



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

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: 838/2014

In the matter between:

NEO GETRO MPELO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: JACOBS, AJ

JUDGMENT BY: JACOBS, AJ

HEARD ON: 11 November 2016

DELIVERED ON: 01 December 2016

Introduction

- [1] The plaintiff instituted action against the defendant as a result of a motor vehicle accident which occurred on 22 August 2009. The plaintiff was a passenger at the back of the said motor vehicle. On 9 June 2015, Mocumie, J as she then was, granted an order,

per agreement between the parties, in terms of which the defendant was declared liable for 100% of the plaintiff's damages. The plaintiff's claim for loss of income was also determined and finalised with the claim in respect of past medical and hospital expenses as well as general damages being postponed.

- [2] The matter was set down for trial on 8, 9 and 11 November 2016 in order to deal with the outstanding issues. In response to the plaintiff's claim the respondent filed its plea including two special pleas wherein it raised the point of the plaintiff's alleged non-compliance with Regulation 3 of the 2008 Regulations to the Road Accident Fund Act, 56 of 1996 (the Act) and further contended that the plaintiff's RAF4 form, was defective. At the hearing, it was agreed between the parties that the plaintiff should be given an opportunity to remedy the defect. Subsequently the plaintiff remedied the defect by submitting a corrected RAF4 form.
- [3] The parties agreed to file heads of arguments on 14 November 2016 pursuant to which the Court will make a determination. I received the plaintiff's heads of argument as agreed and only received the defendant's heads of argument upon enquiry on 23 November 2016. The defendant having submitted same on 16 November 2016 but, due to incorrect case number furnished, could not be traced, hence I received a copy. I found it necessary to mention these developments so as to explain the delay in finalising the judgment.

Salient facts

- [4] The plaintiff abandoned his claim for past medical and hospital expenses while the defendant, on its part, conceded that the plaintiff's injuries are serious and that the plaintiff qualifies for general damages.

- [5] As a result of the above mentioned collision the plaintiff sustained the following bodily injuries:
 - 5.1 Fracture of right clavicle;
 - 5.2 Ribs fractures;
 - 5.3 T12 and L1 fractures; and
 - 5.4 Brain haemorrhage.

- [6] As a result of these injuries:
 - 6.1 The plaintiff had to undergo medical treatment;
 - 6.2 The plaintiff was hospitalised during the medical treatment;
 - 6.3 The plaintiff will have to undergo medical treatment;
 - 6.4 The plaintiff was unable to perform his work as efficiently as he did prior to the collision;
 - 6.5 Due to the progression of the degenerative disease, as a result of the injuries sustained in the collision, the Plaintiff's functional ability will in future deteriorate leading to a loss of earning capacity;
 - 6.6 The plaintiff experienced pain and suffering and will experience future pain and suffering due to the injuries sustained;

6.7 The plaintiff suffered a loss of amenities in life and will suffer future loss of amenities of life.

Issues

- [7] The issue in dispute between the parties relates to general damages. The defendant conceded that the plaintiff does qualify for general damages as claimed. Therefore the amount of general damages to which the Plaintiff is entitled is the only issue that I have to decide.
- [8] The plaintiff submits that based on the injuries and their sequelae general damages are worth R3 000 000, 00.

ANALYSIS OF EXPERT EVIDENCE

- [9] At the time of the accident the plaintiff was employed as a General Worker by Bennett's Scrapyard. Gerard Jacobson, the Actuary reported on 21 May 2015, that according to two wage slips dated 18 June 2009 and 27 June 2009 it appears that the plaintiff earned R625, 95 per week, at the time of the accident.
- [10] According to the medico-legal report of the Industrial Psychologist, Dr. Susan Van Jaarsveld dated 14 July 2014, but for the accident the plaintiff could have continued working as a labourer until the retirement age of 65. Furthermore, Industrial Psychologist, Dr Delpoort, also confirmed, that the Plaintiff's injuries affected his life style tremendously.

