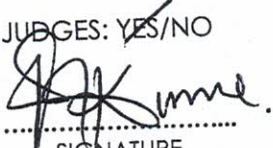


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 25897/17

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
06/03/2019	
DATE	
	
SIGNATURE	

In the matter between:

ADV S SAYED NO.

(CURATOR AD LITEM OF CJ BROWER)

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

SKOSANA AJ

- [1] The plaintiff herein sues the defendant for damages arising from injuries sustained in a motor collision. The plaintiff was represented by Adv Dredge and the defendant by Adv Soni. Both counsel informed me that

the claim has been settled in respect of the merits, the future medical expenses by way of undertaking in terms of section 17(4) of the RAF Act 56 of 1996 and loss of earning and earning capacity at R1 244 772-60.

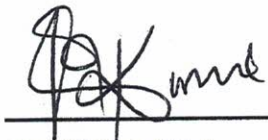
- [2] The only remaining aspect on which I am called upon to decide is in relation to the proof of the existence of general damages and the quantum thereof.
- [3] It was indicated from onset that defendant's counsel has not been favoured with instructions in regard to this head of damages nor has defendant filed any expert reports in that regard.
- [4] On the other hand, Mr Dredge, before taking me through various expert reports, referred me to two pre-trial minutes on the basis of which he contended that the defendant has conceded or must be regarded as having conceded to the existence of general damages to Mr Brower. In addition, he referred me to the judgment of Makgoka J in the matter of Magaqana against the present defendant in relation to the limited effect of the reservation-of-rights clause, especially where such rights have not been exercised during the agreed period. I accept that approach.
- [5] I am not going to set out the details of the excerpts of the plaintiff's expert opinions that Mr Dredge took me through. Suffice to state that all such

expert opinions point to significant brain and cognitive impact that the accident had on Mr Brower's well-being, which was permanent in effect.

[6] To mention some of the conclusions reached by these experts, I refer to the following:

- [6.1] The Neurologist, Dr Smuts who found that Mr Brower sustained concussive head injury with associated moderate to severe diffuse axonal brain injury;
- [6.2] The Special Neuro Surgeon, Dr Moja, who concurred with Dr Smuts;
- [6.3] The Psychiatrist, Dr Fine, who found that Mr Brower sustained a head injury with significant organic brain damage;
- [6.4] The Counselling Psychologist, Dr Jonker, who concluded that Mr Brower suffered from neuro-cognitive impairment leading to long-term cognitive changes.
- [6.5] The Urologist, Dr Van Heerden who established that Mr Brower suffered from neurogenic bladder which resulted from the head injury and which makes it difficult for Mr Brower to hold urine;

- [6.6] Dr Fredericks, who assessed Mr Brower's impairment and found that his whole person impairment measured at 34%.
- [7] In his heads of argument, Mr Dredge persuaded me that a figure of R1 million is not out of kilter with the guideline provided by previous case law in respect of similar injuries. Mr Soni stated that he was not able to differ with this submission.
- [8] The curator ad litem, Adv Sayed also submitted that the creation of a trust will better serve Mr Brower who has still retained some cognitive abilities to utilize funds as long as they were not huge amounts. The trust will be able to provide funds to him in the form of monthly emoluments. She was also agreeable with the contingency fee arrangement in respect of the plaintiff's legal representatives.
- [9] In the result, I am satisfied that an order as contained in the draft order which I mark "X", is just and appropriate in the present case. Consequently, I make an order accordingly.



DT SKOSANA

Acting Judge of the High Court