



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: 3564/2018

In the matter between:

MJ DHLAMINI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

HEARD ON:

01 MARCH 2022

JUDGMENT BY:

MATHEBULA, J

DELIVERED ON:

This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 23 March 2022 at 09H30.

- [1] The parties have settled the merits, loss of earnings and future medical expenses. The only remaining dispute relates to general damages.

- [2] On 7 January 2018 the plaintiff was a passenger in a motor vehicle that was involved in an accident. Apparently, the insured driver was travelling at a high speed and he lost control of the motor vehicle. The plaintiff suffered serious injuries and was transported to Boitumelo Hospital, Kroonstad for medical treatment. After two (2) days, he was transferred to Pelonomi Hospital, Bloemfontein where he was admitted for six (6) weeks.

- [3] The plaintiff filed reports by six (6) experts while the defendant filed three (3) reports. Neither party called witnesses to testify having agreed that all evidence is contained in the reports. His injuries are well documented and recorded as thoracolumbar fracture, pelvic as well as head injury by the orthopaedic surgeon, Dr LF Oelofse. Dr P Steyn, the urologist, noted mild system of lower tract obstruction. The neurosurgeon, Dr D Matyaba recorded mild concussion and spinal cord injury of T12-L1 which resulted in monoplegia of the right leg.

- [4] The X rays of the thoracic and lumbar spine were processed and a suprapubic catheter inserted. Analgesics were prescribed and he was given a wheelchair and crutches.

- [5] The sequences of his injuries were recorded in general as follows: frequent headaches, stabbing pain in the lower back, loss of the function of the right leg due to paralysis and cannot walk without two (2) crutches. His gait is unsteady with incoordination in the right leg and involuntary movement. He struggles to concentrate and has frequent nightmares about the accident. He also has reduced muscle bulk of the right leg. He suffered from urinary incontinence.

- [6] The plaintiff did not give evidence but in order to demonstrate his physical condition, his counsel requested him to stand up. He could not stand without assistance from his wife. He was shaky, could not make strides and his

entire body displayed severe incoordination and involuntary movements. This occurred severely when he was not using his two (2) crutches. I gained the impression that the plaintiff cannot be functional at all given that he could hardly stand let alone work.

[7] The plaintiff rejected an offer for general damages. In the written heads of argument, counsel for the plaintiff is of the view that the appropriate award must be the sum of R1 200 000. In response, the argument on behalf of the defendant is that the plaintiff should be awarded the sum of R450 000.00.

[8] In amplification of their cases, both counsel cited and relied on the following case law:

8.1 Monamodi v Road Accident Fund.¹

“In this matter a recently qualified advocate suffered bodily injuries comprising a severe head injury, fractured ribs, bilateral fractures of the lower limbs, scarring, left sided hemiplegia, severe depression and post traumatic organic brain syndrome. The fair and reasonable award was determined at R850 000.00 which equates to R1 920 000.00 in the present value.”

8.2 Cordeira v Road Accident Fund.²

“This involves a teenage boy who suffered primary head injury with intra cranial haematomas and secondary intra cranial pressure to the aforementioned. His speech was affected and he walked with a measure of difficulty. He also suffered poor memory, lack of mental agility and flexibility, lack of energy and could not live independently. He was awarded R800 000. The present value is R1 380 000.”

8.3 Van Zyl NO v Road Accident Fund.³

¹ Monamodi v Road Accident Fund (23.02.2007) (W) (unreported).

² Cordeira v Road Accident Fund 2011 (6A4) QOD 45 (GNP).

“In this matter the court made an award of R850 000 which translates to R1 300 000 in the present value. The plaintiff had sustained severe diffuse axonal brain injury, multiple lacerations of the head and face, fractures of the right tibia and fibula and injuries to the left arm. *Inter alia* he experienced right upper limb weakness, headaches, impaired balance, fatigue, cognitive impairment and neuro behavioural disorder. Although he was a part time law student, he was rendered unemployable as a result of his injuries.”

