

**NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

1) REPORTABLE: ~~YES~~/NO.

2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

3) REVISED.

Case no: 46585/2008

DATE 12/10/2011

SIGNATURE

12/10/2011

In the matter between:

**CACANE GASIA NKOSI N.O ESTATE LATE
JOEY BUTITSHI MTHIMUNYE**

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE J

[1] This matter concerns only the quantum of the damages which the plaintiff has suffered as a result of the injuries which he sustained in a motor vehicle collision which occurred on 10 October 2005.

[2] The plaintiff, who is now deceased, was a contract worker doing tiling. At the time of the accident he was a passenger on the back of the van when another vehicle came into collision with the van.

[3] The plaintiff claims damages in the amount of R285 000.00 which amount is made up as follows:

- | | |
|----------------------------|--------------|
| 1. Future medical expenses | R105 000, 00 |
| 2. General damages | R180 000, 00 |

[4] I was advised at the commencement of the trial that I must make a finding on general damages only. The defendant has tendered to provide to the plaintiff an undertaking as envisaged in section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996. Past loss of earnings have been agreed at R9 600.

[5] What remains for decision is accordingly the plaintiff's general damages only as the deceased has since passed away.

[6] There is no dispute as to the injuries, which the plaintiff sustained in and as a result of the collision. A number of medico legal reports have been provided and I was advised at the commencement

of the trial that the parties are agreed that the medico legal reports of Dr. Andre van Niekerk, an orthopedic surgeon, Petro Grove, an occupational therapist and Johan Erasmus, an industrial psychologist may be admitted into evidence without the necessity of calling these witnesses. The parties are in agreement as to the correctness of both the facts recorded therein and the opinions set out therein.

[7] These reports reveal that the plaintiff suffered the following physical injuries in the collision:

1. Fractured radial head on the right side;
2. Fracture of the right distal radius;
3. A non union of the Ulnar styloid.

[8] As a result of these injuries the plaintiff continued to suffer until his death from the following sequelae:

1. Painful elbow and had a problem lifting heavy objects. He had problems performing his work as contract worker doing tiles.
2. Painful right wrist.

[9] Dr. Andre van Niekerk reports that at the time of assessment, he presented with a fractured head of Radius on the right side plus fractured distal Radius and Ulnar Styloid. He suggests conservative treatment of his injuries and does not foresee the possibility of permanent disability. He recommends pain tablets. He reports that he should be back at work within a two months period.

[10] Petro Grove, the occupational therapist, reports that plaintiff was not able to meet work speed requirements of the industrial standards in the competitive open labour market with his right hand. His right dominant hand was slower. He opined that he would require an understanding employer should he secure formal employment in the competitive open labour market as a result of the slow work speed with his right upper limb and increased fatigability of his right arm and wrist, requiring regular breaks.

General damages

[11] There are no general rules to follow in determining the amount to be awarded for general damages. Watermeyer JA, in *Sandler v Wholesale Coal Supplies Limited* 1941 AD 194 at 199 stated as follows:

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the Judges view of what is fair in all the circumstances of the case."

[12] The injuries which the plaintiff sustained and the sequelae which he has endured are set out and discussed above. I have given careful consideration thereto in endeavoring to assess a reasonable compensation for general damages.

[13] I have been referred to by the legal representatives of the parties, to a number of previous decisions which they argued are of assistance in indicating a general trend of the value of awards in matters comparable to the present. I have given careful consideration to each of these decisions, and regrettably, each of these differs on the facts and considerations raised therein from the present.

[14] I have considered the well-established principle that I should take care to see that the award which I make is fair to both sides so as to give just compensation to the plaintiff, but not "to pour out largesse from the horn of plenty at the defendant's expense". (*Compare Pitt v Economic Insurance Company Limited* 1957 (3) SA 284 (N) at 287.)

[15] On a consideration of all these factors and in particular the injuries and sequelae sustained by the plaintiff as fully set out above I consider that an award of R100 000, 00 would represent a fair compensation as general damages for shock, pain and suffering, discomfort, disability, and loss of the enjoyment of the amenities of life which the plaintiff has suffered. There is no need for an undertaking for future medical expenses as the plaintiff has since died.

[16] In the result, the following order is made:

1. The defendant is ordered to pay to the plaintiff R109 600 as compensation for past loss of earning and general damages.
2. The defendant is ordered to pay to the plaintiff interest on the aforestated damages calculated at the legal rate from a date fourteen (14) days after the date hereof to the date of payment.
3. The defendant is ordered to pay the plaintiff's costs of the suit, such costs to include the costs of medical reports



K.E. MATOJANE
JUDGE OF THE HIGH COURT