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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: **2905/2021**

In the matter between:

MOETI GREGORY NKONOANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 25 NOVEMBER 2022

JUDGMENT BY: KHOOE, AJ

DELIVERED ON: 23 MAY 2023

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down are deemed to be 11:00 on 23 May 2023.

INTRODUCTION

[1] The plaintiff, a male born on 5 December 1991, was injured as a result of a motor vehicle accident that occurred on 2 July 2018. The plaintiff was a

pedestrian on Mampoi Road, Phithaditjhaba, Qwaqwa when an unknown motor vehicle collided with him. The plaintiff then proceeded to institute proceedings against the defendant for the injuries he suffered as a result of the accident.

- [2] The plaintiff's claim was for an amount of R 9 484 459.00, made up as follows:

2.1	Past medical and hospital expenses:	R 100 000.00
2.2	Future medical hospital expenses:	S 17(4)(a) Undertaking
2.3	Estimated Past and future loss of earnings:	R 8 384 459.00
2.4	General damages:	R 1 000 000.00

- [3] The defendant accepted liability for 70% of the plaintiff's proven or agreed damages.
- [4] The parties agreed that the plaintiff's claim for past medical and hospital expenses would stand over for later adjudication.
- [5] The parties agreed that the plaintiff's past and future loss of earning capacity would stand over for later adjudication.
- [6] I have been called upon to decide the amount of compensation for general damages.
- [7] The plaintiff handed in the reports of the following experts; Dr D R Bogatsu (orthopaedic surgeon), Ms S Moagi (occupational therapist) as evidence, which the defendant accepted.
- [8] On 2 July 2018, the plaintiff was injured when he was run over by a motor vehicle. He was admitted to Manapo hospital in Qwaqwa and on 6 July was transferred to Pelonomi hospital where he spent approximately six (6) weeks.

- [9] He underwent an operation, attended physiotherapy sessions, had bedrest and received medication and crutches.
- [10] According to Dr Bogatsu's report, the plaintiff suffered a pelvic fracture, a right humerus fracture and multiple soft tissue fracture.
- [11] The plaintiff listed the following current complaints; pain below groin at times, numbness of the right hand and fingers, inability to lift heavy objects, difficulty in performing physical activities, inability to stand and sit for long periods, reduced walking distance and stiffness.
- [12] Dr Bogatsu concluded that orthopaedic injuries sustained in the accident resulted in a healed pelvic fracture with implants in situ, a healed humerus fracture and post-traumatic degenerative changes of the hips and left sacroiliac joint. His conclusions were supported by a report from Dr Van Dyk & Vennote Inc.
- [13] According to Dr Bogatsu, the plaintiff will require visits to a general practitioner for treatment of ongoing pains at injury sites, vigorous physiotherapeutic treatment to restore muscle strength and to improve endurance of the patient, assessment and intervention by an orthopaedic surgeon to remove implants, sacroiliac joint arthrodesis and bilateral hip arthroscopic debridement and total hip replacement at a later stage.
- [14] Ms Moagi the occupational therapist reported the following having noted the X-ray report from Dr W Piek the radiologist; the plaintiff presented with functional muscle strength and range of movement of both upper limb joints, however, with reported right arm pain at extreme ranges. The lower extremity functional scale, plaintiff scored 40% which indicates that he perceives mild functional restriction due to right arm pain. The plaintiff presented with functional muscle strength and full range of movement of both lower limb joints, however, with reported left hip and pelvic area discomfort with left hip range of movement testing. On the Baseline Hydraulic Dynamometer, the plaintiff's grip strength for right hand fell below the required norm for a person of his age and gender.

- [15] According to Ms Moagi, the plaintiff has the following complaints; pain below groin at times, numbness of the right hand and fingers, right upper limb pain when carrying heavy items, struggles to lift heavy items, pelvic pain and discomfort when walking for long periods, discomfort on the pelvis when sitting for long periods and struggles to sleep due to pains.
- [16] The following loss of amenities of life were noted, discomfort in the right shoulder and pelvic area which require medication for pain relief; his work activities have been disrupted, he requires reasonable accommodation and will be deemed vulnerable in the working environment; his ability to engage in activities of daily living tasks have been negatively affected; he needs to use specialised equipment and has never been pain free since the accident.
- [17] Ms Moagi reported that the plaintiff's current rate of work, work qualification profile as well as physical capacity would not meet the physical requirements for occupations that require a person to constantly bilaterally or unilaterally use right dominant upper limb above shoulder level, those that put constant strain on the right shoulder, physically exerting force with right dominant upper limb as well as those that require optimum function and strength of the right hand and bilateral hand due to reported right shoulder discomfort. She further reported that the plaintiff could not competently meet the physical requirements for work sample that falls within full range of medium, heavy to very heavy types of work. As a result, the plaintiff's physical requirements for his pre-accident occupation. Due to the reported pain, impairment will negatively affect his load handling abilities as well as efficiency when fulfilling his pre-accident occupational tasks. He will therefore be deemed more vulnerable.
- [18] According to Ms Moagi, the plaintiff has been left with significant long-term orthopaedic/musculoskeletal residual impairment which continue to affect his physical functional capacity on a permanent basis. He requires future surgery to address his residual limitations and impairment.

