

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 64897/2010

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

12 June 2013
DATE

EWM Black
SIGNATURE

12/6/2013

In the matter between:

MOKAKALE MOGOMOTSI SHADRACK

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KUBUSHI, J

- [1] This is a claim for damages arising from a motor vehicle collision that occurred on the 14 April 2006.

[2] The issue of merits has been previously settled. The defendant conceded the merits on 60/40 basis in favour of the plaintiff.

[3] The parties are before me on *quantum* only. The plaintiff is claiming the following damages:

- a. Future medical expenses.
- b. Loss of income
- c. General damages.

FUTURE MEDICAL EXPENSES:

[4] The parties are agreed that the defendant will provide the plaintiff with an undertaking in terms of section 17 (4) (a) of the Road Accident Fund Act (the Act).

LOSS OF INCOME

[5] The plaintiff is relying in its claim on the following documents:

- a. A joint minute of the orthopaedic surgeons.
- b. A joint minute of the industrial psychologists.
- c. An actuarial calculation based on the joint minute of the industrial psychologists.

- [6] The actuarial report has been sourced by the plaintiff and the defendant accepts the calculations. The parties are also agreed as to the contingencies to be applied. In respect of pre-morbid calculation they are agreed that a contingency percentage of 7% be applied and for post-morbid a contingency percentage of 20%.
- [7] The parties are agreed that the total amount due to the plaintiff in respect of the loss of income after the contingency deductions from the calculations is the amount of R1 106 897-39. Both parties agree that the amount is fair and reasonable in the circumstances of this case.
- [8] The defendant's counsel requested the court to make an order for the payment of the amount in instalments in terms of section 17 (4) (b) of the Act. Her argument is that, in respect of future income, the calculations were based on expenses to be incurred by the plaintiff. At the time of the collision the plaintiff was an owner and driver of a taxi. The expenses are for the salary of a driver who must be hired to drive the taxi and for the mechanic who will repair the taxi. These expenses according to the defendant's counsel can be paid out as and when they occur. There is no risk for the plaintiff as the expenses will be paid. There can only be a benefit for him – actual expenses will be paid and the contingencies will not be deducted. She contended that the expenses that have been paid to date will be paid out in a lump sum.

[9] A proposal in this respect was made to the plaintiff and has been rejected that is why the defendant is approaching the court.

[10] In terms of section 17 (4) (b) of the Act where a claim for compensation under subsection (1) includes a claim for future loss of income or support, the Fund or an agent shall be paid by way of a lump sum or in instalments as agreed upon.

[11] I am in agreement with the submission by the plaintiff's counsel, besides the fact that the plaintiff does not agree, payment by way of instalment will be prejudicial to the plaintiff. He will have to expend money before the Fund pays him. The amount should be paid to the plaintiff in a lump sum.

GENERAL DAMAGES

[12] The plaintiff relies on the joint minutes of the orthopaedic surgeons in respect of the claim for general damages. According to the plaintiff's counsel both doctors are agreed about the injuries sustained by the plaintiff.

[13] It is common cause that the plaintiff sustained the following injuries:

- a. An above elbow amputation of the right arm.

- b. A compound fracture of the right femur.
- c. An injury to the knee.
- d. An urethral injury.
- e. An injury to the left foot.

- [14] As per the medical report of Dr Van den Bout the plaintiff sustained a severe deformity of the distal femur of a commuted fracture which has healed totally. The fracture occurred on the distal right fibula and there is a hole through the proximal tibia which was probably caused by skeletal traction.
- [15] According to the joint minute of the orthopaedic surgeons the amputation through the right *humerus* is suboptimal and the plaintiff has a limitation of movement in the right knee as well as a *varus* deformity. Both doctors agree that the possibility of a knee replacement in future remains.
- [16] The defendant had initially made a settlement offer of R900 000. The plaintiff's counsel contended that the amount would have been acceptable if it were not for the medical report of the defendant's orthopaedic surgeon. This doctor referred in his report to injuries which were not noted in the joint minutes, namely, the injuries

sustained by the plaintiff in his left foot. Due to this injuries the plaintiff had to increase his claim to R1 200 000.

[17] The plaintiff's counsel contended that the plaintiff was severely injured and traumatised. He suffered a traumatic amputation of his right arm at the scene of the collision. The arm was recovered some times after the collision.

