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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

**CASE NO: 12465/15
13/6/2018**

In the matter between:

MANQINDA MPHO ISAAC

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

COLLIS J:

INTRODUCTION

[1] The plaintiff, an adult male has instituted a damages action against the defendant for certain bodily injuries that he sustained in a motor vehicle collision on 8 February 2012. At the time of the collision, the plaintiff was a passenger in a motor vehicle bearing registration letters and numbers [...] travelling on the R54 road between Potchefstroom and Vereeniging. The collision occurred when the driver of the vehicle in which the plaintiff was travelling lost control of his vehicle and it fell into a ditch.

[2] In the particulars of claim at paragraphs 7 thereof, the plaintiff alleges as follows:

"7. As a result of the collision, the Plaintiff suffered inter alia, the following injuries:

7.1 Facial fractures;

7.2 Back trauma;

7.3 Frontal abrasion;

7.4 Left tibia and tibia fracture, and

7.5 Multiple contusions

The aforementioned injuries have resulted in the Plaintiff suffering from severe back pain which have resulted in him being unable to walk or stand for prolonged periods."

[3] In its plea the defendant denied the injuries sustained by the plaintiff and put the plaintiff to proof thereof.

[4] During February 2018, the parties filed pre-trial minutes. In the pre-trial proceedings the parties had agreed that the issue of both the merits and quantum remained outstanding. At the commencement of the proceedings the court however was informed that the merits had subsequently been settled between the parties 100% in favour of the plaintiff.

[5] At the behest of the parties, the court was further requested to determine the plaintiff's general damages only and for the plaintiff's future loss of earnings to be postponed *sine die*. The defendant at the same instance had agreed to furnish the plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996 in respect of the plaintiff's future medical expenses.

THE DISPUTE

[6] As mentioned the matter comes before me for the determination of the general damages to be awarded to the plaintiff and with specific reference to the severity of the head injury sustained by the plaintiff.

PRINCIPLES TO APPLY WHEN EVALUATING A CLAIM FOR GENERAL DAMAGES

[7] It is a well-known fact that making an award for general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life is particularly difficult. It has been repeatedly stated in previous cases that in such cases a trial court should have regard to all the facts and circumstances of a case and that a court would have a wide discretion to award what it considers to be fair and adequate.¹ In determining this head of damages, the court will take into account, the age, sex, status and relevant physical and psychological characteristics of the plaintiff into account. The court will also take into account the plaintiff's ability to endure pain or inability to do so.

[8] In view of the difficulty in calculating an amount to be awarded for non-patrimonial damages, considerations of fairness and reasonableness always play determining roles in the assessment of such damages. Whilst fairness and reasonableness mean that the claimant must be sufficiently and properly compensated for the injury he has suffered, it also means that inordinately high awards should not unnecessarily burden the defendant.

[9] Previous comparable awards, adjusted to reflect current market values, are also taken into account when calculating the reasonable and fair award to be made for general damages.

THE EVIDENCE

[10] No *viva voce* evidence was presented before the court. Also, the plaintiff himself did not testify before this Court. Counsel on either side had elected to merely hand into the record certain medico-legal reports which were prepared and then to address the court in closing arguments with specific reference to some case law and the contents of these reports. No formal heads of arguments were prepared on either side and as such this Court was called upon to extract from these expert reports the most crucial portions from the individual reports

¹ Road Accident Fund v Marunga 2003 (5) SA 164 (SCA)

without the benefit of the specific experts testifying thereto, or in the absence thereof a summary in relation to expert's reports having been prepared by counsel. This is a practice which should in fact be discouraged as the court is called upon to determine appropriate compensation for the plaintiff without due assistance from the parties.

[11] I will then proceed to deal with specific reports referred to during arguments.

REPORT OF DR. MUSHWANA (GENERAL PRACTITIONER)

[12] Dr. Mushwana a General Practitioner examined the plaintiff on 5 January 2013 approximately eleven months after the date of the collision. Pursuant to his examination he completed the RAF 4 Form.² His diagnosis of the plaintiff was that he suffered from epilepsy, a head injury and a left tibia fracture and he recorded the current symptoms and complaints of the plaintiff to be chronic headaches associated with poor vision.

REPORT OF PROFESSOR LEKGWARA

[13] Professor Lekgwaru, a Specialist Neurosurgeon, examined the plaintiff on 2 October 2017. His examination took place, 5 years and one month after the collision. Pursuant to his examination he compiled a report, which report was marked as Exhibit B. As per his report he recorded that the plaintiff complained of suffering of backache, headache and convulsions. On the past medical history obtained by him, he recorded that the plaintiff was healthy before the collision and that he has suffered from no chronic illnesses. Albeit that he recorded that the plaintiff was involved in a previous collision during 2010, the surgeon recorded that the plaintiff did not sustain any injury during such previous collision. In his opinion, the plaintiff sustained a thoracic spine injury and a Grade 1 concussion. In relation to the concussion he opined that the plaintiff may suffer from post-concussion headaches and neuropsychological complications which will require treatment in future.

² Bundle E pg 1-10

JOINT MINUTE PREPARED BY CLINICAL PSYCHOLOGISTS

[14] The joint minute prepared by the clinical psychologists, Dr. Dlukulu on behalf of the plaintiff and Mr. MacFarlane on behalf of the defendant was handed in by agreement between the parties which minute was marked as Exhibit C. Therein, Dr Dlukulu recorded that prior to the present accident in question the plaintiff was involved in two previous collisions. One during 2008 during which he sustained an injury to his forehead for which he received medical attention together with a left shoulder dislocation. It was further recorded that the plaintiff during 2010 was involved in a second collision, where he sustained a fractured left tibia-fibula, an injury to his spine, multiple facial contusions and facial fractures.