- [19] The plaintiff's counsel argued that the sequelae of the injuries suffered by the plaintiff were permanent and according to the above reports have rendered him an unequal competitor for work in the open market. Mr Thompson argued that not only have the injuries affected the plaintiff's occupation but has also affected his ability to function in his private life.
- [20] Mr Thompson referred to a number of comparable cases, but for his main argument, he referred me to **Kgopyane v Road Accident Fund**¹. In that case the plaintiff sustained a pelvic fracture, which caused damage to her bladder, and resulted in permanent incontinence. She furthermore sustained a fracture of the right superior rami as well as the left inferior ramus along the link of the bone. She had a chest contusion, injury to her right foot as well as soft tissue injuries.
- [21] While Counsel admitted that the injuries in **Kgopyane** were much more than in this current case, he submitted that in this case the plaintiff did not only suffer a pelvic injury but also suffered a humerus fracture. Counsel referred me to **Jordan v Union and South West Africa Insurance Co Ltd**², where an award of R 2 200.00 in 1969 (current value R 177 900.00) was awarded to the plaintiff for a humerus fracture. Based on the above, Counsel submitted that a reasonable amount to be awarded to the plaintiff is R 750 000.00.
- [22] Ms Mkhwanazi for the defendant submitted that the outcome and diagnosis by Dr Bogatsu were healed pelvic fracture, healed humerus and post-traumatic degenerative joint disease. She argued that the pelvic fracture and the humerus had healed and that the case law that the plaintiff had relied on were for multiple and severe injuries.
- [23] She also referred to **Kgopyane** and to **Nonkwali v Road Accident Fund**.³ She however differentiated them from the plaintiff's case, submitting that the plaintiff's injuries were not as severe as the injuries in said that while the

¹ (43235/2014) [2016] ZAGPPHC 872.

² [1969] LNQD 12 (C).

³ (771/2004) [2009] ZAECMHC 5 (21 May 2009).

defendant acknowledged the post-traumatic degenerative joint disease and sequelae the other injuries had healed. She submitted that the fair amount to be awarded was R 500 000.00 and R 350 000.00 after apportionment.

[24] Counsel for the plaintiff submitted that the manner in which the defendant approached the award was incorrect. He submitted that the argument was not about the injuries that had healed, but the sequelae of the injuries that had to be taken into consideration. The long-term effects that the injuries were going to have on the plaintiff. He therefore submitted that R 500 000.00 could never be fair.

[25] Mathebula J said the following in **Dhlamini v Road Accident Fund**⁴

“An assessment of an appropriate award of general damages is a discretionary exercise of the trial court. The ultimate goal is to arrive at an award that will compensate the injured party in a fair and adequate manner. Every court has to bear in mind the injuries sustained by the plaintiff, considering the nature thereof, severity, permanence and its general impact. There are no hard and fast rules or a particular formula to be followed for the determination of quantum of damages. It is generally recognised that the matters used as previous comparable awards will not always be on all fours with the matter on hand. The matters cited by both counsel were merely used as guide.”

[26] I have considered both arguments for the parties and the case law they referred to, for which I am grateful for. Taking into consideration that an award for damages need not paralyse the defendant, I believe a fair amount for general damages is R 650 000.00 less 30% in the circumstances.

[27] In the result, I make the following order:

27.1 The defendant is liable for 70% of plaintiff's proven or agreed damages.

⁴ (3564/2018) [2022] ZAFSHC 72 (23 March 2022) para 9.

27.2 The issue of future medical and hospital expenses and general damages are separated from other issues in terms of Rule 33(4), with the issue of loss of earning / earning capacity postponed.

27.3 The defendant shall pay the plaintiff an amount of R 455 000.00 (four hundred and fifty-five thousand rand) in full and final settlement of the plaintiff's claim for general damages which amount is made up as follows:

General damages	:	R 650 000.00
Less 30% apportionment	:	R 195 000.00
TOTAL	:	R 455 000.00

27.4 The defendant to pay the plaintiff's taxed or agreed party and party costs on High Court scale, until date of this court order, including but not limited to the costs set out hereunder:

27.4.1 The preparation, reservation and / or attendance fees of Counsel to attend the matter on 22, 23 and 25 November 2022;

27.4.2 The reasonable preparation/ qualifying and reservation fees and expenses (if any) of the following experts:

27.4.2.1 Dr Bogatsu (Orthopaedic surgeon);

27.4.2.2 Ms Moagi Occupational Therapists.

27.5 The payment provisions in respect of the foregoing are ordered as follows:

27.5.1 All payments in terms of this order are to be paid directly into the account of the plaintiff's attorneys of record by means of electronic transfer, the details of which are the following:

Gcasamba Attorneys Inc

Bank	-	ABSA
Branch Code	-	6[...]
Account No.	-	4[....]

27.5.2 Payment of the taxed or agreed costs shall be made within 180 (hundred and eighty) days of taxation, and shall likewise be effected into the account of the plaintiff's attorney.

27.6 Interest shall accrue at the statutory rate per annum, compounded, in respect of:

27.6.1 The taxed or agreed costs, calculated from 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs.

27.6.2 The plaintiff's claim for past hospital and medical expenses is hereby separated in terms of Rule 33(4) and postponed to the pre-trial.

N.J. KHOOE, AJ

On behalf of the Plaintiff:	Adv. D.R Thompson
	Instructed by:
	Gcasamba Inc Attorneys
	Bloemfontein

On behalf of the Defendant:	Ms. K Mkwanazi
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Instructed by:

State Attorney

Bloemfontein