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

Case Number: 56301/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

MANGOLELE AJ

DATE: 04 JULY 2023

In the matter between:

FATIMA OSMAN ALLY

APPLICANT/PLAINTIFF

and

THE ROAD ACCIDENT FUND

RESPONDENT/DEFENDANT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand- down is deemed to be 10h00 on 04 July 2023.

MANGOLELE AJ

[1] The Plaintiff FATIMA OSMAN ALLY (SULIMAN) born on 8 July 1978, approaches this court by way of application for default judgment. Her claim is for personal injuries sustained in a motor vehicle accident that occurred on 23 January 2010, in which she was a passenger.

[2] As a result of this accident Plaintiff suffered injuries and was taken to Krugersdorp Hospital for medical attention. The hospital records states that she sustained the following injuries:

- Lacerations multiple – chest
- Displaced crack fracture orbit
- All were sutured
- Head block and hard collar applied.

[3] Complaints by Plaintiff after the accident are listed as follows:

- Headaches – constant headaches, every day. Her head is painful to touch. Driving causes headaches, she needs glasses, she has blurred vision. Working on the computer also results in headaches.
- Pain in both ankles and left knee – standing for a prolonged period, walking a distance. Sitting for too long, this also results in swelling of her ankles.
- She experiences pain but no physical impairments.
- Unable to jog, walk long distances or stand for a prolonged period of time.
- Self-image has been negatively influenced by her scarring. She is self-conscious and embarrassed by them. She tries to hide the scar on her forehead and scalp by wearing a scarf.
- Seeing the scars reminds her of the accident, it makes her emotional and she feels depressed.
- She gets anxious when driving or travelling in a car.
- She avoids functions, if she does attend, she wears an outfit that

hides her scars.

- She has a loss of femininity; she feels she is not as pretty as prior to the accident.
- Locking jaw.

[4] In pursuance of her claim she appointed experts listed hereunder:

- Dr H W Kluge (Maxillo Facial and Oral Surgeon)
- Dr P T Olivier (Ophthalmologist)
- Dr L F Segwapa (Neurosurgeon)
- Dr N G Irsigler (Plastic and reconstruction Surgeon)
- Ms S P Sebapu (Occupational Therapist)
- MEC Kalane (Clinical Psychologist)
- P Vorster (Industrial Psychologist)
- Pendulum (actuary)

[5] Dr N G Isigler (Plastic and Reconstructive Surgeon) records as follows after examination:

- The claimant has a whole person impairment of 9% but qualifies under the narrative test in terms of serious disfigurement, under paragraph 2 or general damages. She has reached MMI.
- Future treatment is recommended.

[6] After examination Dr H W Kluge (Maxillofacial and Oral Surgeon) records as follows:

- Diagnoses: Absent teeth 16, 36 (Accident related), internal derangements of temporo-mandibular joints (Bilateral).

- Future Maxillo, Facial and Oral surgery is recommended. Dental implants, Temporo-mandibular joints – Arthrocentesis and Arthroplasty, new biteplate every second year for life.

- Impairment of mastication: Diet is limited to semi-soft or soft food.

[7] Dr P T Olivier (Ophthalmologist) records that her vision is slightly reduced and she needs glasses. However, the refractive error is age-related and cannot be attributed to the mentioned accident.

[8] Dr L F Segwapa (Neurosurgeon) after examination records the following:

- She has no neurophysical impairments.

- She reports memory problems and emotional changes. It is usually not expected for minor head injury to result in cognitive deficits, should be assessed by clinical psychologist.

[9] MEC Kalane (Clinical Psychologist) concludes the following summary:

- Based on the information she provides, she presents with symptoms of PTSD and an Unspecified Depressive Disorder. Her involvement in the accident seems to have resulted in a reduction to her enjoyment and quality of life, interpersonal functioning and emotional well-being.

- Her occupational functioning has been affected by her physical. Cognitive and behavioural limitations, as comprehensively outlined in this report.

[10] Sebapu (Occupational Therapist) records the following after the examination:

- In conclusion, the writer is of the opinion that the claimant has

suffered a permanent reduction in her functional capacity. Her emotional/psychological fallouts appear to contribute the most to her reduced functional capacity. She suffered a loss of competitiveness.

[11] P Vorster (Industrial Psychologist) records that there is no past loss of earnings.

- With regard to future loss of earnings, the industrial psychologist is of the opinion that she will continue working in her current capacity as a Sales agent at Marquis finance. She will most probably be promoted to team leader at Marquis Finance within the next 2 years. Upon being promoted to a team leader at Marquis Finance, her total average earnings will amount to approximately R40 000 per month, in current money terms. Mrs Ally will reach her career ceiling as a Team Leader at Marquis Finance. Mrs Ally is not at risk of losing her employment. Therefore, the industrial psychologist believes that in future, she will continue to receive annual inflationary increases until retirement age of 65.

- The industrial psychologist suggests that a normal post-morbid contingency be applied to account for (i) time off work to attend the recommended treatment; (ii) The pain she experiences might impact her work performance; (iii) Her functional, emotional and cognitive limitations might impact her work performance as per expert opinion; (iv) She is regarded as a vulnerable employee in the open labour market compared to uninjured individuals as per expert opinion.

