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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 3967/2019P

In the matter between:

CAMERON ROSS DOUGLAS JONES

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

Ploos Van Amstel J:

[1] The plaintiff in this matter was injured in a motor vehicle accident on 26 February 2017. He instituted an action for compensation against the Road Accident Fund, which was settled on the basis that the Fund will pay to the plaintiff 90% of such damages as he is able to prove he suffered as a result of the accident.

[2] The matter came before me on the trial roll for the quantum of his damages to be determined. The parties have reached agreement on all the issues relating to quantum, save for general damages and the contingencies that need to be applied to the calculation of his future loss of earnings, both in respect of the pre-morbid and the post-morbid periods. The plaintiff was 20 years old at the time of the accident. He was born on 18 March 1996 and is currently 26 years old. He has delivered a number of expert medical reports and an actuarial report. The Fund has not delivered any reports and accepted the correctness of those delivered by the plaintiff.

[3] The injuries suffered by the plaintiff are described as follows by Dr Du Trevou: a severe head injury; an extensive comminuted fracture of the parietal bones extending to the skull vertex; a fracture extending from the occipital bone to the foramen magnum; widening of the occipito-mastoid suture; contusions of the frontal lobes and a contusion with the corpus callosum, which he says is always an indication of a severe traumatic brain injury. He also suffered a fracture of his collar bone.

[4] The plaintiff was transported by ambulance to a hospital in Ladysmith, where he received emergency care and was stabilized. Whilst being stabilized he experienced three grand mal seizures and was sent for CT scans. He was transferred to the Life Entabeni Hospital in Durban for specialist neurological management, where he received extensive cognitive therapy, occupational therapy, speech therapy and physiotherapy. He was discharged from hospital on 13 March 2017.

[5] The plaintiff now has poor vision and wears glasses. He has a poor concentration span and a bad memory. Dr Du Trevou says no further improvement with respect to his brain injury can be expected. The plaintiff was a good rugby player before the accident and was hoping to play rugby overseas. Dr Du Trevou says this is now out of the question. He also says it is inevitable that the plaintiff will be found by a neuropsychologist to have severe abnormalities of both personality and cognition. These abnormalities in the long-term are likely to prove to be his major impairment, influencing his educational and therefore vocational prospects. He also has been left with a poor sense of smell and taste, which Dr Du Trevou says represents a significant impairment.

[6] A clinical psychologist, Dr Bosch, provided a comprehensive report, in which she states her diagnosis and conclusions as follows: 'The clinical and psychometric picture is consistent with a diagnosis of a mood disorder(depression); a moderate neurocognitive disorder involving variable deficits in his cognitive (neuropsychological) functioning; emotional, personality and behavioural changes (emotional dyscontrol as well as being consistent with his psychopathology to some extent) a probable reduction in intellectual functioning, a self- and body-image disturbance, reduced social/leisure functioning, superimposed upon his residual physical complaints and fatigability, which has probably resulted in reduced academic functioning/potential and reduced occupational potential.' She expresses the view, with regard to the claim for loss of earnings, that higher than usual contingencies should probably be applied given the plaintiff's emotional dysregulation, rigidity and inflexibility which could have adverse effects in the working environment.

[7] Dr Kadi, an orthopaedic surgeon, says in his report the fractures of the clavicle may be associated with degenerative changes at the acromioclavicular joint. He says salvage surgery in the form of debridement at the joint and/or excision of the lateral third of the clavicle should be catered for.

[8] Dr Sara, an ophthalmic surgeon, says in his report from an ophthalmology point of view the plaintiff sustained a severe brain injury involving the occipital cortex. This has resulted in a profound global loss of vision. This decreased vision will be permanent. No surgical, medical or device intervention will improve the vision. He also suffered from a cranial nerve 4 palsy which has resulted in a binocular double vision. The double vision can be improved by putting prisms in spectacles and he can also undergo extra ocular muscle surgery to correct the problem. He says as a result of the decreased vision the plaintiff cannot legally hold a driver's license and this will severely impact his independence and choice of occupation in the future.

[9] Mrs Bainbridge, an occupational therapist, says in her report that the plaintiff's clavicular fracture continues to worry him but has not stopped him from undertaking rigorous physical training. I found her report particularly helpful in assessing the contingencies relating to the claim for future loss of earnings. It is detailed and I do not want to burden this judgment by quoting from it extensively. Suffice it to say that before the accident the plaintiff was employed as a sport coach and teaching intern at the Winterton Primary School. He could probably have worked in that field until retirement age. The contingency deduction in respect of the pre-morbid situation only has to cater for the usual risks in life, such as accidental death. I agree with counsel that a 20% contingency will be appropriate.

