IN SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 14443/11

DATE: 14/05/2012

10 In the matter between

MAUREEN WOOLF APPLICANT

and

ROAD ACCIDENT FUND RESPONDENT

J U D G M E N T

SUTHERLAND J: In this matter the plaintiff, Dr Maureen Woolf, was injured in a motor car accident on 7 December 2007, as a result she has sued the Road Accident Fund. The liability of the defendant to compensate her for her

20 damages arising out of that accident are agreed. Also agreed are several heads of damage which are set out as follows.

1) General damages R600 000.00.

2) Past hospital expenses R24 348.82.

3) Past medical expenses R103 5582.92.

4) The defendant has tendered to provide an undertaking in terms of

17(4)(a) of the Road Accident Fund in respect of future medical expenses.

As a result, the sole controversy which remains is the computation of the damages arising out of the past loss of earnings and the loss of future earning capacity. Relevant to such computation are several factors.

To begin with, Dr Woolf is for all practical purposes unemployable. This was not seriously questioned during the trial, although the prospects of her not wasting her medical expertise was explored. The reality is that notwithstanding her cerebral capacity and her medical expertise, this cannot
10 be exercised in a practical economic way in a vacuum.

Her injuries, which consist of serious neck and back injuries and related less serious injuries, and with permanent chronic pain, inhibit her from any concentrated or protracted effort. Moreover, throughout the course of the week she is taxed by the need to engage in various rehabilitative therapies, including aqua-dynamics, bio-genetics and physiotherapy. This clearly inhibits her marketability. It is not apparent that these circumstances are likely to diminish in any serious fashion, over the medium term at least.

It is true, as was indicated by her, that she performs certain administrative functions for her husband relating partly to his business and
20 partly to their household, but this enterprise is not evidence of her being able to engage in any meaningful sense in a conventional working environment.

Dr Woolf has since 1993 until the accident in December 2007 been a general practitioner in private practice in Johannesburg. But for the accident which has caused her injuries she would in all likelihood have continued to practice indefinitely, although no doubt at some stage at a lesser pace.

The question of how long she would have practiced must be determined for the purposes of calculating damages. She has indicated that her own aspirations would have been to have practiced until the age of 65, probably 67, and then continued at perhaps a reduced rate to practice thereafter for as long as she was minded to do so.

Two important factors fortify this evidence. First the manifest tendency of professional people to work well into their old-age, provided their health prevails, and the age of 70 is certainly, in this era, no milestone at all.

10 Secondly the plaintiff indicates that she and her husband, who is himself self-employed, had not made any special provision to sustain them during their old age and it was their inclination to work for as long as they could. They do not have a nest egg waiting for them off which they may live happily ever after and in common with many other people in the professions they would have indeed continued to work provided their health held. It seems therefore unlikely that Dr Woolf under these domestic circumstances would have thought to truncate her career at any age earlier than 65.

The proposition advanced for the purposes of the computation is that it should be assumed that the plaintiff would continued to have practiced in a
20 full-time capacity until the age of 65 and thereafter part-time until at least the age of 70. I agree that this is a sensible premise upon which to make a calculation and I accept the evidence in support of this for the purposes of that calculation.

How much Dr Woolf was earning, and how much she might have earned but forfeited owing to the accident was the subject of scrutiny. This

task was greatly simplified by the evidence of Mr Venter, a chartered accountant, and a specialist in the healthcare profession and its related applications.

He conducts a practice known as The Healthman and he is involved extensively in all aspects of the health provision industry. He provided the court with an analysis of the financial records of the plaintiff's practice over a period of years and with that data he illustrated the extent to which she has earned, and, on the basis of publicly available data, he indicated to what extent those earnings bear a relationship to the norm of earnings of South
10 African general medical practitioners. The data so gleaned and consolidated by him for the court has presented a coherent picture from which a reliable estimate can be achieved.

In respect of the financial years immediately prior to the accident, that is to say the financial year ending February 2007 and the financial year ending February 2008, (which included a truncated period of practice owing to the accident having happened in December 2007) an average figure of earnings of that period was calculated. A fair basis for making that estimation, given the various overheads which were actually experienced, has been put at a figure of R173 259.00 per annum. This figure serves as a
20 baseline upon which losses can be assessed.

The valuation date to split the past and future earnings has been taken as 1 July 2012. This is a useful date, being approximately a month or so distant from the time of the trial. The data compiled by Mr Venter was then given to Mr Whitaker, the actuary. The actuary's calculations were based on the information provided to him through the plaintiff's attorney and

derived both from Mr Venter and from the plaintiff.

