

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3265/09

In the matter between:-

CEBISA NOMZAMO DLANGAMANDLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON:

16 MARCH 2012

JUDGMENT BY:

RAMPAL, AJP

DELIVERED ON:

28 JUNE 2012

- [1] The plaintiff sues the defendant for payment of damages in the sum of R9,2 million. The plaintiff was injured in a road accident which took place in Andries Pretorius Street in Bloemfontein on 7 October 2006. The action is defended.
- [2] The issues of merits and quantum were separated. The substantive merits have been previously adjudicated upon. The defendant was held to be fully liable for the plaintiff's proven damages. In these proceedings I am now called upon to determine the quantum of the plaintiff's damages.

- [3] In her particulars of claim, the plaintiff alleged that she sustained certain bodily injuries as a result of the aforesaid road accident. Her injuries were described as follows: a severe brain injury; a fracture of the left femur and multiple lacerations and abrasions.
- [4] She further alleged that she received past medical treatment. Such treatment included emergency treatment at the hands of the paramedic ambulance crew at the scene of the accident and intensive medical treatment and care at Pelonomi Hospital where she was admitted and treated as an inpatient.
- [5] The plaintiff alleged firstly, that as a result of the aforesaid injuries she would have to incur medical and related expenses in the future. Secondly, she alleged that the injuries she sustained coupled with the disability which stemmed from them, would have an adverse impact upon her capacity to earn an income in the future. Thirdly, she alleged that, as a result of the injuries she sustained, she has suffered loss of amenities of life and that she had endured, and would continue to endure, pain and suffering.
- [6] Initially the defendant disputed the nature and extent of the

injuries the plaintiff alleged she had sustained in the accident. In its plea the defendant consequently repudiated the plaintiff's claim for compensation. I adjudicated the substantive merits of the matter. At the end of the hearing I found for the plaintiff as I have already said.

[7] I was subsequently called upon to adjudicate the disputes by determining the issues of quantum. During the course of the second leg of the trial, certain quantum issues were narrowed. Now two issues remain for determination, *viz* future loss of earning capacity and general damages.

[8] In the first place, I deal with the issue of loss of earning capacity. This is one of the segments of special damages. The inquiry requires the leading of medical evidence concerning the effects which the injury will have on the plaintiff in the long run. Of particular significance is the adverse impact, if any, of such injury on the plaintiff's ability to earn a livelihood in the future. The underlying purpose of the inquiry here is to have any limitation to a victim's capacity to earn income in the future first ascertained and then quantified in monetary value.

[9] Shortly before the close of the plaintiff's case, the assessment report by Dr. P.A. Olivier, the plaintiff's orthopaedic surgeon, was admitted and handed in as evidence. That was done by agreement between the parties. The defendant closed its case without calling any witness.

[10] On behalf of the plaintiff Mr. Strydom contended that the plaintiff would suffer substantial loss of capacity to earn income as a result of the injury. Under this head of compensation the plaintiff estimated her claim to be in the region of R8 million.

[11] On behalf of the defendant Ms De Kock contended that the plaintiff would not suffer substantial loss of capacity to earn income in the future, as was contended. Besides submitting that the plaintiff's claim was very excessive, counsel did not venture to say what figure the defendant regarded as a fairly reasonable compensation to the plaintiff.

[12] In support of her claim, the plaintiff called the following witnesses:

Nomazima Dlangamandla, the plaintiff's biological mother;

Sivuyisile Dlangamandla, the plaintiff's older sibling;

Dr. Odette Guy, a speech language therapist and audiologist;

Ms Andiswa Gowa, an occupational therapist;

Dr. Pieter Repko, a neurosurgeon; Dr. Richard G Holmes, an industrial psychologist; Mrs Margaret Gibson, an educational and neuropsychologist; Ms F A van Vuuren, an educational psychologist and remedial therapist.

[13] In order to determine the extent of the plaintiff's future loss of earnings capacity it is necessary to consider two scenarios that emerged during the course of evidence.

[14] The pre-accident scenario – This requires that the plaintiff be profiled before 7 October 2006. The plaintiff was born on 24 March 1990. She lived at Sterkspruit in the Eastern Cape. She was the second child in a family of two siblings. She performed very well scholastically. She never repeated a class or a grade at school. She was in grade 11 at Navalsig High School in Bloemfontein in 2006 when she met her disaster. Her subjects included physical science and mathematics. Her ambition was to become a chemical engineer. These facts were sourced from the evidence of her

mother, Ms Nomazima Dlangamandla's evidence.

[15] Her mother described her as a clever, happy, friendly, confident, tolerant, sociable and articulate girl. Her older sister, Sivuyiside Dlangamandla, described her little sister in pretty much the same way. She said the plaintiff was a jolly girl who liked having fun with her peers. She was a very pleasant person with an outgoing personality. The foregoing personal profile is of vital importance in determining her career, development, disregarding her disability.

[16] Ms M. Gibson assessed the plaintiff as above average intellectually. She regarded her as an exceptional learner. She had no doubt that, with the sort of scholastic accolades she had, the plaintiff was on course to pass matric with a university exemption and that she would be able to advance to degree studies.

[17] Dr. R.G. Holmes' evidence was that the plaintiff was an active and healthy child and a social product of a highly functional family. She could have worked in the private or public sector. The corporate world falls under the former. So much about the

pre-morbid scenario.

