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IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case number: 4572/2015

In the matter between:

MBELE: DAWID

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

HEARD ON: 7 FEBRUARY 2018

JUDGMENT BY: BOKWA, AJ

DELIVERED ON: 01 MARCH 2018

A INTRODUCTION:

- [1] The Plaintiff suffered injuries as a result of a motor vehicle collision which occurred on 02nd March 2014 on the R57 between Heilbron and Sasolburg, approximately 4km outside of Heilbron. At the time of the accident the Plaintiff was a passenger.

B ISSUES TO BE DETERMINED

- [2] The Defendant has conceded liability on the merits and is therefore liable for 100% of the Plaintiffs proven or agreed damages. In confession, the Defendant concedes further that the Plaintiff does qualify for damages as claimed. Exactly what the amount of such damages is, is a point in dispute and an issue for determination.

C BACKGROUND FACTS

- [3] The Defendant has agreed to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the cost of future accommodation of the Plaintiff in a hospital or a 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 collision of 02nd March 2014, after such costs have been incurred and on proof thereof.
- [4] The truth and correctness of a number of experts' reports have been accepted. It was not in dispute that as a result of the accident the Plaintiff sustained the following personal injuries, severe head injury, hip injury, laceration to the face, medial right pneumothorax, left acetabulum fracture and multiple abrasions.
- [5] Plaintiffs counsel took the court through various expert reports dealing with the Plaintiffs injuries, the sequelae thereof and its impact on the Plaintiffs life including the impact on the employment and the amenities of his life.
- [6] Great emphasis was placed on the brain injuries and the impact it has had on Plaintiff's life. Counsel relied on the reports commissioned by the Plaintiff, which reports stood as evidence during the trial. The court was referred to the report of Dr. Gian Marus on page 30 of the indexed bundle where the

following is recorded:

"THE ACCIDENT:

History taken from Mr Mbele in English and also via the interpreter:

He remembers that he was a front seat passenger in a car being driven by his nephew. It was about 25 kilometres from Heilbron when he fell asleep. He then has no memory of the accident. He has a memory of being in an ambulance. He can remember as the ambulance went over bumps he had pain in the left hip. He then has no memory of his initial hospitalization. He then has some memories of returning to the Heilbron Hospital in an ambulance. He was told that he had been at the Pelonomi Hospital but cannot remember this."

[7] On page 42 of the paginated bundles of the papers the following is recorded:

"SUMMARY:

On account of the accident Mr. Mbele sustained the following injuries:

- 1. A concussive brain injury.*
- 2. Blunt chest injury with right haemothorax.*
- 3. Left acetabular fracture.*
- 4. Laceration left eyelid and lip.*

ASSESSMENT:

- 1. Pre-accident Condition:*

No pre-accident neurological problems are noted.

- 2. Accident Related Injuries:*

2.1 Concussive Brain Injury:"

[8] The report goes on to comment that the Plaintiff lost amenities of normal living as a result of the accident. In the same report, the Plaintiffs hip injuries

are dealt with on page 32, where the following is stated:

"1. *Left Hip Pain:*

He is aware of pain in the hip every day and if he does not take pills for pain then he has difficulty in managing with the pain. It causes him to limp. He cannot walk far - more than a kilometre otherwise the hip becomes painful. He is not able to run."

- [9] The aspect regarding his hip problem is dealt in details in a report compiled by Dr. Anton H. van den Bout on page 62 where the following is recorded:

"1. *For the patient's left hip fracture of the acetabulum with a total collapse of the hip joint space because of avascular necrosis with no cartilage at all and shortening of the leg, and therefore a grade modifier for clinical investigation, a 58 lower extremity impairment according to page 514 table 16-4 Class 4. This 58% lower extremity impairment translates to a **23% whole person impairment**.*

*The patient now needs a total hip replacement which will most likely be with a poor result because of the fact that the patient already has such poor muscles with weakness of the hip as well as the thigh muscles, although some rehab will bring some strength back, but that will bring the patient in the range of 67% lower extremity impairment according to page 515 table 16-4 Class 4, which would mean a **27% whole person impairment** and not the 30% of the RAF 4 report either."*

- [10] I was referred to the evaluations of Dr. Lamprecht, Vogel & Partners which report evaluated the nature of the injuries on the pelvis and the left hip of the Plaintiff. I had regard to the report of the clinical psychologist Rolien Hovsha. When one has regard to all the report I have been referred to by counsel for the Plaintiff, I should no doubt accept in the Plaintiff's favour that he suffered head as well as hip injuries as a result of the accident.

