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THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

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

Case No: 4119/2015

In the matter between:

M M

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

CORAM: OPPERMAN, J

HEARD ON: 13 FEBRUARY 2019

DELIVERED ON: 4 MARCH 2019

JUDGMENT BY: OPPERMAN, J

Summary: Claim for damages – motor vehicle accident – general damages

JUDGEMENT

I BACKGROUND

- [1] On 27 October 2013 on the N5 Road between Bethlehem and Kestell, traveling towards Kestell, the plaintiff was the driver of a motor vehicle that had to swerve to avoid a collision with an unidentified motor vehicle (the insured driver). The insured driver overtook another vehicle and entered the plaintiff's lane of travel. In an attempt to avoid a collision, the plaintiff lost control of her vehicle and it overturned.

II COMMON CAUSE

- [2] On 18 October 2016 Moloi, J ordered that the merits and the quantum of the matter be separated in terms of Rule 33(4), the defendant is liable for 100% (*One Hundred Percentum*) of the plaintiff's proven or agreed damages pertaining to the injuries sustained.
- [3] The quantum was postponed. The matter was placed for trial for three days.
- [4] Consultations between the parties on the first day of trial eventuated in a settlement that entails that:
- 4.1 The defendant shall make payment to the plaintiff of compensation for loss of income in the amount of R919 854.80.
- 4.2 Payment by the defendant is to be made within fourteen (14) days from date of this order, failing which interest will

start to accrue from date of this order at a rate of 10,25% per annum until date of payment.

- 4.3 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 the 27 October 2013.
- 4.4 The defendant pays the plaintiff's taxed or agreed party and party costs and correspondent's fees on the High Court Scale which costs *inter alia* will include the following:
- 4.5.1 The Costs of Senior-Junior Counsel for the 12th and 13th of February 2019;
- 4.5.2 All costs in obtaining all medico-legal-reports, joint minutes and an actuarial report as well as the plaintiff's travelling and lodging costs in attending the plaintiff's and defendant's expert medical appointments as well as the trial.
- 4.5 The defendant is also liable for the qualifying fees, attendance fees and fees in respect of accommodation and air fare in respect of Dr. HJ Edeling (Neurosurgeon) and Jeannie van Zyl (Industrial Psychologist).

- 4.6 The plaintiff's claim in respect of past hospital and medical expenses to be postponed to 1 April 2019 to the pre-trial roll.

III DISPUTE

- [5] The quantum of general damages remained in dispute. The parties submitted all relevant expert reports by consensus and the dispute was argued on the papers.
- [6] The defendant submitted that in the circumstances an amount of R620 000, 00 would represent fair compensation as far as general damages are concerned. The plaintiff argued that the correct amount for general damages would be R1 000 000, 00.

IV THE LAW

- [7] The manner of determination of general damages in personal injury cases is trite.

7.1 In determining the quantum of general damages in personal injury cases the trial court essentially exercises a general discretion. **De Jongh v Du Pisani N.O.** 2005 (5) SA 547 (SCA) at paragraph 60 laid down the basic rule in that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour largesse from the horn of plenty at the defendants' expense.¹

7.2 General damages is the broad term given to non-pecuniary loss such as pain and suffering, loss of amenities, emotional harm, etc. As pointed out by the court in the

¹ Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 (D) 287E-F.

case of **Hendricks v President Insurance** 1993 (3) SA 158 C the nature of the damages which are awarded make quantifying the award very difficult.

7.3 The Appellate Division in **Sandler v Wholesale Coal Suppliers** 1941 AD, 194 at 199 stated:

“Though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty.”

7.4 There is unfortunately no expert that can place an exact value to the abovementioned losses. The damages that are to be awarded should be assessed by taking into account the age, sex, status, culture, lifestyle and the nature of the injury suffered as well as having regard to previous awards made for similar injuries. Also, other factors which are often taken into account include the degree of pain suffered. The fact that pain is subjective is taken into account, whether further surgery can be expected, whether the plaintiff has debilitating scarring, is unable to fend for him/herself and has a decreased life expectancy are examples of factors that guide the court. This discretion is not restrained by an inexorable tariff drawn from previous similar awards.

7.5 It is not enough to compare the general nature of injuries. All factors affecting the assessment of damages must be

taken into account. Once it is established that the circumstances are sufficiently comparable, then only are comparable cases to be used as a general yardstick to assist the court in arriving at an award.

[8] The comparable cases referred to by counsel are:

8.1 **H Nate v RAF**, Case Number 2843/2016, judgement on 25 October 2018, FS Division wherein R1 100 000.00 was granted.

8.2 **D Mbhele v RAF**, Case number 4572/2015, judgement on 1 March 2018, FS Division wherein R850 000.00 was granted.

8.3 **De Jongh v Du Pisani N.O.** 2005 (5) SA 547 (SCA); R250 000.00 was granted (R600 000.00: 2018).

8.4 **Van der Mescht v RAF**, IV J2-42, Case number 2008/12182 12 March 2010, South Gauteng High Court. R400 000.00 was granted (R620 000.00: 2018).

[9] Each case must be adjudicated on its own merits. Van Heerden J in **Dikeni v Road Accident Fund** 2002 C&B (Vol 5) at B4 171 stated that:

“Although these cases have been of assistance, it is trite law that each case must be adjudicated upon on its own merits and no one case is factually the same as another..... previous awards only offer guidance in the assessment of general damages.”

