

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

01/09/2011
CASE NO: 19031/10

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED:
2011-09-31	
DATE	SIGNATURE

In the matter between:

ESTHER LESELO MACHUISA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

HIEMSTRA AJ

[1] The Plaintiff is a 63-year old housewife from Khunwana Village in the district of Ditsobotla, North West Province. On 19 December 2006 she was a pedestrian on Sekame Road, Mafikeng, when she was knocked down by a motor vehicle with registration number BCC 757 NW, driven by a certain Diditle Motshidisi Gaobepe, a learner driver at the time.

[2] The parties have agreed that the Plaintiff and the driver of the vehicle had been jointly responsible for the accident and that whatever damages may be proven should be apportioned between them on a 50/50% basis.

[3] The Plaintiff suffered the following injuries;

1. Contusion of the right shoulder;
2. Laceration of right upper arm;
3. Abrasions and lacerations on the left side of the face;
4. A closed supra-condylar fracture of the left femur with displacement.

[4] She was admitted to the Victoria Private Hospital where an open reduction and internal fixation was undertaken for the supra-condylar fracture of the left femur. The fragments were stabilised with dynamic condylar plate and screws. She was taught to walk with a walking frame and discharged on 27 December 2006.

[5] She used a walking frame for approximately eight months after her discharge and in September 2007 changed to crutches. She discarded the one crutch after six months and is still walking with the assistance of a single crutch.

[6] She has been a housewife for her entire adult life and was unable until September 2007 to undertake any household chores because she had been unable to stand on both legs. She is still limited in her household work, but has resumed some of her tasks.

[7] The Plaintiff had never previously been hospitalised and has no chronic illnesses. She has never before been involved in a motor accident.

[8] Her present complaints according to Mr Watson S. Mokgosi, an occupational therapist, who evaluated her injuries on 19 April 2011 are the following:

1. Pain in the right shoulder;
2. Pain in the left leg;
3. Pain in the left eye;

4. Her eye-sight has been negatively affected and she currently wears glasses;
5. She cannot perform her home chores due to pain;
6. She cannot walk or stand for more than five minutes.

[10] Dr R.A. Morule, an orthopaedic surgeon, reported under the heading General Damages the following:

The patient experienced excruciating pain following the fracture of a major limb bone. She also suffered pain from multiple soft tissue injuries affecting the face, right shoulder and right elbow. She suffered further excruciating pain following the open reduction and plate fixation of the femoral fracture. Severe pain would have been suffered for about seven to ten days after the surgical intervention. Thereafter she would have suffered moderate pain for three to four months, and mild pain would have persisted until the fragments have consolidated at six to eight months. She continues to suffer post injury pain to the left thigh bone with post-traumatic early osteo-arthritis of the left knee. She continues to suffer pain on the right shoulder and elbow. She has features of established post-traumatic cuff disease of the right shoulder with persistent acromio-clavicular subluxation in the right shoulder. Lastly, she has unsightly scars on the left thigh and right elbow. She is also expected to suffer further pain during the removal of the fixatives of the left femur.

[11] The parties have agreed that the Plaintiff has incurred medical expenses in the amount of R27 756.94. The Respondent has further undertaken in terms of s 17(4)(a) of the Road Accident Fund, 56 of 1996, to pay 50% of her future medical expenses. The Plaintiff has suffered no loss of earnings and will suffer no future loss of earnings as a result of the accident. The only matter to be decided is the quantum of general damages.

[12] As far as general damages are concerned, counsel referred me to several judgments concerning comparable injuries. As has been stressed repeatedly, such judgments could at best serve as a broad guideline because no two cases are identical. There are also certain trends in the allocation of general damages of which the Court must take account. In *Wright v Multilateral*

Vehicle Accident Fund, a 1997 decision of the Natal Provincial Division¹
Broome DJP said

"I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of grater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries."

[13] Both counsel referred me to *Road Accident Fund v Marunga*², a judgment by Navsa JA in the Supreme Court of Appeal, decided in March 2003. The plaintiff (respondent in the appeal) in that case was a 19-year old scholar whose main injury had been a fractured femur. The *sequelae* of the injury were that the plaintiff had a plate and screws inserted, he spent five months in hospital, two of which with his leg in traction and plaster. Thereafter he walked on crutches for five months and had to abandon school for the rest of the year. He was readmitted to hospital in 1997, 4 years after the accident, to have the plate and screws removed. He had to visit the hospital repeatedly for a number of years for treatment. His leg was some 3.5 cm shorter than the other. Before the accident he had been a keen soccer and volley ball player and can no longer participate in these sports. He is unable to lift heavy objects and cannot remain standing for long periods. He was awarded R375 000 general damages by the Venda High Court. On appeal this amount was reduced to R175 000. This amount translates to R315 000 today.

[14] The injuries of the plaintiff in the *Wright* case³ were in broad terms close to the injuries in the *Marunga* case. The plaintiff was a 28 year old woman. Her right leg has been shortened by 3.5 cm, requiring raisers in her footwear. She has a weakness in the leg and residual pain and suffers recurring infections and abscesses. She was awarded R65 000 in 1997, which amounts to R146 000 today.

¹ Corbett & Honey Vol. IV E3 - 31

² Corbett & Honey Vol. V E3 1-10

³ Supra

[15] I was referred to a number of other cases, but I find that they are not sufficiently similar to serve as a guideline.

[16] The main feature that distinguishes the present case from those of *Marunga* and *Wright* is that the plaintiffs in those cases were young people, 19 and 28 respectively. In both cases the Courts took into account that they were in the "full bloom of their youth" and will have to endure discomfort for the remainder of their lives.

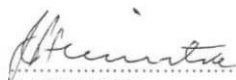
[17] The Plaintiff in the present case is 63 years old and was 58 at the time of the accident. I have considered whether her age is a factor that would justify a lesser amount than what she would have received had she been a young woman. In my view it should not have that consequence. Young people are more resilient and can more readily adapt to their disabilities. For the Plaintiff, on the other hand, the rest of her life will be a misery of pain and discomfort.

[18] In my view, an amount of R200 000 is justified. By agreement between the parties, this amount must be reduced by 50%.

I accordingly make the following order:

1. The Defendant is ordered to pay to the Plaintiff the following amounts:
 - 1.1 R13 878.47 in respect of past medical expenses;
 - 1.2 R100 000.00 in respect of general damages.
2. The Defendant is ordered to issue to the Plaintiff a certificate of undertaking to cover 50% of all related medical and hospital costs which may be required in future, in terms of s 17(4) (a) of the Road Accident Fund, 56 of 1996.

3. The Defendant is ordered to pay the costs of the Plaintiff including the qualifying costs of Dr Ramoroa A. Morule, orthopaedic surgeon, and Mr Watson S. Mokgosi, occupational therapist.


J. MINNAAR

ACTING JUDGE OF THE HIGH COURT

Date heard:	23 August 2011
Date of judgment:	31 August 2011
Counsel for the Plaintiff:	R. Latib
Attorney for the Plaintiff:	Mothuloe Attorneys
Counsel for the Defendant:	J. Minnaar
Attorneys for the Defendant:	Dyason Inc