[10] With regard to his future, post-morbid earnings, the picture is considerably bleaker. Mrs Bainbridge deals with the difficulties in detail: the plaintiff is said to be disorganised; lacking in planning and ability to prioritise; loss of self-confidence; struggles to focus; difficulty recalling practice drills; altered memory for visual and verbal information; slow processing of information; more easily provoked; more tearful and emotional; increased risk of termination of employment; will require mentoring; increased frustration; and will face periods of unemployment. She recommends 'much higher than average unemployment

contingencies'. Ms Hill, a consulting psychologist, is to the same effect.

[11] In a more recent report Mrs Bainbridge deals with the difficulties experienced by the plaintiff in his employment as a coaching/boarding intern at a primary level school. Suffice it to say that it is clear from the report that he is struggling, not doing well at all, and is likely to face periods of unemployment.

[12] In those circumstances I am in agreement with counsel for the plaintiff that the contingency for post-morbid earnings should be 40%.

[13] The plaintiff's past hospital and medical expenses have been agreed in the amount of R232 103.78; the Fund has agreed to provide a certificate in respect of the future medical expenses; and his past loss of income has been agreed in the sum of R315 923.

[14] With regard to general damages both counsel have referred me to previous awards. They do provide guidance as to the range of awards, but only in a general way as the facts are hardly ever truly comparable. The plaintiff's disability and loss of the amenities of life is substantial and he should be awarded substantial compensation. His brain injury and the consequences thereof will not improve and this has caused, and will continue to cause, significant frustration and hardship. The loss of the opportunity to play professional rugby overseas contributes significantly to his loss of the amenities of life. Counsel for the plaintiff has suggested an award of R1 500 000 and counsel for the Fund R900 000. My determination is that an amount of R1 200 000 will be fair compensation. It is not the purpose of the exercise to place a value on what the plaintiff has lost. It is rather to award some compensation, having regard to the limited resources, with a view to ameliorate his sense of suffering.

The Order that I make is as follows:

[1] The Defendant is ordered to pay the Plaintiff the sum of R5 495 782, 43;

[2] The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 to compensate the Plaintiff for 90% of the Plaintiff's costs for:

- (a) the costs of future accommodation in a hospital or nursing home;
- (b) the costs of treatment to the Plaintiff;
- (c) the costs of rendering a service to Plaintiff and the supplying of goods to him.

[3] Payment to the Plaintiff of the costs of accommodation, treatment, the rendering of a service and the supplying of goods referred to in paragraph 2(a), 2(b) and 2(c) above, shall only be made on the following conditions:

- (a) That the accommodation, treatment, services and supply of goods are incurred as a direct consequence of the injuries which the Plaintiff sustained in the collision described in the particulars of claim; and
- (b) That such costs have been actually, necessarily and reasonably incurred.

[4] The Defendant is ordered to pay the Plaintiff's legal costs, as between party and party, which costs shall include, inter alia:

- (a) The costs of counsel;
- (b) All reasonable costs of the Plaintiff's experts, including preparation

time, consultation fees, medico-legal examinations and drafting of expert reports, and including reservation fees and qualifying fees where specifically noted:

- (i) Dr M. D. Du Trevou (Neurosurgeon);
- (ii) Dr B. A. Bosch (Clinical Psychologist- including consultation, reservation and qualifying fees);
- (iii) Dr D. K. Kadi (Orthopaedic Surgeon);
- (iv) Dr Alan Sara (Ophthalmologist);
- (v) Mrs Jane Bainbridge (Occupational Therapist - including consultation, reservation and qualifying fees);
- (vi) Ms Sonia Hill (Industrial Psychologist- including consultation, reservation and qualifying fees); and
- (vii) Mr Robert J. Koch (Consulting Actuary- report only).

[5] The Defendant shall pay the Plaintiff's taxed or agreed Party and Party costs on the High Court scale, subject to the following conditions:

- (a) The Plaintiff shall, in the event that costs are not agreed, serve the Notice of Taxation on the Defendant's Attorney of record; and
- (b) The Plaintiff shall allow the Defendant 180 (one hundred and eighty) court days to make payment of the taxed costs.

[6] The capital amount of R5 495 782, 43 is to be paid into the Plaintiff's Attorneys Trust Account by the 10th February 2023, the details of which are as

follows:

VASH PILLAY & ASSOCIATES TRUST ACCOUNT

NEDBANK

ACCOUNT NUMBER: [...]

BRANCH: MIDLANDS MALL

(REF: YP/RAF.19)

Ploos Van Amstel J

CASE INFORMATION

Date Judgment Reserved 8 August 2022

Date Judgement Delivered 18 August 2022

Appearances:

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