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

Case number: 3035/2016

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

MKHOHLOA PAULUS NTOMBELA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 05 OCTOBER 2022

JUDGMENT BY: DANISO, 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 12h00 on 10 October 2022.

[1] The only issue that I have to determine in this matter is the quantum pertaining to general damages resulting from the injuries the plaintiff sustained in a motor vehicle accident which occurred on 29 November 2013.

[2] At the time of the accident, the plaintiff was 53 years old. He was and still employed as a Divisional Officer (Fire Fighter) by the Dihlabeng Municipality. Immediately before the collision occurred, he was driving a motor vehicle with registration numbers and letters [....]when the driver of a motor vehicle with registration numbers and letters [....]disobeyed a stop sign and collided into his (the plaintiff's) vehicle.

[3] It is common cause that as a result of the accident, the plaintiff sustained a head injury, facial abrasions and fractures of the spine and the sternum. He was transported from the scene of the accident by an ambulance to Medi-Clinic where he was admitted until discharged on 4 December 2013.

[4] The plaintiff's resultant claim against the defendant for damages consisting of past and future medical expenses, past and future loss of income and general damages was defended.

[5] The defendant has since conceded the merits, 100% of the plaintiff's proven or agreed damages and undertook to furnish the plaintiff with the statutory undertaking for future medical expenses in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996 ("The Act") and to pay to the plaintiff an amount of R429 510.00 (four hundred and twenty-nine thousand five hundred and ten rand) for the loss of past and future income.

[6] It is not in dispute that the plaintiff is entitled to general damages, the parties are however in disagreement with regard to the amount of damages to be awarded.

[7] By agreement, no oral evidence was led by either party. The plaintiff's expert reports were handed in by concurrence for the matter to be determined on the conclusions as expressed in the said reports which included the reports by the general practitioner, Dr JJ Schutte, orthopaedic surgeon Dr Oelofse, radiologist Dr F

Steyn, neurosurgeon Dr van Aswegen, ophthalmologist Prof WJ Marais, clinical psychologist Dr FJ Truter, clinical neuropsychologist Ms Urvashi Maganlal, occupational therapists Ms R Kruger and Mrs Liebenberg of Rita van Biljon Occupational Therapists, industrial psychologist Dr EJ Jacobs and actuaries Munro Actuaries.

[8] According to the experts' reports, the plaintiff sustained fractures of the chest and spine (L1, L2, T11, T12 transverse and compression fractures including an injury to the adjoining ligaments). The head injury has been diagnosed as a mild traumatic brain injury with post-concussive syndrome and he also sustained facial abrasions.

[9] As a result of the injuries, the plaintiff experienced acute pain in the head, face, chest, mid and lower spine and left buttock area immediately after the accident which continued for three weeks thereafter. The pain is alleviated by pain medication.

[10] All the abrasions have healed and there is no disfigurement. Regrettably, the pain and suffering is ongoing. The plaintiff is also battling with dilapidating chronic headaches, concentration deficiencies, memory losses, dizzy spells and loss of balance. His vision on both eyes has been severely affected he is now medico legally blind as a result, he can no longer read as he used to.

[11] The fractures of the chest and spine are united but the enduring pain and discomfort hinders his proper performance of work duties. The pain becomes worse when he performs strenuous activities such as running and handling heavy objects. His ability to sit, walk and stand for a long period of time also impacts on his performance of household chores including gardening. A thoracolumbar spine surgery with physiotherapy and long term bio kinetics will be required in the future.

[12] The pain and discomfort in respect of the existing ailments and post-surgery can be managed by the use of conservative treatments including the long term use of pain and anti-inflammatory medication (NSAIDS) and analgesics however, when taken for a long time these pain medications can lead to serious side effects such as peptic ulcers, kidney damage, heart defects and drug dependency.

[13] The plaintiff is also afflicted with a combination of an anxiety-depressive disorder. He has become anti-social, he struggles with sleep and loss of libido which has had an adverse effect on his marriage. Psychological interventions have been recommended in this regard.

[14] It is the plaintiff's case that having regard to the damages awarded in previous comparable cases¹ ranging from R700 000.00 (seven hundred thousand rand) to R1 000 000.00 (one million rand) the amount that would be just and equitable under these circumstances is an amount of R850 000.00 (eight hundred and fifty thousand rand).

[15] The defendant is of the view that the amount claimed by the plaintiff is excessive having regard to the fact that the plaintiff is presently 62 years old, he is still employed, the fractures have since unionised and the plaintiff did not qualify for general damages under the narrative tests. Relying on *D.S v Road Accident Fund* (78615/2015) [2017] ZAGPPHC 951 (8 December 2017) and *Mbalathi v Road Accident Fund* (4817/2019) [2020] ZAGPJHC 327 (1 September 2020) defendant's counsel contends that the amount that would be appropriate in this instance is the amount of R500 000.00 (five hundred thousand rand).