[12] Plaintiff appointed actuaries who conduct calculations of her loss based on the expert reports. There is no expert report filed by the Defendant in this matter. I have however taken note and considered the offer made by the Defendant as well as the Plaintiff's expert reports, findings and recommendations.

[13] **LOSS OF INCOME:**

I am of the view that the Plaintiff has successfully proven her loss on the balance of probabilities and I am inclined to grant an order in line with the actuarial calculations.

[14] **GENERAL DAMAGES:**

It is trite that there is no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. This is so because it would be difficult to find a case on all fours with the one being heard. Award of general damages in decided cases might be of some use only for guidance. A court may also derive assistance from the general pattern of awards.

[15] Plaintiff in this matter seeks an award for general damages in the sum of R800 000-00 (Eight Hundred Thousand Rand). I have been referred to the nature of injuries and sequelae suffered by the Plaintiff as well as various decisions to support Plaintiff's amount claimed by Plaintiff in respect of general damages.

[16] I have considered all the reports by experts, nature of injuries sustained by Plaintiff, the sequelae thereof as well as the past decision of the courts including those relied upon by the Plaintiff.

[17] The Defendant has made an offer in the sum of R300 000-00 (Three Hundred Thousand Rand) in respect of general damages.

[18] Given the circumstances of the Plaintiff's case, findings and recommendations by experts on the nature of the injuries sustained and the sequelae thereof, I am of the view that the amount of R600 000-00 (Six Hundred Thousand Rand) is a fair and reasonable award for general damages under the circumstances.

[19] In the result I am convinced that the Plaintiff has succeeded in proving her claim on a balance of probabilities and an order is made as follows:

1. The Defendant shall be liable to 100% of Plaintiff's proven and/or agreed damages.

2. The Defendant is ordered to pay the Plaintiff an amount of R1 768 895-00 (ONE MILLION SEVEN HUNDRED AND SIXTY- EIGHT THOUSAND EIGHT HUNDRED AND NINETY-FIVE RAND) in settlement of Plaintiff's claim for general damages and future loss of earnings/capacity which amount shall be paid by direct transfer into the following trust account of Plaintiff's attorneys:-

Account Holder: Zenzele Mdluli Attorneys

Bank: First National Bank

Account number: 6[...]

Branch Code: 2[...]

Branch Name: Hatfield

Reference: RAF/ZM 0191

3. In the event that the Defendant fails to pay the aforesaid amount on or before the expiry of 180 days, the Defendant shall be liable for interest at a prescribed rate from the aforesaid date to the date of payment.

4. The Defendant is to provide an undertaking to the Plaintiff in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the costs of the future accommodation in a hospital or nursing home or treatment of or rendering of a service to the Plaintiff or supplying of goods to him arising out of the injuries he sustained in a motor vehicle accident on the 21st September 2020, after such costs have been incurred and upon proof thereof.

5. The statutory undertaking referred to above shall be delivered by the Defendant to the aforesaid Zenzele Mdluli Attorneys within sixty (60) days from the date of this order failing which the Defendant shall be liable for the costs attendant in obtaining such an undertaking.

6. Defendant is ordered to pay the Plaintiff's taxed or agreed party and arty costs on a High Court Scale, including the costs of all previous appearances, which costs shall include but not be limited to the following, subject to the discretion of the taxing master:-

6.1 The costs of the experts employed by the Plaintiff and served on the Defendant, including the costs of the reports and addendum reports.

6.2 The costs of attending to the Motions for 26 May 2022 and 02 September 2022, including the costs of Counsels fees thereof.

6.3 The costs of Counsel drafting the heads of arguments, preparation, consultations, and day fees for 23 March 2023.

6.4 The costs and time spend in preparing and copying of the trial bundles.

6.5 Costs of advices on evidence.

6.6 The costs of attending an inspection loco.

6.7 The costs attendant upon the obtaining of payment of the amounts referred to in this Order.

6.8 The costs of the preparation of the expert and witness affidavits.

6.9 The reasonable taxable traveling, subsistence and accommodation costs and expenses of the plaintiff for attending the medico legal examinations;

6.10 The above costs will be paid into the aforementioned attorneys trust account with the details furnished in paragraph 2 above.

Payment of the above costs by the Defendant is subject to the following conditions:

7.1 The Plaintiff must serve the bill of costs on the Defendant.

7.2 The Defendant is ordered to pay the Plaintiffs' taxed and/or agreed party and party costs within 180 days from the date upon which the bill of costs is taxed by the Taxing Master and/or settled.

7.3 Should payment not be effected within 14 days, the Plaintiff will be entitled to recover interest at the prescribed mora rate per annum on the taxed or agreed costs from the date of the allocator or agreement to date of final payment.

8. No Contingency Fee Agreement is applicable in these proceedings.
9. The issue of past medic expenses is postponed *sine die*.

MANGOLELE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

PLAINTIFF'S COUNSEL: ADV Z E MAHOMED

PLAINTIFF'S ATTORNEYS: ZENZELE MDLULI ATTORNEYS