V THE MATTER *IN CASU*: THE PLAINTIFF

[10] As stated above; the expert reports are common cause. The report of Dr H.J Edeling, a neurosurgeon, depicts the material issues. He took cognisance of, amongst others, the hospital reports, ambulance reports, RAF 4 report of Dr Irsigler (Trauma surgeon) and radiology reports of Dr Nel.

10.1 The plaintiff is 35 years old. The date of injury was 27 October 2013 at the age of 30 years old.

10.2 She is employed as a Crime Information Officer in the South African Police Services (SAPS). She matriculated in 2002. She completed a one-year certificate in Information Technology in 2004 and in 2008 obtained a certificate that qualified her as a call centre consultant. In the meanwhile, she worked as a cashier, pay point operator and did a learnership at the Department of Education. From January 2011 to September 2012 she was enrolled as a Trainee Constable and was appointed permanently in October 2012.

10.3 After the accident she remained absent from work for four months while recuperating from her injuries. When she resumed her duties, it was realised that she cannot execute her duties and she was transferred to the position of Crime Information Officer.

10.4 At the time of the accident she was single and living with her mother, 2 brothers and daughter in a house in

Witsieshoek. In addition to her work she performed routine household tasks: “She played netball, enjoyed going out with friends, going to church, listening to music and reading books. She was in good health, with no physical, mental or psychological difficulties and no disabilities in relation to her work or amenities. She had not experienced any learning difficulties in matric or while studying for her subsequent certificate qualifications.”

- 10.5 After the accident she was treated in the casualty ward where after she was transferred to the ICU. She remained here for three days. She remained in the general ward for two and a half weeks.
- 10.6 Her treatment included two operations and physio-and-occupational therapy.
- 10.7 The injury diagnosis is a traumatic but moderate brain injury, compression wedge fracture L2, L3 and L4. Fractured right tibia and fibula. Fractured right pubic rami and ischium. The outcome diagnosis is post traumatic neurocognitive/ neuropsychological disorder, post-concussion dizziness, mechanical back pain, scarring, mood disorder secondary to the musculoskeletal syndrome and changes in life circumstances. There have been considerable changes in physical function, mood and behaviour that are impacting on amenities, life roles and circumstances.

“Her leg was not stable shortly after the incident. She fell down a lot and struggled with the facilities at work. She struggled to get inside a car and couldn’t sit for long.”

- 10.8 She was moved to a different position still inside the SAPS but her salary was smaller because she could not work overtime anymore. She cannot wear a bullet proof vest anymore so is fearful at crime scenes and cannot run anymore. She works in a sympathetic environment. Her commander noticed that she is very forgetful and guides her by letting her write down relevant tasks and matters. She cannot sit, stand or walk for long.
- 10.9 Her social life changed since she cannot go to church anymore, play netball and socialise effectively. She has become irritable and short tempered.
- 10.10 In conclusion by Dr Irsigler the following was noted; Surgical scars on her back and ankle, stiffness and discomfort in walking affected by her right ankle and back. She has no abnormalities of her cervical spine and no physical neurological deficits of the cranial nerve function or long track motor or sensory functions in her limbs.
- 10.11 At superficial level her mental function appears to be within normal limits for her educational and vocational status. More detailed there are impairments that include variable attention, resulting in need for repetition and explanation of certain questions, paucity of speech, variable difficulties with the retrieval of memories, a blunt affect with a lack of

drive and determination and questionable insight and impaired capacity to provide a coherent and credible account of her condition and circumstances. Her organic neurological sequelae of her brain injury have stabilised and become permanent.

VI CONCLUSION

[11] Taking all the factors into account a fair and just compensation for general damages for the plaintiff is the amount of R850 000.00.

[12] ORDER

1. The defendant shall make payment to the plaintiff of compensation for loss of income in the amount of R919 854.80 and general damages in the amount of R850 000.00.
2. The total amount of R1 769 854.80 is payable within fourteen (14) days from date of this order, failing which interest will start to accrue from the date of this order at a rate of 10,25% per annum until date of final payment.
3. 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 the 27 October 2013.

4. Payment is to be made into the following account: -
 - Account Name : Edeling Van Niekerk Inc
 - Bank : Nedbank
 - Branch : Business Westrand
 - Account number: [...]
 - Branch code : 128605

5. The defendant pays the plaintiff's taxed or agreed party and party costs and correspondent's fees on the High Court Scale which costs *inter alia* will include the following:
 - 5.1 The costs of Senior-Junior Counsel for the 12th and 13th of February 2019;

 - 5.2 All costs in obtaining all medico-legal-reports, joint minutes and an actuarial report as well as the plaintiff's travelling and lodging costs in attending the plaintiff's and defendant's expert medical appointments as well as the trial. The plaintiff filed the following expert reports:
 1. Dr. D. Irsigler (Trauma Surgeon);
 2. Dr. H. E. T. van den Bout (Orthopaedic Surgeon);
 3. Dr. L. Fine (Psychiatrist);
 4. Dr. H. J. Edeling (Neurosurgeon);
 5. Ms. C. Angus (Clinical Psychologist);
 6. Ms. K. du Toit (Occupational Therapist);

(Alison Crosbie Occupational Therapists);

7. Mr. J. van Zyl (Industrial Psychologist);

8. Mr. G.A. Whittaker (Actuary).

5.3 The defendant is also liable for the qualifying fees, attendance fees and fees in respect of accommodation and air fare in respect of Dr. HJ Edeling (Neurosurgeon) and Jeannie van Zyl (Industrial Psychologist).

5.4 The plaintiff's claim in respect of past hospital and medical expenses is postponed to 1 April 2019 to the pre-trial roll.

M. OPPERMAN, J

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