

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE
- (2) OF INTEREST TO OTHER JUDGES
- (3) REVISED.

Case no: **49320/2015**
15/3/2018

In the matter between:

Marie Louise De Wet

Plaintiff

And

Road Accident Fund

Defendant

JUDGMENT

Dlamini AJ

INTRODUCTION

- [1] The plaintiff is Marie Louise De Wet born of the 21 March 1986, She was involved in a motor vehicle collusion that occurred on the 9th of July 2013 at approximately 05:45 on the Badfontein Road in Lydenburg, when a motor vehicle which registration letters and numbers are unknown to the plaintiff (the first unidentified vehicle) and motor vehicle with registration

number ([....] the second insured vehicle) driven by Mr WL Boshof, the motor vehicle in which the plaintiff was a passenger.

- [2] It is common cause that the defendant has conceded merits 100% in favour of the plaintiff . Accordingly the defendant is liable to pay 100% of the plaintiff's proven or agreed damages.
- [3] The parties agreed as to the amount of post medical expenses. The total amount paid on this heading is R83 357-14.
- [4] The parties after argument agreed that the defendant shall provide the plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996 to cover all future medical expenses suffered by the plaintiff. For cost of plaintiff future accommodation in a hospital or nursing home or treatment of or rendering of service to her or supply of goods to her arising out of the injuries sustained by her in the motor vehicle collision, after such costs have been incurred and upon proof thereof.
- [5] The parties filed various medico-legal reports by their respective experts and these were admitted into record as evidence.
- [6] The parties by agreement filed into the record the joint minutes of the following experts and same was admitted into evidence.

6.1 Occupational Therapists-

Vanessa Moolman and Neevashnee Panchoo

Neuropsychologist

6.2 Dr Mazibuko and Dr P Dlukulu

6.3 Plastic and Reconstructive Surgeons

Dr Leslie Berkowitz and Dr Anton Brewis

6.4 Neurosurgical Report

Dr J.A. Ntimbani and Dr G. Marus

6.5 Industrial Psychologist

Dr J Bosman and Ms C. Du Toit

Mr L. Linde and Ms A. Van Der Westhuizen

6.6 Actuaries

Algorithm Consultants

- [7] The parties placed on record that only the medico-legal report (orthopaedic surgeon) compiled by Dr H.B Enslin will be admitted by consent into the record as evidence, and that of Dr Gosai should be ignored.
- [8] Following deliberations, plaintiff conceded that future loss of income will be calculated less 10 % contingency deduction instead of 16.50% deduction proposed by the actuarial report. Taking into account the agreed contingency deduction the parties agreed that the plaintiff is entitled to payment of the sum of R4 412 964-95 in respect of future loss of earnings.
- [9] The remaining dispute that had to be determined by the court related to the amount of the general damages that had to be awarded to the plaintiff.
- [10] In the particulars of claim the plaintiff had claimed an amount of R1 800 000- 00 for the general damages in respect of pain and suffering and loss of amenities of life.
- [11] General damages are by their very nature not capable of being measured in monetary terms. Its quantification is a matter of judicial discretion. In exercising its discretion, the court must determine a reasonable compensation that is fair and just in the particular circumstances of each case.
- [12] The following dicta was expressed by the court in *Sendler v Wholesale Coal Supplier*¹ "it must be recognised that although the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in the monetary terms, the amount to be awarded as compensation can only be determined by the broadest general consideration and the figure arrived at must necessarily be certain depending on the judges view of what is fair in all the circumstances of the case".

¹ 1941 D 194 at 1999

[13] In the present case it was submitted on behalf of the defendant that an amount of not more than R700 000-00 would be an appropriate and adequate award for plaintiff's general damages. On the hand plaintiff submitted that an award of between R800 000-00 and R850 000-00 would be a fair and adequate award in this case.

[14] In support of this submission of R700 000-00 counsel for the defendant referred the court to the case of *Easters V Metro-rail*². Although the court awarded a sum of R700 000-00 in general damage, however the nature of the injuries and facts are with respect not similar to the present case.

[15] On behalf of the plaintiff the court was referred to the following case law,

*Dlamini v Road Accident Fund*³

*Bismilla v Road Accident Fund*⁴

*Mohale v Road Accident Fund*⁵

*Mofokeng v Road Accident Fund*⁶

[16] In *Eastes* case the court awarded general damages in the sum of R380 000-00.

16.1 In *Dlamini*, the court awarded general damages in the sum of R850 000- 00, in today's calculation will be R1 192 438-00.

16.2 In *Bismilla* the court awarded general damages in the sum of R700 000- 00, which is now R725 626-00 in today's calculation .

16.3 In *Mohale*, an amount of R650 000-00 was awarded as general damages which is now R650 000-00 was awarded as general damages which is now R794 722 -00.

16.4 In *Mofokeng*, an amount of R700 000-00 was awarded and today's calculations will be R849 150-00 for general damages.

[17] It is important to note that comparative awards in other cases might be a

² (22394/2004) 2014 ZAGPJHC 176 at 188

³ 39907(2110) at 46

⁴ 2012/12325 (2017) ZAGP JHC 277 at 86

⁵ (33835/2012) (2014) ZAGP PHC 437 at 25

⁶ (2009/11101) 2014 ZAGP JHC 160 at 112

useful guide, that are instructive but not decisive.

In *Protea Assurance v Lamb*⁷ the court said the following:

"It should be emphasised however that the process of comparison does not take the form of 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 courts general discretion in such matters".

[18] In the present case, it's not disputed that the plaintiff went through considerable pain and suffering following the accident. She sustained a fracture/dislocation of C6/C7 treated with anterior cervical fusion, T3 compression fracture, lung contusion , left ear decreased hearing. There is no doubt that the above injuries are severe and have left plaintiff with severe and continuous pain.

[19] Plaintiff has gone through a very difficult time with her fiancé being fatally injured in this accident. She has been traumatised and had considered suicide .

In the light of all the above highlighted circumstances, the plaintiff is awarded general damages in the sum of R800 000-00.

[20] I accordingly make the following order

20.1 That the draft order marked X is therefore made the order of the court.

DLAMINI AJ

HIGH COURT OF SOUTH AFRICA

⁷ 1971 (1) SA 530 (7) at 534

GAUTENG DIVISION, PRETORIA

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