[15] Mr. Macfarlane, upon examination of the plaintiff, recorded that the plaintiff reported having been involved in a first collision during 1998. He further recorded that the plaintiff was involved in a second collision, being the present collision, in respect of which he reported injuries to his head, face, spine and left leg. During his examination of the plaintiff, he had no recollection of having been involved in a collision during 2010. The neurosurgeons were however in agreement that albeit that the plaintiff had no independent recollection of having been involved in a collision during 2010, the plaintiff must have sustained a brain injury and so too that it cannot be excluded that he sustained a head injury during the present collision giving rise to this action. Mr. Macfarlane, was further of the view, that the plaintiff's neuropsychological difficulties are probably primarily attributable to a traumatic brain injury sustained as a result of the collision during July 2010 and that the pain relating to the present accident may have exacerbated the effects of the brain injury.

DR. READ (ORTHOPEADIC SURGEON ON BEHALF OF THE DEFENDANT)

[16] Dr Read examined the plaintiff on 14 July 2017 . Pursuant to his examination he compiled a report which report was handed into the record as Exhibit E.³ The report was handed into the rec9rd by agreement between the

parties. As per his report he recorded under the heading the history of the accident, that according to the RAF4 Form, the plaintiff sustained a fracture of the left tibia, but that this injury was sustained during a collision which occurred during 2010 . Upon his examination the only injury which he observed which could be attributed to the 2012 collision, is that of an injury to the lumbar spine of the plaintiff. Dr. Read further recorded in his report that prior to the accident the plaintiff was relatively active and healthy and able to do minor chores, whereas post collision he requires assistance in this regard.

[17] On all account the plaintiff was a healthy person prior to the 2012 collision. At the time of the collision, he was employed as a driver of heavy duty trucks and suffered from no chronic illnesses. Post-collision, he did return to his previous employer, but was unable to cope with the demands of his employment and was as a result assigned to working in a shop. He eventually became unemployed, albeit that inconclusive evidence exists as the reasons for his lack of employability. At present he suffers from pain at the back of his head at least twice a week and has reported that his energy levels have dropped since the last collision. This Court was not appraised of the entire extent and the sequelae of the plaintiff's injuries to his quality of life, as the plaintiff elected not to testify before this Court.

[18] During argument counsel on either side had referred the court to various cases as a guide in determining an appropriate award to be made in respect of general damages. It should however be borne in mind, that each case must be determined on its own merits.

18.1 *Abrahams v Road Accident Fund 2014 (7J2) QOD 1 (ECP)* where the plaintiff suffered a badly communicated fracture of the right proximal femur, fractures of the right distal fibula and patella; fracture of the right medial malleolus and a mild concussive traumatic head injury. As a result of the injuries sustained the plaintiff was rendered unemployable. The plaintiff was awarded R 500 000, 00, which in today's value is worth R 699 000,00.

18.2 *D'Hooghe v Road Accident Fund 2009 6 QOD J2-1 (ECP)* In this matter the plaintiff suffered from a diffuse axonal brain injury, fractures of the humerus, tibia, and tibial plateau. As a result of the injuries sustained

the plaintiff was unable to work and compete in the open employment market. The plaintiff was awarded R 650 000,00, which today is worth R 1 051 000,00.

[19] In this present matter, it was common cause between the parties, that the Plaintiff was involved in two prior collisions before the present collision giving rise to this action. It is also common cause that as a result of the second collision the Plaintiff sustained a head injury and that he also sustained a further head injury in his last collision, although not so severe.

[20] Having said that I am however satisfied that an award of R 700 000.00 will be reasonable and fair for general damages in this matter.

ORDER

[21] As a consequence, the following order is made:

21.1 The defendant is to pay the plaintiff an amount of R 700 000. 00 (Seven Hundred Thousand Rand) in respect of general damages for his personal injuries sustained by the plaintiff in a collision on 8 February 2012, which amount should be paid on or before 15 July 2018;

21.2 The defendant is ordered to furnish an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996, in respect of future accommodation in a hospital or nursing home or treatment of /or rendering of services or supply of goods to the plaintiff, Mpho Isaac Manqinda, arising from injuries sustained in the above mentioned motor vehicle accident which occurred on 8 February 2012;

21.3. The plaintiff's future loss of earnings and earning capacity claim is postponed *sine die*;

21.4 The defendant shall pay the plaintiff's agreed or taxed party and party costs on a High Court scale, which costs shall *inter alia* include the following:

21.4.1. The fees of counsel on a High Court scale

21.4.2. The costs of expert witnesses' medico-legal reports which

notice has been given, the costs to include the preparing of the joint minutes and any addendums between the parties;

21.4.3. The costs to include the costs for the 22nd and 23rd February 2018 on a Party and Party High court scale.

21.5 Should the payment of the capital amount of R 700 000,00 not be effected by 15 July 2018, the plaintiff will be entitled to recover interest on the said amount at the rate of 10.5% per annum from 16 July 2018 to date of final payment.

C.J COLLIS

JUDGE GAUTENG DIVISION

APPEARANCES:

Counsel for the Plaintiff	:	ADV. V. MALEBANE
Instructed by	:	MASIKE INCORPORATED
Counsel for the Defendant	:	ADV. K. KUTA
Instructed by	:	MF JASSAT DHLAMINI INCORPORATED
Date of Hearing	:	22-23 FEBRUARY 2018
Date of Judgment	:	13 JUNE 2018