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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 number: 4719/2017

In the matter between:

S M

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

HEARD ON: 6 NOVEMBER 2019

JUDGMENT BY: MATHEBULA, J

DELIVERED ON: 5 DECEMBER 2019

Quantum of damages – Comparable awards – Cautious approach in making the award.

- [1] The only issue to be determined is the quantum of general damages. Despite attempts to settle this matter, the parties remained far apart from each other on this aspect. The plaintiff is claiming the sum of R800 000.00 while the defendant is of the view that an amount of R400 000.00 will be just and fair in the circumstances of the injuries sustained in this regard.
- [2] It is common cause that the plaintiff suffered the left arm, right upper leg, right ankle and multiple soft tissue injuries as a result of the accident. This is noted as such by medical experts appointed by both parties. The experts agreed as recorded in the joint minutes that she suffered from acute pain for ten (10) days and then moderate pain for another three (3) months. It is apposite to note that she has not been pain free since the accident.
- [3] Given the extent of her injuries, orthopaedic surgeons are *ad idem* that provision must be made for physiotherapy, medication, bio kinetics and arthroscopy of the shoulder. There must also be removal of the instrumentation of the right femur and she will require a built-up shoe orthosis. Importantly, they agree that the injuries have had a profound impact on her amenities of life and this will persist in the future.
- [4] In order to substantiate the claim of R800 000.00 the Plaintiff referred me to decided cases. It is the comparable awards that I turn to in order to make the award that is just and fair to the parties.

- [5] In **Mgudlwa v Road Accident Fund** the court made an award for general damages in the amount of R300 000.00.¹ The plaintiff had sustained an extremely comminuted fracture of the lower end of the femur and scars on the upper end of the left tibia. The injuries had significant adverse effects on his legs, spine and hips. These also left him with a deformity of the proximal end of the left femur with the left leg 5 centimetres shorter than the right leg. He was compelled to use an auxiliary crutch because of a limp on the left. He could no longer squat or drive a motor vehicle. As a result further corrective surgery was required to improve his left leg.
- [6] This matter was relied upon by both counsel in their heads of argument. The award referred to above is R 482 000.00 in the present value. The injuries sustained in **Mgudlwa** were less severe compared to those sustained by the plaintiff. It stands to reason that the award for general damages must be higher in this matter.
- [7] I was also referred by both counsel to the matter of **Ncama v Road Accident Fund**². The plaintiff had suffered fracture of the right femur, fracture of skull, neck injury, soft tissue injury of the right and left sacro-iliac joints and pelvic ring. An open reduction and internal fixation of the femur was performed and plaster of Paris cast applied. He also received physiotherapy and crutches to walk about. It is recorded that the fracture of the skull was treated conservatively. The neck injury was treated with a neck brace, pain medication and anti-inflammatories. Clearly, his injuries are more severe than those sustained by the plaintiff. The submission by counsel for the plaintiff is that the lower limb injuries of the plaintiff are more severe. I do not

¹ 2011 (6E3) QOD 1 (ECM)

² 2015 (7E3) QOD 7 (ECP)

find logic in this argument because the award was made looking into the injuries holistically not piecemeal as it is suggested in the heads of argument. The cumulative effect of the injuries is what inspired the court to decide as it did. The plaintiff in the Ncama matter was awarded the sum of R500 000.00 for general damages which is R 650 000.00 in the present day value.

- [8] In **Ndaba v Road Accident Fund** the plaintiff suffered multiple orthopaedic injuries including straddled pelvic fracture, right femoral fracture, dashboard left knee and right shoulder injuries. A further injury of the ruptured bladder is a result of blunt abdominal trauma. Open reductions and fixations were performed on the hip joint, femur and tibia. It appears that orthopaedic complaints were aggravated by abnormal weather conditions. These injuries had rendered her unfit to any type of employment in the open labour market thus she could not continue as the hawker. She was awarded the sum of R300 000.00 which equals to R 456 900.00 in the present day value.
- [9] Counsel for the defendant also relied on the decision of the court in **Venter v Road Accident Fund**. In that matter a 22 year old salesman, who was 18 years old at the time of the injury, sustained numerous injuries the most problematic being the shortening of the right femur which appears to have caused some back ache from time to time. There was also the loss of function of the right hand. The plaintiff in that matter was awarded R300 000.00 for general damages which equates to R 462 000.00 in present day value. The nub of the submission is that the extent of injuries and the resultant effects exhibited by the plaintiff in the present matter are of a less severe nature than those in the matter above.

