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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 no: 2991/2014

In the matter between:

JACOB NCEBA NOJIYA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

CORAM: RAMOS AJ

HEARD ON: 04 March 2022

DELIVERED ON: 15 March 2022

INTRODUCTION

[1] The Plaintiff instituted action against the defendant on the 02 July 2014. The cause of action arises from injuries the plaintiff sustained in a motor vehicle collision

that occurred on 06 December 2010 at Bloubaai Road, Virginia Free State. The plaintiff, whose date of birth is 17 September 1980, was a passenger in the vehicle at the time of the collision with a motor vehicle, then driven by one Petrus Lefu Khalbe (the insured driver).

[2] The Defendant has conceded liability on the merits and is therefore liable for 100% of the Plaintiffs proven or agreed damages. The Defendant concedes further that the Plaintiff qualifies for damages as claimed. However the amount of such damages is in dispute and therefore an issue for determination.

BACKGROUND FACTS

[3] The Defendant has agreed to furnish the Plaintiff with an undertaking in terms of Section 17(4) (a) of the Road Accident Fund Act 56 of 1996, for the cost of future accommodation of the Plaintiff in a hospital or a nursing home or treatment or rendering of a service, or supplying of goods or related expenses, in respect of injuries sustained by the Plaintiff in the motor collision of 06 December 2010, after such costs have been incurred and on proof thereof.

[4] The truth and correctness of a number of experts' reports have been accepted. It was not in dispute that as a result of the accident the Plaintiff sustained the following personal injuries:

- a) Abrasions to the face and head
- b) Bilateral subgaleal haematomas
- c) Moderate traumatic brain injury, haemorrhagic contusions
- d) Spinal injury : undisplaced fracture anterior arch of C1 vertebra and bilateral crack fractures inferior aspects of lateral masses of C1

[5] The sequelae of these injuries has left the plaintiff with decreased concentration, impaired memory, irritability, headaches, sexual and bladder dysfunction, neck pain and dizziness.

[6] On the first day of trial the parties attempted to settle all the outstanding issues in dispute. They were not able to reach full agreement on all the issues and

informed the court that the only remaining issue left for determination would be the award for general damages. The Defendant agreed to pay R844 590.00 (eight hundred and forty four thousand five hundred and ninety rand) in respect of the Plaintiffs claim for past and future loss of income resulting from a motor vehicle collision that occurred on 06 December 2010.

[7] Plaintiffs' counsel took the court through various expert reports dealing with the Plaintiffs injuries, the sequelae thereof and its impact on the Plaintiffs life including the impact on the employment and the amenities of his life.

[8] Emphasis was placed on the head and neck injuries and the impact it has had on Plaintiff's life. Counsel relied on the reports commissioned by the Plaintiff, which reports stood as evidence during the trial. The court was referred to the report of Dr. A Van Aswegen on page 146 of the indexed bundle where the following is recorded: "the long term cognitive and emotional consequences of mild to moderate traumatic brain injury include somatic symptoms such as chronic headaches, cognitive symptoms such as attention deficits, reduced working memory and impaired executive functions, and psychiatric symptoms such as depressed mood, insomnia, anxiety, poor motivation, social withdrawal and interpersonal difficulties"

[9] Dr. Van Aswegen's findings were that the plaintiff suffered moderate traumatic brain injury which include the symptoms of chronic headache, attention deficits, mood disorders and depression.

[10] As a result of the injuries the Plaintiff sustained he was admitted to hospital for a period of 11 (eleven) days. He suffered from amnesia of the accident and the immediate period thereafter. Dr. Van Aswegen opines that the sequelae of this type of injury is often referred to as "post-concussive syndrome"

[11] Dr. Rita Du Plessis conducted extensive interviews with the plaintiff and his family which are contained in her neuropsychological report. Advocate Zietsman argues that her findings are significant and provides the causal link between the Plaintiffs injuries and his current state of health and the difficulties he experiences related thereto.

[12] According to Dr. Du Plessis the Plaintiff displays symptoms of moderate depression disorder. He further states the Plaintiff's symptoms are compatible with a diagnosis of post-traumatic stress disorder which has impacted on his relationships particularly with his wife. He is reported to be irritable and short tempered.

[13] Advocate Zietman's elaborated on the findings of Dr. LF Oelofse, the orthopaedic surgeon. He argues that Dr. Oelofse's report is important in proving that the injuries sustained is the cause of the continued pain and suffering the plaintiff is experiencing. Prior to the accident the plaintiff medical history reveals no complains of headaches or neck pain. However after the accident the plaintiff displays chronic pain and spasm, C5/6 disc lesion with radicular symptoms in the right hand and persistent headaches.

