

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO. 11999/2016

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 31/3/2023

SIGNATURE

In the matter between:

P[...] M[...] N[...] OBO N[...] N[...]

APPLICANT

AND

ROAD ACCIDENT FUND

RESPONDANT

JUDGMENT

MAKHOB A J

- 1) The plaintiff in this matter instituted an action against the defendant for damages suffered as the results of injuries sustained in a motor vehicle collision that occurred on the 21st May 2015. At the time of the collision, the plaintiff was 14 years old of age.
- 2) Merits were settled 100% in favour of the plaintiff as per court order dated 21 May 2015. On the 24/02/2023 the defendant was not represented in court. Counsel for the plaintiff asked the court to grant default judgement in favour of

the plaintiff. He addressed the court and referred to his heads of argument. No oral evidence was led.

3) The plaintiff's claim is as follows

3.1 General damages : R1000 000 .00

3.2 Past loss of income : R2785.00

3.3 Future loss of income : R6508 580.00

4) Paragraph 2 of the orthopaedic surgeon report (015-11 on case-lines) describe the injuries as follows:

4.1 Minor head injury

4.2 Multiple lacerations on the face and both knees.

4.3 Left humerus fracture. In paragraph 8 the doctor says the left humerus is healed.

5) She was admitted at Murchison hospital and discharged on the 27 May 2015. She was in grade 8 at the time of the accident.

6) In paragraph 10 the orthopaedic surgeon says the following (015-17 Case-lines)

EFFECT ON OCCUPATION

"She was in grade 8 and now in grade 9. She is repeating her grade. She has recovered well from her injuries and has good prognosis for orthopaedic injuries. She should be able to perform all kinds of work in future after good rehabilitation. Final work assessment is deferred to occupational therapist"

- 7) Professor M.Kakaza a neurologist says in paragraph 9 of his report (015-30 Case-lines)

“Ms N[...] has recovered from the mild traumatic brain injury.

She has a normal cognitive score.

She did not have any lateralising signs.”

- 8) It is trite that the award for general damages is within the court discretion. The discretion must not be exercised arbitrarily. The court will follow the awards in similar decisions but the court is not bound by the decisions of other courts.
- 9) In this matter before me counsel for the plaintiff in paragraph 45 of the heads of argument refers the court to a number of decisions where the injuries are not, similar or the same with the injuries the plaintiff sustained in this case.
- 10) In my view the appropriate amount to be awarded for general damages taking into account previous awards in other cases is R500 00 (Five hundred thousand rands)
- 11) It is trite that the onus rests on the plaintiff to prove her case on the balance of probabilities see *Pillay v Krishna* SA 946. Thus therefore the duty is on the plaintiff to produce evidence on balance of probabilities that because of the injury, she has suffered loss of income.
- 12) The only issue remaining is whether this court after hearing counsel and reading the papers should grant the amount as requested on behalf of the plaintiff in respect of loss of earnings. During the proceedings I did ask counsel to address me on all issues to the best of his abilities because I am going to reserve judgement.
- 13) The evaluation of the amount to be awarded for loss of income does not involve proof on a balance of probabilities. It is a matter of estimation. The

general approach is to posit the plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions to his case with the proven injuries and their sequela.

14)I am called upon to perform a delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but for the injuries and the consequent disability. Furthermore, I must determine the plaintiff's future income, if any, having regard to the disability.

15)At the time of the accident the plaintiff was attending school. The orthopaedic surgeon has concluded that "she should be able to perform all kinds of work in future".

16)The neurologist says "Ms N[...] has recovered from mild traumatic brain injury" There is there no evidence to suggest that she will have difficulties to perform any kind of employment in future, neither there is evidence to suggest that due the injuries she sustained she will be impeded to perform any duties in future.

17)In my view the plaintiff failed to satisfy the court that she has lost any earnings or stand to lose any earnings as a consequence of the motor vehicle accident in question.

18)I make the following order.

18.1The plaintiff's claim for past and future loss of earnings is dismissed.

18.2 for general damages the defendant must pay the plaintiff an amount of R500 000.00(five hundred thousand rands)

18.3 costs of suit.

D. MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

**For the Plaintiff:
Instruction**

**Advocate Andrew Mametse
MC Maubane Attorneys Inc**

**For the Defendant:
Instructed by:**

**No appearance
No appearance**

Date heard:

23/02/2023

Date delivered:

31/3/2023