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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: 2843/2016

In the matter between:

N: H

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 21 SEPTEMBER 2018

JUDGMENT BY: DANISO, AJ

DELIVERED ON: 25 OCTOBER 2018

- [1] In this matter the defendant is being sued for damages the plaintiff sustained as a result of being injured in a motor vehicle accident which took place on the 22nd December 2012.
- [2] The plaintiff was a passenger in a vehicle with registration numbers and letters **D[...] FS** driven by **JC Tuyishime** when it collided with another vehicle bearing registration numbers and letters **C[...] FS**.
- [3] It is common cause that as a result of the said collision, the plaintiff sustained the following injuries: severe head injury, occipital lacerations, bilateral femur fractures, lung and cardiac contusion, left intertrochanteric femur fracture, abdominal injuries with mesenteric tear and avulsion of splenic blood supply, right hemiplegia and multiple abrasions and lacerations.
- [4] The defendant has conceded the merits 100% of the plaintiff's proven or agreed damages. The damages for past and future medical expenses and past and future loss of income have also been settled between the parties.
- [5] A written draft order in that regard was handed in by concurrence and I will incorporate the agreed terms therein in my ensuing order. See Annexure "X".

- [6] The only issue that I have to determine is the quantum pertaining to general damages. It was not in dispute that the plaintiff is entitled to general damages, the parties are however in disagreement with regard to the amount of damages to be awarded.
- [7] By agreement between the parties, the plaintiff handed in the joint minutes by the occupational therapists J Monson and S Moagi, Industrial Psychologists, J van Zyl and M Kheswa and Orthopaedic Surgeons Drs HET Van Den Bout and Moloto.
- [8] All the experts confirm that the plaintiff will still require future medical treatment and hospitalization.

8.1. At the time of the accident the plaintiff was 46 years old, he enjoyed hunting with his dogs and doing some gardening. The orthopaedic injuries have curtailed the enjoyment of his amenities in that he has constant weakness of the limbs. He walks with difficulty and very slowly. He also can no longer stand on one leg and has a right sided limping gait.

8.2. The accident has also left him with permanent scars on the occipital area, the diaphragm down to the pubic area, around the belly button and operations scars from the hips down to the knees on both legs and the right upper arm. He also has bed sore scars on the head and right buttock.

8.3. The plaintiff has been experiencing pains following the accident. The pains were treated with Morphine, Pethidine and Tramal Capsules while he was in hospital.

8.4. The pain and suffering is ongoing and there will be more pain and suffering in future with the realization of operative procedures.

[9] The plaintiff also adduced the evidence of Dr HJ Edeling, a neurosurgeon. He took the court through his report. The salient parts of his evidence are the following:

9.1. The plaintiff's wife, Ms Ntsoaki Motaung, provided the information with regard to the plaintiff's status prior to the accident. She reported that before the accident the plaintiff was in good health with no physical, mental or psychological difficulties. He also had no disabilities in relation to his work or amenities. She was not present when the accident occurred and she only found out about two weeks after the accident that the plaintiff was injured and hospitalized.

9.2. The plaintiff has no recollection of the events prior, during and after the accident. According to the hospital records he was admitted at Dihlabeng hospital on the day of the accident. He was fully conscious.

- 9.3. He spent about 2 months in the ICU and a month and 3 weeks in a general ward. During that period he had numerous surgeries, laparotomies for spleen removal and bowel resection. He also had orthopaedic surgery to repair the fractures of the femur.
- 9.4. For the most part of his hospitalization he was in a critical condition. His condition was exacerbated by respiratory and heart complications.
- 9.5. He underwent blood transfusions. He was placed on mechanical ventilation by way of endotracheal tube and later tracheostomy on several occasions.
- 9.6. It was only on 25 January 2013 that the plaintiff was fully awake, communicating well and orientated. The plaintiff reported that he experienced and still suffers from pain in the stomach area, occasional headaches, back, right upper arm and shoulder. Dr Edeling informs that the pains will persist in invariable degrees and for a long term in the future.
- 9.7. The brain injury is the most severe dilapidating injury sustained by the plaintiff. It is quiet so severe that it has rendered the plaintiff both physically and mentally disabled. As a consequence of the brain injury, the plaintiff can no longer manage his personal, financial

and legal affairs and he is also at risk of developing epilepsy.

9.8. In conclusion, Dr Edeling confirmed that the plaintiff's life expectancy should be normal, provided, he receives the necessary medical treatments, support and care.

[10] Thus was in short the evidence presented on behalf of the plaintiff. No evidence was led from the defendant's side.

[11] The plaintiff's evidence is thus uncontested and it is in that regard that it was argued on behalf of the plaintiff that the amount that would be just and equitable under these circumstances would be an amount of R1 300 000.00 (One million three hundred thousand rand). On the other side, it was the defendant's submission that the amount claimed by the plaintiff is excessive, the amount that would be fair is a sum of R500 000.00.

[12] I was referred to ***Mbele Dawid v Road Accident Fund*** case number (4572/2015) by the plaintiff's counsel. This matter was decided in this division by Bokwa AJ. The plaintiff in this matter sustained brain and chest injuries, a fracture of the left acetabular and laceration of the left eyelid and lip was awarded R850 000.00 as general damages. It was the submitted on the plaintiff's behalf that in this case the injuries were much lesser as compared to the present cases however the case can still be used as a bench mark.

- [13] The determination for the award for general damages has never been an easy task. There is neither a mathematical nor a scientific formula to compute the monetary value on pain and suffering, and loss of amenities of life. See *A A Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A).
- [14] The court retains a wide discretion when it determines what to award as general damages. There is no hard and fast rule of general application requiring a court to consider past awards. Comparable previous awards merely serve as a guide as two cases can never be the same, each case must be treated on its own unique facts.
- [15] Having regard to the entirety of the plaintiff's undisputed evidence, it can be established that as a result of the injuries the plaintiff suffered great pains. He is still in agony and the pain will persist for a long period in the future. His condition post-morbid has rendered him totally depended on others for his daily existence. The multiple scars he has been left with bear testimony of his body disfigurement and mutilation resulting from the surgical removal of his spleen and part of his bowels. The grim picture of the plaintiff's life post the injuries is indicated by the severe brain injury which has rendered him both physically and mentally impaired.

Advocate Herman Kriel has been appointed as the plaintiff's curator ad litem as a result.

[16] It is the light of these circumstances that I'm of the view that the amount suggested by the defendant will not be adequate to compensate the plaintiff for the injuries he suffered and that the amount that would fair and equitable under these circumstances is the amount of R1,100 000.00 (one million one hundred thousand rand).

[17] In the result I make the following order:

1. The draft order annexed hereto as annexure "X" is made an order of court.
2. The defendant is to pay the plaintiff an amount of R1, 100 000.00 for general damages.

DANISO, AJ

APPEARANCES:

Counsel on behalf of the plaintiff:	Adv. Olivier
Instructed by:	McINTYRE & VAN DER POST BLOEMFONTEIN
Counsel on behalf of the defendant:	Adv. Mopeli
Instructed by:	MADUBA ATTORNEYS BLOEMFONTEIN