[16] The extent of the injuries sustained by the plaintiff including their nature, severity and impact on the plaintiff's life amenities is indisputable. There is neither a mathematical nor a scientific formula to compute the monetary value on pain and suffering, and loss of amenities of life.² The court retains a wide discretion which has, as its objective to fairly and adequately compensate a plaintiff.³

¹ Reference was made to various authorities including *Bismilla v Road Accident Fund* (2012/12325) [2017] ZAGPJHC 277 (26 September 2017); *Pooe v Rosenbach* 1972 (213) QOD 242 (W) and *Tobias v Road Accident Fund* (4934/2009) [2010] ZAGPPHC 537 (15 April 2010).

² *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A).

³ *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A.

[17] Comparable previous awards do serve as a guide when the court determines the amount to award a plaintiff and make allowance for increases in such awards.⁴

[18] The authorities referred to by the plaintiff involve nearly similar injuries sustained by the plaintiff namely, brain and spine injuries, loss of sight and long term neurocognitive ailments. I can therefore consider them as a baseline when assessing the damages to be awarded to the plaintiff. On the other side, the defendant's reliance on *D.S* and *Mbalathi* is misplaced as those authorities only deal with fractures of the body and limbs.

[19] With regard to the defendant's contestation of the liability for the plaintiff's general damages, the defendant ought to have invoked the provisions of section 17(1A) of the Act to reject the plaintiff's claim where it is not satisfied that his injuries are so serious to fall under the ambit of the narrative test or request the plaintiff to submit himself to a further assessment.

[20] On the available facts, the plaintiff's right to claim general damages has not been disputed, see para 6 above and once the defendant has admitted the assessment of the plaintiff's injuries, the defendant is obliged to compensate the plaintiff.⁵ I'm thus of the view that the defendant's attempt to raise a belated dispute of the assessment of the plaintiff's injuries as a bargaining tool for the reduction of the quantum of the damages is unsound.

[21] Taking into consideration the facts of this matter, I consider the amount of R850 000.00 (eight hundred and fifty thousand rand) to be adequate to compensate the plaintiff in respect of general damages and also fair to the defendant.⁶

[22] In the result I make the following order:

1. The draft order annexed hereto as annexure "X" (as amended) is made an order of court.

⁴ Road Accident Fund v Marunga **2003 (5) SA 164** (SCA) at 169E-I; *De Jongh v Du Pisanie NO* **2005 (5) SA 457** (SCA) paras 58-65.)

⁵ Section 17(1) of the Act.

⁶ *De Jongh*, Ibid at fn 6 above.

1. The defendant is liable for payment to the plaintiff in the amount of **R1 279 510.00** (One million two hundred and seventy-nine thousand five hundred and ten rand) [hereafter referred to as “the capital”] as set out hereunder:

1.1. **R850 000.00** (Eight hundred and fifty thousand rand) in respect of general damages; and by agreement between the parties:

1.2. **R429 510.00** (four hundred and twenty-nine thousand five hundred and ten rand) for loss of past and future loss of income resulting from a motor vehicle collision which occurred on 29 November 2013.

2. The defendant shall furnish the plaintiff with an undertaking as envisaged in Section 17(4)(a) of the Act for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred on proof thereof.

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

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

3.1.1 Dr JJ Schutte (General Practitioner)

3.1.2 Dr JF Oelofse (Orthopedic Surgeon)

3.1.3 Dr F Steyn (Radiologist)

3.1.4 Dr A van Aswegen (Neurosurgeon)

3.1.5 Prof WJ Marais (Ophthalmologist)

3.1.6 Dr FJ Truter (Clinical Psychologist)

3.1.7 Ms Urvashi Maganlal (Clinical Neuropsychologist)

3.1.8 Ms R Kruger and Mrs L Liedenbergh of Rita van Biljon
(Occupational Therapists;

3.1.9 Dr EJ Jacobs (industrial psychologist);

3.1.10 Munro Forensic Actuaries.

4. The payment provision in respect of the afore-going are ordered as follows;

4.1 Payment of the capital amounts shall be made without set-off or deduction, within 180 (one hundred and eighty) calendar days from date of the granting of this order, directly into 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 Bunchner/J03175

(please quote the reference at all times)

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

5 Interest shall accrue at 7% (the statutory rate per annum), compounded, in respect of:

5.1 the capital claim, calculated from 14 (fourteen) days from date of this order.

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

6. The plaintiff's claim for past hospital and medical expenses is separated in terms of Rule 33(4) and postponed to the pre-trial roll of **07 November 2022**.

N.S. DANISO, J

APPEARANCES:

Counsel on behalf of the plaintiff:

Instructed by:

Adv. PJJ Zietsman SC

Honey Attorneys

BLOEMFONTEIN

Counsel on behalf of the defendant:

Instructed by:

Adv. Booysen

Office of the State attorney

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