



**IN THE HIGH COURT OF SOUTH AFRICA, NORTHERN CAPE DIVISION,
KIMBERLEY**

Not reportable
Case No: 2618/2016

In the matter between:

ALME STANTON N.O

PLAINTIFF

And

ROAD ACCIDENT FUND

RESPONDENT

Heard: 13 September 2019

Delivered: 08 November 2019

JUDGMENT

PHATSHOANE ADJP

- [1] Adv Almè Stanton NO, in her representative capacity as the curator *ad litem* for the patient, Mr Jacobus Strauss ("Strauss"), instituted action against the Road Accident Fund, the defendant, in which she claims on behalf of Strauss damages flowing from bodily injuries sustained during an accident which occurred on 13 February 2012 at the intersection of Robertson Street and Main Road, Beaconsfield, Kimberley, in which a motorcycle ridden by Mr John Slater

with Registration Number [...] collided with a bicycle which was ridden by Strauss.

[2] The defendant has conceded liability on the merits and on a number of issues pertaining to the plaintiff's claim for damages. The defendant has also admitted liability with an 80/20% apportionment ratio of the plaintiff's proven damages. It further conceded Strauss's loss of income and/or income earning potential the total of which, after applying the 80/20% apportionment, is in the order of R338 078.24 and includes past and future losses. What consequently remains is quantifying the general damages due to Strauss for pain, suffering, loss of amenities of life, disfigurement and incapacity.

[3] The plaintiff and the defendant's agreed stated case is substantially the following:

3.1 Mr Strauss is 44 years old, single with no dependants. He was born with a hearing and speech impairment. Consequent upon the accident, described earlier, he sustained the following injuries: a base of the skull fracture with fracture line extending through left mastoids into middle ear; severe head/brain injury with neurocognitive and emotional disturbance; soft tissue injury to the left knee and patella. He presents with a mild chondromalacia of the patella to the left knee ("runner's knee"- a condition that causes irritated cartilage under the knee and a soft or deformed patella). He has a restricted gait not attributable to the knee injury but the head injury. The orthopaedic injuries have left him with only minor functional impairment.

3.2 Strauss resided at Lewensruimte Institute for deaf individuals in Worcester where he lived independently and worked in the pottery department. He also worked with power tools in the woodwork department.

3.3 Three years prior to the collision Strauss was residing with his sister in Kimberley, Northern Cape. He secured employment as a car washer at Monument Car Washers, Kimberley, where he earned an income of

R2 320.00 per month with a postulated income of R4 676.00 per month in 2018. He would have been able to work until the age of 62 years and six months but the accident has rendered him unemployable in the open labour market.

3.3 The injuries had a permanent impact on Strauss's amenities of life. He returned to Lewensruimte Institute after the collision. However, he is no longer allowed to work with power tools but sands wooden articles such as wooden doors for which he receives an allowance far less than what he did in the past. He requires direct supervision and care. He resides in a group home headed by a house mother and father due to his dependency.

3.4 The patient's injuries are regarded as serious as contemplated in s 17 of the Road Accident Fund Act, 56 of 1996, as amended, read with Regulation 3 of the Road Accident Fund Regulations, 2008. He will require future treatment and is therefore entitled to an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act.

[4] The trite principle in awards for general damages was restated as follows in *Protea Assurance Co Ltd v Lamb*:¹

'(T)he trial Judge has a large discretion to award what he in the circumstances considers to be a fair and adequate compensation to the injured party for these *sequelae* of his injuries. Further, this Court will not interfere unless there is a "substantial variation" or as it is sometimes called a "striking disparity" between what the trial Court awards and what this Court considers ought to have been awarded. (See *Parity Insurance Co. Ltd. v. Van den Bergh*, 1966 (4) SA 463 (AD) at p. 478 *in fine*, and *Sandler v. Wholesale Coal Suppliers Ltd.*, 1941 AD 194 at p. 200). Where interference is justified in terms of the principles enunciated above, this Court will substitute its own assessment of damages.

The further question that arises is to what extent, if any, this Court should be guided in its assessment of general damages by awards in previous decided cases.....

¹ 1971 (1) SA 530 (A) at 534-536

...(T)he trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their *sequelae* may have been either more serious or less than those in the case under consideration.'

- [5] Mr Rust, for the plaintiff, referred, *inter alia*, to *Monchonyane v Road Accident Fund*² where the claimant, a 25 year old male, sustained severe head injuries, fracture of the left femur, and soft tissue injury to the thorax. He was left wheelchair bound and needed a full-time caregiver for his survival as he was completely immobile and could do nothing without assistance. He was awarded general damages in the amount of R1 700 000.00 equivalent to R 1 874 000 in current values. He also referred to *Dlamini v Road Accident Fund*³ where the claimant, an adult male winch operator at a mine, sustained irreversible brain injury expected to cause permanent and significant neurocognitive and even psycho-organic abnormalities. He also had a mandible fracture and a dislocated Metatarsophalangeal (MTP) joint of the second toe. He was awarded general damages in the amount of R1 350 000 in 2015 which translates to R1 666 000 in current values. Mr Rust urged that the quantum of general damages be in the vicinity of what was awarded in *Dlamini v RAF* (supra).

