 of the judgment above. When the recalculation is done, Van der Schyff J can be approached in chambers to finalise the order regarding the claim for loss of earnings;
3. The defendant is to compensate the plaintiff for general damages in the amount of R700 000.00 (Seven Hundred Thousand Rand);
4. The defendant must furnish the Plaintiff with an Undertaking in terms of Section 17 (4) (a) in respect of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him after the costs have been incurred and on proof thereof, resulting from the accident that occurred on the 09 July 2015;
5. The Defendant shall pay the Plaintiff taxed, or agreed party and party costs, as well as actual travelling costs incurred in the prosecution of this matter, necessary attendance for inspection in loco if any, cost of consultation with the below mentioned experts, preparation and research, which shall include the following: -
 - 5.1. The costs of Counsel including attending court on the 10th August 2021;

5.2. The actual costs of obtaining all medico-legal reports, which include the travelling, accommodation, and substance fees as well as for the reservation, qualifying fees, and court attendance fees, for the 10th August 2021, if any, for the following experts that the Plaintiff has attended to and the actual costs of the experts and witnesses, which include the travelling, accommodation and substance fees, interpreter's fees, if any:

5.2.1. Dr. LF Oelofse

5.2.2. Dr. BA Okoli

5.2.3. Dr. JFL Mureriwa

5.2.4. Burger Diagnostic Radiologists

5.2.5. Dr. JJ Schutte

5.2.6. Tebogo Matsape

5.2.7. Mark Day

5.2.8. Munro Forensic Actuaries

5.2.9. Sandton Radiology

6. The above amount shall be payable into the Attorney's Trust Account as follows: -

Name of Bank: Standard Bank

Account Holder: Godi Attorneys

Account Number: [...]

Branch Number: 010145

Type of Account: Trust Account Branch Name: Van Der Walt Street (Pretoria)

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 8 November 2021.

Counsel for the plaintiff:

Adv. P.M. Leopeng

Instructed by:

Godi Attorneys

Instructed by:

Date of the hearing:

10 August 2021

Date of receipt of affidavit:

25 October 2021

Date of judgment:

8 November 2021