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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG NORTH AND SOUTH PROVINCIAL DIVISION)

CASE NO: 33182/2011

DATE: 7 SEPTEMBER 2012

In the matter between

ADAM IERSHAAD

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

LI VORSTER (AJ)

[1] The plaintiff claims from the defendant damages resulting from a motor collision which caused personal injury to the plaintiff.

[2] At the beginning of the trial I was informed by counsel appearing on behalf of the parties that the merits as well as the amount of general damages, past hospital medical and related

expenses and past loss of earnings have been agreed and settled by the parties. The future loss of earnings and/or earning potential of the plaintiff and the question of costs are the only two remaining issues between the parties. I have been given a draft order recording the amounts referred to above and leaving blank any amount in connection with future loss of earning and/or earning capacity.

[3] The sole issue that was debated in court was the question whether a separate award should be made for future loss of earning capacity. In this connection I may mention that an actuarial report was filed of record and part of the papers before me. That actuarial report was drafted and submitted by Algorithm Consultants & Actuaries. That report deals with two scenario's. The first is on the basis that the plaintiff will be able to complete a bookkeeping certificate and earn an income on that basis. The second scenario on the assumption is that the plaintiff does not complete the book keeping certificate. It was accepted by counsel in argument that the first scenario would be applicable. In terms of that scenario the future loss of income is calculated in the amount R 697 029,00.

[4] The plaintiff also called Esme Noble, an industrial and counselling Psychologist to give evidence. She also completed a report which is part of the papers before me. She recognised the fact that the plaintiff as a result of his injury and previous history of drug abuse is vulnerable as a prospective student and employee. On page 24 of her report she says the following:

"The writer's of the view that the above possibilities [eventualities, limitations and implications should be dealt with means of a higher post-accident contingency deduction, based on a financial career path described above..."

[5] The Actuarial report clearly took into account future disability in connection with the earning potential of the plaintiff and applied a contingency deduction in respect thereof. The question is whether there can be room for a separate award on the basis of loss of future earning capacity. In my view it can not because any future loss in earning capacity has already been taken into account by the actuarial calculation in the application of a contingency factor in its calculation of future loss of income.

[6] I have completed the draft order furnished to me. In the missing figures that I have added I accepted the Actuarial calculations to which I have referred above.

[7] Consequently, I make the following order:

[7.1] As to the merits of the matter, the Defendant is ordered to compensate the Plaintiff for 80% (EIGHTY PERCENT) of the Plaintiff's damages arising from the collision;

[7.2] In settlement of the Plaintiff's claims the Defendant shall pay the sum of R 1,070 396.71, over and above the apportionment set out in paragraph 1 above, which amount is calculated as follows:

[7.2.1.1] General damages	R450 000.00
[7.2.1.2] Past hospital, medical and related expenses	R148 440.89
[7.2.1.3] Past loss of earnings	R42 526.00
[7.2.1.4] Future loss of earnings and/or earning potential	R697 029.00
Subtotal	RI,337 995.89
[7.2.1.5] Less apportionment (20%)	R 267 599.17
Total	R 1,070 396.71

[7.2.2]The Defendant shall pay the aforesaid sum to the Plaintiff's attorneys, Adams & Adams, which amount shall be payable by direct transfer into their trust account, details of which are as follows: Nedbank

Account number :

Branch number : 198765

Pretoria

Ref: NK/JLLG/S595/10

[7.2.3]The capital amount referred to in paragraph 2 above will not bear interest unless the Defendant fails to effect payment thereof within 14 (FOURTEEN) calendar days of the date of this Order, in which event the capital amount will bear interest at the rate of 15,5% per annum calculated from and including the 15 (FIFTEENTH) calendar day after the date of this Order to and including the date of payment thereof.

[7.3] The Defendant shall 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 the Plaintiff after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 11 May 2010, limited to 80% (eighty percent).

[7.4] The Defendant must make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale which costs shall include the following:-

[7.4.1] The fees of Counsel on senior-junior level, on the High Court Scale;

[7.4.2] The reasonable taxable costs of obtaining medico legal and related reports (and addenda thereto, if any) of the following experts that were employed by the Plaintiff, as well as any others whose reports have been furnished to the Defendant:

[7.4.2.1] Dr VM Close, orthopaedic surgeon, which shall include the costs of any radiology performed at her insistence;

[7.4.2.2] Dr DA Le Roux, vascular surgeon;

[7.4.2.3] Dr PB White, plastic and reconstructive surgeon;

[7.4.2.4] Mrs C Pretorius, occupational therapist;

[7.4.2.5] Mr D Rademeyer, mobility consultant;

[7.4.2.6] Mr K Truter, clinical psychologist;

[7.4.2.7] Dr DA Shevel, psychiatrist;

[7.4.2.8] Prof VU Fritz, neurologist;

[7.4.2.9] Mrs E Noble, industrial psychologist;

[7.4.2.10] Mr GA Whittaker, consulting actuary.

[7.4.3] The reasonable taxable qualification, preparation and reservation fees, if any, of the Plaintiff's experts set out in paragraph 4.2 above.

[7.4.4] The costs associated with the holding of meetings and the preparation of joint minutes between the following opposing experts:

[7.4.4.1] Dr Close and Dr JJL Heymans;

[7.4.4.2] Mrs Pretorius and Mrs B Ngwato;

[7.4.4.4] Mrs Noble and Mrs Karin Pulles of Dr Willie Pretorius & Associates.

[7.4.5] The reasonable taxable transportation costs incurred by the Plaintiff in attending medico-legal consultations with the parties' experts, in such amounts that the Taxing Master may allow;

[7.4.6] The above costs will also be paid into the aforementioned trust account of the Plaintiff's attorneys of record.

[7.5] The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:-

[7.5.1]The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

[7.5.2]The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;

[7.5.3]Should payment not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 15.5% on the taxed or agreed costs from date of allocator to date of final payment.

LI VORSTER

ACTING JUDGE IN THE HIGH COURT

Date heard: 31 AUGUST 2012

Date judgment: 7 SEPTEMBER 2012