² (RAF69/15) [2017] ZANWHC 99 handed down 30 November 2017

³ (59188/130 [2015] ZAGPPHC 646 delivered on 03 September 2015

- [6] Mr Jankowitz, for the defendant, referred to *Benjamin NO v Road Accident Fund*⁴, where the plaintiff suffered severe brain injury resulting in urinary incontinence, emotionally labile state, daily headaches, low self-esteem and being subjected to ridicule by other school children. The plaintiff needed a curator and would be wholly incapable of earning an income in the future. She also sustained a fracture of the femur and a pelvic fracture with the result that she was unable to run or walk fast. She was awarded R400 000 which is equivalent to R880 000 in today's terms.
- [7] Mr Jankowitz also relied on *Rabie v MEC for Education, Gauteng*⁵, where a Grade 8 learner was thrown into the air by other learners and instead of being caught safely, landed on his head. He suffered multiple injuries. The magnetic resonance imaging (MRI) investigations of the brain showed a fracture in the right frontal area through the lamina papiracea from right to left and a fracture through the left colloid process with frontal contusion bilateral and multiple points of bleeding on the base of the skull and frontal lobes. He also sustained a fractured left patella with signs of chondromalacia patellae with significant retro patella tenderness of the left knee. He had significant impairments on the neuro-cognitive, neuro-psychological and neuro-behavioural range. He suffered from recurrent headaches, fatigue, poor concentration, poor memory, slow working tempo, irritability, impulsivity and psychological deficits. After the incident his academic results deteriorated drastically. He was awarded R800 000 general damages, the equivalent of R1 098 000 in today's terms.

Mr Jankowitz argued, with reference to the above two cases, that an award of R800 000 would adequately compensate Strauss.

- [8] I have also considered other similar cases including *Matthys NO v Road Accident Fund*⁶ where the patient suffered severe brain injury and other minor

⁴ 2005 (5B4) QOD 205 (C)

⁵ 2013 (6A4) QOD 227 (GNP)

⁶ 2013 (6A4) QOD 273 (GNP)

orthopaedic injuries. The patient was left with significant cognitive deficits. The list of his (permanent) *sequelae* was extensive and he had insight into his condition in that he knew that he suffered a major injury which left him inferior. He underwent a change in his disposition. He was forgetful, angry, temperamental, unsociable and struggled to express himself clearly. When at home he was unclean and unhygienic and isolated himself from family and friends. He experienced difficulty concentrating and became less productive in the workplace. His general enjoyment of life diminished and even if he were to receive treatment he would not have fully recovered from the brain injury sustained and would never regain his pre-accident level of capacity. He was awarded R500 000 general damages the present value of which is R686 000.

- [9] *In casu*, Strauss led a worthwhile life with his pre-morbid disabilities. At present he is not only faced with hearing and speech impairments but is mentally handicapped as well. Apparent from the stated case, prior to the accident he worked independently as a potter and also worked with power tools. He later on worked as a car washer. Dr Parker opined that Strauss was “*already operating at the margins of the society in that he was deaf and dumb and could not be formally educated....*” and “*had the chance to make his life meaningful in that he got a job at a car wash in Kimberley where he worked for 3 years.*”
- [10] Strauss suffered untold anguish following the collision with long-lasting disruptive impact on the circumstances of his life. A significant feature of his case is his traumatic brain injury. Due to the severity thereof Dr Parker deems him incapable of working in the open labour market or of being “*useful in a sheltered market.*” This have had a profound effect on his personality and he will forever remain in this twilight zone. He has lost his sense of self-worth and outlook on life. At present his services at the institute have been reduced to menial tasks. He works under supervision and cannot operate power tools. He is entirely dependent on others because he suffers from memory loss.⁷ For instance, he needs to be reminded about self-care hygiene such as taking a shower or changing his clothes⁸. He is in an emotionally labile state. His

⁷ This is captured in the reports by Ms Benita Crouse, an occupational therapist, Dr Parker, a neurosurgeon, and Dr Bredenkamp, a counselling psychologist.

⁸ This appears in the occupational therapist report by Ms Benita Crouse.

despondency, as recorded in Dr Shafik Parker's report, is quite telling of how self-conscious he is of his current condition. The doctor recorded the following:

"At the end of the examination he [the patient] became very emotional and started crying. He was telling the interpreter that before the accident he worked wonderfully at the car wash and had no difficulty communicating neither working the whole day without even taking leave or taking minimum leave. All this has changed now and his mind doesn't function properly."

[11] In *Pitt v Economic Insurance Co Ltd*⁹ it was held that 'The Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense'.

[12] Even though the case of *Matthys NO v Road Accident Fund 2013 (6A4) QOD 273 (GNP)* is sufficiently similar to this matter, the award made in that case was too conservative in my view. I deem fair and adequate compensation, having had regard to Strauss's circumstances and guidance sought from the long line of cases considered, to be R950 000.00.

I make the following order.

Order

1. The Road accident Fund, the defendant, is to pay the plaintiff, Adv Almè Stanton NO, in her capacity as the curator *ad litem* for the patient, Mr Jacobus Strauss, as follows:
 - 1.1 general damages in the amount of R950 000.00 (Nine hundred and fifty thousand rand);
 - 1.2 past and future loss of income in the amount of R338 078.24; and
 - 1.3 interest on the aforesaid sums at the prescribed rate from a date 14 days after the judgment to the date of payment.

⁹ 1957 (3) SA 284 (N) at 287.

2. The defendant is to furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for 80% of the costs of future accommodation of Mr Jacobus Strauss in a hospital or a nursing home for treatment or rendering of a service or the supplying of goods to him after such costs have been incurred and on proof of payment thereof.
3. The defendant is to pay costs of suit.

MV Phatshoane ADJP

APPEARANCES:

*FOR THE PLAINTIFF: Adv J.M. Rust
Instructed by Venters Rust Inc.*

*FOR THE RESPONDENT: Adv DC Jankowitz
Robert Charles Attorneys*