8.4 **Ramolobeng v Lowveld Bus Services (Pty) Ltd and Another**⁴

“The plaintiff suffered injuries to the cervical and lumbar spine. He also had head injuries with concussion. He underwent disc replacement surgery and a probability exists of future surgical intervention. He suffered from erectile dysfunction. He experienced chronic, moderate to severe cervical spine pain as well as lumbar spine pain. There is also reduced power and sensation on the left limbs. He wears a lumbar support brace. The recent value of the award made in his favour was R760 000 which was R550 000 at the time.”

- [9] 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. Both counsels indicated that they could not find a decided case with the kind of

³ Van Zyl NO v Road Accident Fund 2012 (6A4) QOD 138 (WCC).

⁴ Ramolobeng v Lowveld Bus Services (Pty) Ltd 2015 ZAGPPHC 31 (3 February 2015).

injuries suffered by the plaintiff. Despite diligent search, I could not make much progress either.

[10] The plaintiff has suffered severe injuries which have rendered him unemployable. As demonstrated in court, he cannot perform elementary functions like standing up for few minutes and even taking few strides. This is so primarily because of his unsteady gait which displayed fierce incoordination of the right leg. His body made intolerable involuntary movements that he had to be assisted to his chair lest he could have fallen down.

[11] The injuries he has sustained are permanent. He still suffers sharp pains in the spine which are debilitating. The severity of these injuries is well documented and need no restatement. The evidence show that he cannot function independently. In the absence of precedence, taking into consideration the factors alluded to, my conclusion is that a fair and adequate amount will be the sum of R1 000 000.00.

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

12.1. The defendant is liable to pay 100% (Hundred percent) of the plaintiff's proven or agreed damages;

12.2. The defendant shall pay the plaintiff the sum of **R2 029 840.85 (two million and twenty-nine thousand, eight hundred and forty rand and eighty-five cents)**; in respect of Loss of earnings & General Damages, set out as follows:

LOSS OF EARNINGS:	R1 029 840.85
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GENERAL DAMAGES:	R1 000 000.00
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TOTAL:	R2 029 840.85
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- 12.3. The defendant shall pay the abovementioned amount into the plaintiff's Attorneys account:

The plaintiff's Attorneys account details are as follows:

ACCOUNT HOLDER: VZRL INC
BRANCH: ABSA BUSINESS BANK HILCREST
BRANC CODE: 632005
TYPE OF ACCOUNT: TRUST ACCOUNT
ACCOUNT NUMBER: [....]
REFERENCE: MAT992603

- 12.4. In the event that the defendant does not, within one hundred and eighty days from date on which this order is handed down, make payment of the capital amount, the defendant will be liable for payment of interest on such amount at 7% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.
- 12.5. The defendant shall furnish the plaintiff with an undertaking, in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 7 January 2018.
- 12.6. If the defendant fails to furnish the undertaking to the plaintiff within 30 (thirty) days of this order, the defendant shall be held liable for the payment of the additional taxable party to party costs incurred to obtain the undertaking.
- 12.7. The defendant to pay, subject to the discretion of the taxing master, the plaintiff's taxed or agreed party to party cost, on a High Court scale up to and including the date, when this order is made an order of court, including but not limited to the following:

12.8. The reasonable qualifying fees of the following experts:

- 12.8.1. Dr LF Oelofse – Orthopedic Surgeon
- 12.8.2. Dr CH Griesel – RAF4
- 12.8.3. Burger Radiologist
- 12.8.4. Rita van Biljon (Yani de Klerk) – Occupational Therapists
- 12.8.5. Dr DK Mutyaba – Neurosurgeon
- 12.8.6. D P Steyn – Urologist
- 12.8.7. Ben Moodie – Industrial Psychologist
- 12.8.8. J Sauer – Actuarial Scientist

12.9. In the event that cost is not agreed the parties agrees as follows:

- 12.9.1. The plaintiff shall serve a notice of taxation on the defendant's attorney of record;
- 12.9.2. The plaintiff shall allow the defendant fourteen court days to make payment of the taxed cost.

M.A. MATHEBULA, J

Counsel on behalf of Plaintiff: Adv. J.C. Van Eeden
 Instructed by: Du Plooy Attorneys
BLOEMFONTEIN

Counsel on behalf of Defendant: Me C. Bornman
 Instructed by: State Attorney
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