He had the baseline figure to which I have referred, R173 259.00, to determine both the historic earnings and to extrapolate the possibilities of the future loss. One of the considerations which the actuary was asked to take into account, given the circumstances of the practice of Dr Woolf, was the adaptation of the figures during the period up until the accident and thereabouts in relation to the circumstances explained by her as to the reduced rate at which she had been practicing during the period 2004 to 2007.

10 Although commencing practice in 1993 full time, she consciously reduced the rate at which she practiced during this period for two principal reasons. The foremost reason was to care for her aged mother, who was in ill-health and she spent a great deal of time caring for her and doing for her what she was unable to do.

This took her away from her practice and in her absence she employed a locum in order to discharge the responsibility she had to her patients and to her two associates with whom she practiced. This was unchallenged in evidence. Similarly unchallenged was the statement that she made that she would return to full-time work when she no longer needed
20 to attend to her mother in this fashion.

A second reconsideration was her maternal responsibilities in relation to her two daughters and the customary fetching and carrying and other attendant duties which mothers are obliged to undertake. As it turned out her distraction in that regard came to an end early in 2008 when her daughter acquired a driving licence and she would have been at liberty to

have changed, to some extent, the demands made by her as a parent and devote more time to practice. Also both tragically and coincidentally her aged mother died only a fortnight after her own accident.

The upshot of these considerations is that shortly after she became incapacitated, the opportunity presented itself to her, as she had always intended, to resume fulltime practice. For the sake of choosing a convenient moment it has, and in my view conservatively, been determined that she would have returned to fulltime practice on 1 July 2008. This seems a sensible date to choose.

10 The scenario that would have then played out is that from that date until her 65th birthday she would have practiced in greater earnestness than she had hitherto and would have continued part-time thereafter until at least the age of 70.

On the calculations which have been available to us through the efforts of Mr Venter and Mr Whitaker the past loss of earnings, valued up to 1 July 2012 has been put at a figure of R2 060 233.00. The actuary has applied to that figure a factor of 5 percent for contingencies, leaving a slightly reduced sum for past loss of earnings of R1 942 953.00.

In the course of the trial it was suggested that there was a 20 discrepancy between this figure and the figure which had been posited by Mr Venter, based on the calculations he had presented to the court. There was indeed a discrepancy and that was explained. Mr Venter's calculations, which had taken the extrapolations up to 2012 from 2007 had not factored in the resumption of fulltime practice and the savings from not engaging a locum..

In consequence, there is nothing sinister in the discrepancy and the sum which the actuary has given us, that is to say R1 942 953.00 is a fair estimate on the basis of the information available about the past loss of earnings. It is my finding that that is so.

As to the future losses, the extrapolated figure derived from the baseline figures which I have already mentioned over the period to 65 and thereafter part-time until the age of 70 comes to a gross figure of R5 994 468.00. The actuary, Mr Whitaker, was asked to apply a 15 percent contingency to this sum and reduced it accordingly.

10 However, in the course of argument counsel for the plaintiff indicated that 15 percent might be unduly high in the circumstances. He pointed to the fact that the contingency was to be applied to a period, which at this moment would be another 10 years to age 65 and a further 5 years thereafter to the age 70, given the circumstances to which reference has already been made in the context of professional practice and the aspirations of Dr Woolf and her family. I am inclined to agree that 15 percent probably is at the high end of the contingencies that might have been applied and 10 percent would have been a more appropriate figure to apply.

There is of course in the exercise of applying contingencies to 20 quantums of damage no right or wrong answer. It is, as it is common cause, a discretion that one must exercise based on some common sense assumption about what should be allowed for guessing wrong in the first place. Bearing all of that in mind I am in agreement that 10 percent rather than 15 percent should be applied.

The result is that the gross figure for the future loss of earnings is

reduced by a factor of 10 percent and that produces a lesser figure. The sum of the damages in that regard is therefore reduced to a figure of R5 395 111.12.

If a computation is made of all of the figures to which I have referred in this judgment, including the past loss of earnings and the future loss of earnings the total sum to be awarded is a sum of R8 066 006.00.

For the sake of clarity it is computed as follows.

1. General damages in the sum of R600 00.00. Past hospital expenses in the sum of R24 348.82.
2. Past medical expenses in the sum of R103 592.92.
3. Past loss of earnings in the sum of R1 942 953.00.
4. Loss of future earning capacity in the sum of R5 395 111.12.
5. These sums rounded up comes to a total of R8 066 006.00.
6. In respect of the costs, these costs must obviously follow the result.

I have been furnished with a draft order which sets out conveniently the various other matters which need to be taken into account in a particular, making provision for the undertaking, the costs, including the costs of various experts whose services were procured and who gave evidence. In the result I make an order as set out in the draft, which I have initialled and dated.

ROLAND SUTHERLAND
Judge of the High Court
(edited: 2012/02/03)