D APPLICABLE LEGAL PRINCIPLES

[11] I now have to determine the aspect of general damages suffered by the Plaintiff. General damages account for pain and suffering, disability, disfigurement and loss of amenities of life. In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the Plaintiff and the injuries sustained by him including their nature, permanence. Severity and the impact on his life style.

"[18] In Sandler v Wholesale Coal Supplies Ltd 1941 AD 194 at 199 the court held:

"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"

"[19] That still remains the legal position. There is no hard and fast rule of general application requiring a court to consider past awards. Such awards are seldom on all fours with the facts of the case under consideration. (See Road Accident Fund v Marunga 2003 (5) SA 165 (SCA))."

[12] I am mindful of the caution in **De Jong v du Pisanie N.O.** 2005 (5) SA 547 (SCA) at paragraph 60 wherein the court, after noting the tendency towards increased awards in respect of general damages in recent times, was readily perceptible and re-affirmed conservatism as one of the multiple factors to be taken into account in awarding damages. The court concluded that the principle remained that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour out largesse from the horn of plenty at the defendant's expense, as pointed out in **Pitt v Economic Insurance Co Ltd** 1975 (3) SA 264 (N) at 267.

[13] The court has a wide discretion to award what is fair and adequate

compensation to the injured party. Past awards serve no more than to give some indication or guidance as to what sort of awards are appropriate on the facts of a particular case.

- [14] The Plaintiff is claiming the amount of R1 200 000.00 in respect of general damages. Mr. Nkhahle, counsel for the Defendant tendered an amount of R300 000.00 as offer in respect of the general damages suffered by the Plaintiff on behalf of the Defendant. Mr. Els, counsel for the Plaintiff, strenuously opposed this offer and asked the court to make an equitable settlement justifying the general damages suffered by the Plaintiff.
- [15] In my view the amount suggested by the Defendant as offer to Plaintiff's injuries is not reasonable. The nature and extent of the Plaintiff's pain and suffering and loss of amenities of life are well documented in the medical reports I have laboriously referred to herein above. I am also satisfied that the Plaintiff longevity is not affected by his injuries.
- [16] Taking all these factors into account, it is my considered view that a fair and just compensation for general damages for the Plaintiff is the amount of R850 000.00.

E ORDER

- [17] In the result I make the following order:
- 17.1 The Defendant concedes liability and is therefore liable for 100% of the Plaintiff's proven or agreed damages in respect of the Plaintiff's damages suffered in a motor vehicle collision on 02 March 2014.
 - 17.2 The Defendant pays the Plaintiff an amount of R369 529.52 for his proved or agreed damages.
 - 17.3 The Defendant shall make payment to the Plaintiff for compensation in respect of his general damages in the amount of R850 000.00. (the capital amount referred to in
 - 17.2 and 17.3 shall be paid within 14 days of this order).
 - 17.4 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% (One Hundred percentum) future accommodation in a hospital or nursing home, or treatment or rendering of a service, or

supplying of goods or related expenses as inter alia set out in the medico legal reports delivered under the above case number, in respect of injuries sustained by the Plaintiff in the motor vehicle collision which occurred on the 02nd of March 2014, after such costs have been incurred and on proof thereof.

- 17.5 Payment of the capital amount, costs, as well as any interest is to be made into the following account:-

Account name	:	Edeling Van Niekerk Incorporated
Bank	:	Nedbank
Branch	:	Business Westrand
Account number	:	[....]
Branch code	:	128605

- 17.6 The Defendant shall pay interest a tempore morae on the capital amount aforesaid at a rate of 10.25o/o per annum from 14 (Fourteen) days after date of this order to date of final payment;

- 17.7 The Defendant pays the Plaintiff's taxed or agreed party and party costs on the High Court Scale inclusive of correspondent's fees which costs will inter alia include the following:

17.7.1 The costs of Counsel (for 6 & 7 February 2018);

17.7.2 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 experts as well as trial on 6 & 7 February 2018. The Plaintiff filed the following reports:

17.7.2.1 Dr. G Fredericks (General Practitioner);

17.7.2.2 Dr. G Marus (Neurosurgeon);

17.7.2.3 Dr. A.H. van den Bout (Orthopaedic Surgeon);

17.7.2.4 Ms. R Hovsh (Clinical Psychologist);

17.7.2.5 Dr. L.A. Fine (Psychiatrist);

17.7.2.6 **Ms. A** Crosbie (Occupational Therapist);

17.7.2.7 Ms. L Roets (Industrial Psychologist)

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

I.R.O BOKWA, AJ

On behalf of the Plaintiff:

Adv: J Els

Instructed by: McIntyre van der Post
BLOEMFONTEIN

On behalf of the Defendant:

Adv: Nkhahle

Instructed by: Maduba Attorneys
BLOEMFONTEIN