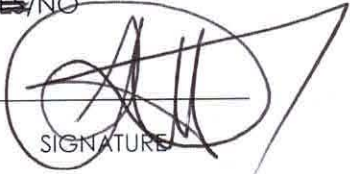


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO. 22403/2015

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
<u>21/09/2022</u>	
DATE	SIGNATURE 

LEBOGANG INNOCENTIA MOKONE

APPLICANT

AND

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

MAKHOB A J

INTRODUCTION

1. The plaintiff instituted an action against the defendant for damages suffered as a result of injuries she sustained in a motor vehicle accident that occurred place on 26 September 2013.
2. At the time of the accident she was in Grade 12 single and no children. She was 18 years old at the time of the accident.
3. Merits were conceded in favour of the plaintiff 100%. The issue of damages have been referred to the HPCSA. The issue in dispute is loss of income/earning capacity, past medical expenses and undertaking in terms of section 17(4)(a).
4. On the 14th February 2022 the attempt to settle the matter did not yield any results. Counsel for the plaintiff asked the court to grant default judgment and she addressed the court. No oral evidence was led.
5. The issue before this court is whether having read the papers and heard counsel, the court should grant the amounts prayed for by the plaintiff.
6. This court must bear in mind that the interests of the community, as a whole, demand that more scrutiny be involved in the disbursement of public funds.
7. The parties rottenly seek to assist the court in assessment of the amount payable by resorting to the expertise of an actuary. The court should be careful not to treat these reports as if they are scientific data.

8. The *locus classicus* as to the value of actuarial expert opinion in assessing damages is found in *Southern Insurance Association Ltd v Bailey NO 1984(1) SA 98 (A)* where Nicholas JA said the following:

“Where the method in actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is ‘tied down by inexorable actuarial calculation. He has ‘a large discretion to award what he considered right’. One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or differently put the ‘vicissitudes of life’. These includes such matters as the possibility that the plaintiff may in the result have less than a normal expectation of life, and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic condition. The amount of any discount may vary depending upon the circumstances of the case.”

9. Zulman JA, with reference to various authorities including *Southern Assurance* said the following in *Road Accident Fund v Guedes (611/04) [2006] SCA 18 RSA at 586-587B*. *“The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO) Courts have adopted the approach that, in order to assist in such calculation, an actuarial computation is a useful basis to establish the quantum of damages.”*

10. In *De Jongh vs Du Pisane 2004 (4) QOD J2-103 (SCA)* the supreme court of appeal reiterated that contingency deductions are discretionary.

11. The general approach of the actuary is to posit the plaintiff, as he is proven to have been in her uninjured state and then to apply assumptions

(generally obtained from the industrial psychologists) as to her state with the proven injuries and their sequelae. The deficits which arise between scenarios (if any) are then translated with reference to the various baseline means and norms used. These exercises are designed with the aim of suggesting the various types of employment which would hypothetically be available to the plaintiff both pre and post morbidity. The loss is calculated as the difference in earnings derived between the pre-accident or pre morbid state and post-accident or post morbid state. In this exercise, uncertainty as to departure from the norms, such as early death, the unemployment rate, illness, marriage, other accidents, and other factors unconnected with the plaintiff's injuries which would be likely, in the view of the court, to have a bearing both on the established baseline used by the actuary and on the manner in which the plaintiff, given her particular circumstances, would fare as compared the established norm are dealt with by way of "contingency" allowances. These are applied by the court dealing with the case in order to adjust the loss to reflect as closely as possible to real circumstances of the plaintiff. This is a delicate exercise which is an important judicial function.

12. The report of the industrial psychologist is pivotal to the actuarial calculation. This is because the actuarial calculation must be performed on an accepted scenario as to income, employment, employment prospects, education, training, experience and other factors which allow for an assessment of the likely career path pre-and post the injuries.
13. I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for injuries and the consequent disability. Furthermore, I must determine the plaintiff's future income, if any, having regard to the disability.

14. One of the expert witnesses for the plaintiff on 004-70 (Caselines) says the following:

“Features are suggestive of a previous fracture through the surgical neck of the humerus which has healed adequately”

15. If the plaintiff has healed adequately and she is currently employed, I fail to understand why is she claiming R 8 200 000 for future loss of income. In my view the amount claimed is not justified.

16. Taking into account all the expert reports. I am of the view that the amount claimed by the plaintiff for future loss of income is too excessive and not justified. In my view an amount of R 1 500 000.00 (one million five hundred thousand rands) is appropriate.

17. In regard to the claim of R 20 647.91 in respect of past medical expenses there is no proof of such payments by the plaintiff on Caselines. The claim is thus dismissed.

18. I make the following order:

1. The defendant shall pay the plaintiff an amount of R 1 500 00.00 (one million five hundred thousand rands only) for loss of income/earning capacity.
2. The defendant must furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.

3. The issue of general damages is postponed sine die and referred to HPCSA.

4. Defendant to pay plaintiff's costs.


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D MAKHOB
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES:

For the plaintiff: Advocate A Granova

Instructed by: Ramoshima Pheeha Inc

For the defendant: Non-appearance

Instructed by: Road Accident Fund

Date heard: 11 August 2022

Date of Judgment: 21 September 2022