- [11] Both the Neurologists, Dr Mokabane (for the Defendant) and Dr Jaap Earle (for the Plaintiff), agree that the Plaintiff suffered moderately severe traumatic brain injury and as a result thereof, his speech as well as his intelligence have been severely affected to such an extent that the Plaintiff cannot even remember his own children.
- [12] Dr Moloto, the Orthopaedic Surgeon, also confirmed that the Plaintiff suffered moderately severe brain injury, thus affecting his brain function which amongst others is demonstrated by his very slow speech.

Cases the plaintiff submits, which compare with the current matter

- [13] The plaintiff submitted a number of cases which are allegedly *in pari materia* with the present case. Although I highlight two of such cases hereunder, they are all distinguishable from the case under consideration on material aspects.

Zarrabi v RAF 2006, Vol 5, C&B 4-231(T)

Severe brain injury with Neuro-cognitive consequences, fractured nose, ruptured right humerus, fractured radius and ulna, intellectual fallout, sympathetic employment only.

Amount awarded: R800 000, value in present day is R1 452 800,00.

Du Toit v RAF (17587/2013) [2015] ZAGPPHC 599.

Severe closed head injury, skull and facial fractures, left clavicle fracture.

Amount awarded: R1 400 000, 00, value in present day is R1 464 400, 00.

Defendant's offer

[14] The Defendant submits that it, upon careful consideration, made an offer of R450 000, 00 (Four Hundred and Fifty Thousand Rand) in favour of the Plaintiff. The Plaintiff in return rejected the offer.

[15] The defendant submits that in the case of **Nhlumayo v General Accident Insurance Co Ltd** 1986 (3) SA 859 (D), the Plaintiff suffered more or less the same injuries as those suffered by the Plaintiff in the present case and was then compensated with the amount of R1 200,00 (One Thousand Two Hundred Rand).

Application

[16] In *casu* the nature and extent of the plaintiff's pain and suffering and loss of amenities of life are well documented in the various medical reports. It is unequivocally accepted that the plaintiff's brain damage is irreversible. The plaintiff's longevity is however not affected.

[17] 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.

- [18] On the issue of awarding quantum, a court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. It has been said that there is no hard and fast rule of general application requiring a court to consider past awards. It is generally accepted that it could be difficult to find a case on all fours with the one being heard and that awards in deciding cases should be considered only as a guide of how other courts arrived at an award. See in this regard **Protea Insurance Company v Lamb** 1971 (1) SA 530 (A) at 535 H.
- [19] **Mofokeng v Road Accident Fund** (11101/2009) [2014] ZAGP JHC 160 (1 July 2014) (C & h VII at B 4 – 12) the plaintiff had been awarded R700 000, general damages, for a moderately severe head injury and soft tissue injuries to the neck and lower back. The brain injury was referred to as a diffuse rotational shear injury, characterised by an effective disconnection between the frontal lobes and the rest of the brain. The said case favourably compares with the case under consideration.

[20] I am of the view that, taking the above into consideration, a fair and just compensation for general damages would be an amount of R850 000, 00.

[21] I accordingly make the following order:

- 1) The defendant shall pay the plaintiff as general damages the sum of R850 000, 00.
- 2) The afore-mentioned amount in paragraph 1) above shall be paid by the Defendant on/before **31 December 2016**.
- 3) In the event that the Defendant fails to make payment on/before 31 December 2016 the Defendant shall be liable to pay interest at 10.5% per annum.
- 4) The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale. Such costs shall include the following:
 - 4.1 The reasonable qualifying and reservation fees, attendance fees, costs of reports and expenses (if any) of the following experts:
 - 4.1.1 Dr. J F Ziervogel
 - 4.1. 2 M A Lekeka
 - 4.1. 3 Dr Verster and Partners Inc.
 - 4.2 The cost of counsel.
 - 4.3 The reasonable traveling and accommodation costs of Plaintiff to attend trial.

- 5) In the event that Plaintiffs costs are not agreed, the Plaintiff shall serve a Notice of Taxation on the Defendant's attorney of record; and the Plaintiff shall allow the Defendant 14 (fourteen) court days to make payment of the taxed costs.

S. JACOBS, AJ

On behalf of the plaintiff: Adv. I. Olivier
Instructed by:
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On behalf of the defendants: Adv. N.D.T. Khokho
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