[10] Lastly I was referred to the decision of this Division of the High Court in **Litseo v Road Accident Fund** where an award of R700 000.00 was made in respect of general damages. The plaintiff in that matter who was a hawker had suffered injuries to the right upper neck and knee, the right lower leg and ankle and the left knee and lower leg. These will also require treatment and surgery in the future. The patent effect of the injuries is that they have rendered her an unfair competitor in the open labour market. This simply means that her opportunities have been nullified. These injuries are almost similar to those suffered by the plaintiff in the current matter. It is important to note that the learned judge adopted the cautious approach in making the award preferring to “err on the conservative side”.³

[11] There are no rules laid down in order to approach the issue of general damages. The accepted approach is the flexible one described in **Sandler v Wholesale Coal Suppliers Ltd**⁴. There the learned judge said the following:-

“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.”

[12] This was confirmed by the same court in **Southern Insurance Association Ltd v Bailey N.O.**⁵ in the following terms:-

³ 2019 ZAFSHC/52

⁴ 1941 AD 194 at 199

⁵ 1984 (1) SA 98 AD at 99 H

“The Appellate Division has never attempted to lay down rules as to the way in which the problem of an award of general damages should be approached. The accepted approach is the flexible one described in *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199, namely: “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.”

[13] It is generally difficult to find a matter that is on all fours with the previous comparable awards. These must be used as a useful guide in order to achieve an award that is fair and just to both parties. The courts have repeatedly cautioned that the plaintiff must be compensated justly but “not pour out of largesse from the horn of plenty at the defendant’s expense”.⁶

[14] In conclusion and considering all the relevant factors in this matter in particular the awards in comparable cases discussed above, the decrease in the value of money and the severity of the injuries sustained, it is my considered opinion that a just and equitable amount is R700 000.00 for general damages.

[15] Therefore I make the following order:-

15.1. The defendant is ordered to pay the sum of R700 000.00 (seven hundred thousand rand) for general damages for pain and suffering, loss of amenities of life, disablement and disfigurement.

⁶ *Pitt v Economic Insurance Co Ltd* 1975 (3) SA 264 (N) at 267

- 15.2. In the event of the default, interest at the rate of 10.25% per annum shall accrue calculated from fourteen (14) days of the date of this order until date of final payment.
- 15.3. The defendant is ordered to furnish to the plaintiff an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff arising out of injuries sustained by her in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate her in respect of the said costs after the costs have been incurred and on proof thereof.
- 15.4. The defendant to pay the plaintiff's taxed or agreed party and party costs on the High Court scale.
- 15.5. The reasonable preparation / qualifying / accommodation / travelling and full reservation fees and expenses (if any) of the following experts, and the costs relating to the plaintiff attending their medico legal examinations:
- 15.5.1 Dr L F Oelofse (Orthopaedic Surgeon);
 - 15.5.2 Hanri Meyer (Occupational Therapist);
 - 15.5.3 Ben Moodie (Industrial Psychologist);
 - 15.5.4 John Sauer (Actuary);
- 15.6. Payment of the taxed or agreed costs shall be made within 14 (fourteen) days of taxation, and shall likewise be effected into the trust account of the plaintiff's attorney;

- 15.7. No interest will accrue in respect of any of the aforesaid amounts if payment is made on or before the stipulated dates.

M. A. MATHEBULA, J

On behalf of Plaintiff:

Instructed by:

Adv. K Peterson

VZLP Incorporated

c/o Du Plooy Attorneys

Bloemfontein

On behalf of Defendant:

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