[14] Mrs Borman acting on behalf of the Defendant argues that the findings made by Dr. Van Aswegan on Page 1444 Paragraph 5.2.6 has not been proved by a report from a urologist and as such argues that this dysfunction should not attributed to the injuries caused in the accident.

[15] She further highlights Dr. Oelofse's findings on Page 91 at paragraph 8.7, which indicates a united fracture at C 1 and therefore no treatment is required and that the conservative treated is suggested for the disc lesions observed at C5/6. She places emphasis on the fact that the plaintiff sustained a moderate head in jury and ask that the court takes this into account when making the general damages determination.

[16] Both counsel referred the court to case law which may assist in making the determination. The Plaintiff argues that in light of the past precedent in similar sequelae as the Plaintiff a fair and reasonable award for general damages would be R 950 000,00 The defendant argues that in the present circumstances R 600 000,00 would be fair.

APPLICABLE LEGAL PRINCIPLES

[17] The issue of general damages is the remaining issue left for this court to determine. General damages account for pain and suffering, disability, disfigurement and loss of amenities of life. In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the Plaintiff and the injuries sustained by him including their nature, permanence, severity and the impact on his life style.

[18] In **Sandler v Wholesale Coal Supplies Ltd**¹, the court held:

"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 judge's view of what is fair in all the circumstances of the case"

[19] In the case of **RAF v Marunga**, ²it was held that: *"in cases in which the question of general damages arose, a trial Court had a wide discretion to award what it considered to be fair and adequate compensation to the injured party. There was no hard and fast rule of general application requiring a trial Court to consider past awards, although the Court might derive some assistance from the general pattern of previous awards."*

[20] The court thus has a wide discretion to award what is fair and adequate compensation to the injured party. Past awards serve no more than to give some indication or guidance as to what sort of awards are appropriate on the facts of a particular case.

[21] The nature and extent of the Plaintiff's pain and suffering and loss of amenities of life are well documented in the medical reports. The parties have made submissions and I have made reference to the pertinent sections above. As a result of the injury the plaintiff is left with decreased concentration, impaired memory, irritability, headaches, sexual and bladder dysfunction, neck pain and dizziness. In addition to these sequelae, he suffers from moderate depression and post-traumatic

¹ 1941 AD194 at 199

² 2003 (5) SA 164 at 165 B

stress disorder which has impacted his relationships with family and friends. I am also satisfied that the Plaintiff injuries has caused substantial pain and suffering which has impacted his quality of life.

[22] Taking all these factors into account, it is my considered view that a fair and just compensation for general damages for the Plaintiff is the amount of R750 000.00.

ORDER:

1. Payment by the Defendant to the Plaintiff in the sum of **R 1 594 590.00** (one million five hundred and ninety four thousand, five hundred and ninety rand) which amount is calculated as follows:

1.1 Future Loss of Income: R 844 590.00 (Eight hundred and forty four thousand five hundred and ninety rand)

1.2 General Damages: R 750 000.00 (seven hundred and fifty thousand rand)

2. Payment of the total amount under paragraph 1, is ordered to be made within 180 days from the date on which this order is made, failure of which, the Defendant will be liable for payment of interest at the prescribed rate compounded and calculated as from 14 days from the date of this order.

3. The Defendant is ordered to pay the party and party costs of the Plaintiff as determined on the High Court Scale.

4. The Defendant is ordered to pay, subject to the discretion of the taxing master, the reasonable and qualifying fees of the following experts:

4.1.1 Dr Kahn (general practitioner);

4.1.2 Dr Schutte (general practitioner);

4.1.3 Dr LF Oelofse (orthopedic surgeon);

4.1.4 Dr Smuts (neurologist);

- 4.1.5 Dr A van Aswegen (neurosurgeon);
- 4.1.6 Hanri Meyer of Rita van Biljon Occupational Therapists;
- 4.1.7 Louise Liebenberg of Rita van Biljon Occupational Therapists;
- 4.1.8 Rita du Plessis (clinical psychologist);
- 4.1.9 Dr EJ Jacobs (industrial psychologist);
- 4.1.10 Munro Forensic Actuaries.

5. Payment of the capital amount shall be made without set-off or deduction, within 180 (hundred and eighty) calendar days from date of the granting of this order, directly into the trust account of the plaintiff's attorneys of record by means of electronic transfer, the details of which are the following:

Honey Attorneys	-	Trust Account
Bank	-	Nedbank, Maitland Street, Bfn
Branch Code	-	11023400
Account No.	-	[....]
Reference	-	HL Buchner/J03194

6. The defendant shall furnish the plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act No 56 of 1996 for 100% of the plaintiff's future accommodation in a hospital or nursing home, or treatment or rendering of a service, or supplying of goods or related expenses in respect of injuries sustained by the plaintiff in the motor vehicle collision which occurred on 06 December 2010.

RAMOS, AJ

ON BEHALF OF PLAINTIFF:

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