[18] The plaintiff's counsel referred me to a judgment in **VAN RENSBURG v A. A. MUTUAL INSURANCE CO. LTD** 1969 (2) C & B at p40. In that case although the plaintiff was severely injured he was not amputated but he was awarded an amount of R679 000. He suffered a fracture of the lower end of the right femur, damaged left patella, fracture and dislocation of joints of the left foot, Steinmann's pin inserted in the right tibia, patellectomies performed on both knees, operations and other treatment lasting 2½ years and future arthrodesis anticipated.

[19] The plaintiff's counsel argued that the amount of R1 200 000 was fair and reasonable in the light of the awards granted in the **VAN RENSBURG** – judgment.

[20] The defendant's counsel submitted that the amount of R900 000 was offered because the main injury was the amputation of the left arm. She conceded that the plaintiff suffered injuries to his right leg including the fracture of the right fibula though it could not be said for certain that the said injuries were not pre-collision.

[21] She referred me to certain judgments as a guideline of how other courts award damages. In RENS v MEC FOR HEALTH: NORTHERN CAPE PROVINCIAL DEPARTMENT OF HEALTH 2010 (6D2) Quantum of Damages 1 (Nck), the plaintiff was 10 years old schoolboy and a budding sportsman and gymnast at the time of the collision. He was 22 years old when the matter was finalised. He sustained above-elbow amputation of the left arm as a result of negligent hospital treatment; subsequent amputation through shoulder. He was without the aid of prosthetic limb for more than ten years. He was no longer able to obtain technical qualification and limited to clerical work in a sheltered environment. He was awarded an amount of R732 000 in today's terms.

[22] In KING v GELDENHUYS 1983 (3D2) Quantum of Damages 379 (C) the plaintiff was attacked by dogs and his right hand was severely chewed and had to be amputated. He was also bitten on throat, face and legs. He underwent eleven operations with possible future surgery.

He was seriously disabled and disfigured. He was awarded in today's terms an amount of R587 000.

[23] A claim for general damages comprise of pain and suffering, disfigurement, permanent disability and loss of amenities of life. A court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. See PROTEA INSURANCE COMPANY v LAMB 1971 (1) SA 530 (A) at 535A-B and ROAD ACCIDENT FUND v MARUNGA [2003] 2 All SA 148 (SCA) at para [23].

[24] The plaintiff has as a result of the injuries lost the enjoyment of amenities of life as well. According to the occupational therapist, he is no longer able to sleep on his right side of the body. He requires help to tie his shoelaces and requires assistance with clothing. He is no longer able to carry out maintenance activities around the house. He is no longer able to carry out his pre-accident leisure activities like soccer, jogging and going to movies. He is no longer able to walk long distances.

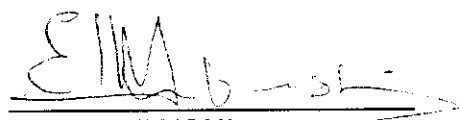
[25] In my view, an amount of R1 100 000 is a fair and reasonable amount for compensating the plaintiff for his injuries.

[26] All the amounts awarded are subject to apportionment of 60% as agreed between the parties.

[27] I was not addressed on the question of costs. As is trite the successful party is entitled to his or her costs of suit. The plaintiff should therefore be awarded costs of suit equal to the apportionment agreed upon.

[28] I make the following order:

- a. General damages are awarded to the plaintiff in the amount of R1 100 000;
- b. Loss of income damages are awarded to the plaintiff in the amount of R1 106 897-39;
- c. It is recorded that the defendant shall provide the plaintiff with an undertaking for 60% future medical expenses in terms of section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, as amended.
- d. The defendant is ordered to pay the plaintiff the costs of this suit.
- e. All the amounts awarded are subject to 60% apportionment.


E. M. KUBUSHI
JUDGE OF THE HIGH COURT

Appearances:

HEARD ON THE	: 07 JUNE 2013
DATE OF JUDGMENT	: 12 JUNE 2013
PLAINTIFF'S COUNSEL	: ADV M. S. MPHAHLELE
PLAINTIFF'S ATTORNEY	: A.M MAMMILE ATTORNEYS c/o MAPONYA LEDWABA INC
DEFENDANT'S COUNSEL	: ADV J. LIEBEL
DEFENDANT'S ATTORNEY	: TSEBANE MOLABA INC