[18] The post-morbid scenario – The focus shifts to the period after 7 October 2006. According to the plaintiff's mother and sister, the plaintiff became a different person altogether after the disaster, which befell her on the fateful day. She became very forgetful, angry, intolerant, irritable, unhappy, unfriendly, over-sensitive, a-sociable, impulsive and unpleasant. She is less confident about herself. She cries a lot and often hibernates or locks herself in her bedroom. She is no longer open-minded. She gets annoyed when one disagrees with her viewpoint. She suffers from mood swings, poor self-esteem and poor memory. She often gets panic attacks while taking exams or tests.

[19] The plaintiff was rendered unconscious by the physical impact during the collision. Seemingly she was in that condition upon her admission. She remained in that state for a few days. The ultimate diagnosis revealed that she sustained head injury as well apart from a fracture of the left femur. At her mother's request she was transferred to the Netcare Hospital, a private hospital housed on the same premises as Pelonomi Hospital,

where a surgical operation was performed on her fractured femur. On 15 October 2006 she was discharged from the hospital.

[20] The doctor advised her parents and the school that she would not be able to attend school for the remainder of the year. As a result of her injury she could not sit for the grade 11 year-end exams. On the strength of her good school record, she was given a condoned pass. In 2007 she returned to school and resumed her studies as a grade 12 learner. She found it hard to cope. She failed test after test. She was taking subjects on a high grade. Realising that she could no longer cope, she scaled down her school programme by lowering the grading of her subjects from high to standard grade. Notwithstanding such downgrading, she continued to struggle. She fared very badly in the final matric exams. Her highest symbol was D. The rest of the symbols were 3 E's and 2F's. Needless to say that she did not obtain a university exemption. Thus she could not begin her tertiary education.

[21] Since she did not obtain university exemption, something she desperately needed in order to pursue her dream of becoming

a chemical engineer, she took supplementary exams in 2008 in an endeavour to improve her poor grade 12 results. Her efforts were fruitless.

[22] In 2009 she embarked on a two year diploma course in IT Networking at Varsity College in Port Elizabeth. She did not complete the course there. Poor academic performance coupled with relational problems forced her to move. She moved to another college in Tswane. She continued to struggle. She was unable to complete the course within the prescribed two year period. She failed some subjects in 2010 and again in 2011. She eventually completed the diploma in 2012. Even then she passed after she was required to sit for supplementary examinations. The foregoing personal profile is of paramount importance in determining her vocational development regarding her disability.

[23] Dr. P. Repko assessed the plaintiff. According to his evidence the plaintiff's concussive head injury consisted of an injury to the occipital region of her head. The occipital injury gave rise to loss of consciousness and subsequent period of amnesia. In his opinion the plaintiff sustained cerebral oedema which

caused axonal damage, in other words, permanent damage to her mental function. The brain injury she sustained in the collision was diffused in nature. Seeing that the frontal lobe was involved, the injury should be classified as a severe form of brain damage. The personality change earlier alluded to, was a true complaint and it was causally attributable to the brain injury the plaintiff sustained. He was of the opinion that notwithstanding the plaintiff's disability and cognitive impairment, she was nonetheless still employable.

- [24] Ms Gibson also assessed the plaintiff. Her evidence was that the plaintiff sustained traumatic brain injury. Her initial state of unconsciousness as well as her subsequent post-traumatic amnesia of about five days corroborated such injury. She mentioned three external factors which indicated that the plaintiff had indeed sustained brain injury, namely: deterioration of her school performance after the injury; her impulsive intolerant and irritable tendencies after the injury and her lack of sustained attention, working memory, mental tracking, executive functioning, information processing and information retention.

[25] The danger of the plaintiff's post-accident situation was, according to the witness, that she was at the raised risk for social, behavioural and affective difficulties. Those difficulties were likely to negatively affect her in the work environment. The likelihood was that she would tend to hop from job to job. She was likely to develop a bad reputation as being superficial and whimsical among her fellow employees. That sort of unfavourable depiction would adversely affect her assessment by prospective employers.

[26] She concluded that the profile of the educational and neuropsychological test results indicated diffused brain injury with frontal lobe involvement and that such profile was consistent with the complaints documented in her report. In her opinion the plaintiff was no longer employable.

[27] Dr. O. Guy opined that the plaintiff presented with speech, language and communication profile that was characterised by mild articulation problem and expressive language problem. Her language pattern, according to the witness, was typical of that often seen after a traumatic brain injury. She expressed the opinion that the plaintiff's language and communication

difficulties rendered her functionally unemployable.

[28] Dr. P.A. Olivier found that the plaintiff had sustained a commuted midshaft femoral fracture of the left leg.

[29] Dr. R. Holmes' opinion about the plaintiff's post-accident profile was that the plaintiff presented with a poor self-concept, a perceived reduced self-confidence and a loss of self-esteem. The witness remarked that the plaintiff remained prone to moods of despondency and even depression at times. She becomes easily frustrated, has a tendency to be emotional and most evidently lacking impatience and tolerance towards others. Such characteristics invariably strain relations at a worker's workplace.

[30] The witness remarked that although the plaintiff continues to make every effort possible to educationally improve herself, it is not anticipated that she would ever be able to utilise any further qualification she might obtain in the future, should she succeed in her endeavours.

[31] The industrial psychologist remains pessimistic concerning the

plaintiff's ability to ever become a competitor in the open labour market, notwithstanding the contrary view by Dr. P. Repko. Indeed, he was of the opinion that all factors considered, it was not expected that she would be able to obtain or sustain any meaningful or competitive work, given her post-accident cognitive, neuropsychological, educational, sociological, emotional and functional impairments.

[32] The plaintiff's witnesses, without any exception, acquitted themselves very well as witnesses. They all gave evidence in a candid, consistent, logical and straightforward manner. They did not contradict themselves. None of them was contradicted by another. They materially corroborated one another. I did not get any impression that the mother and the sister were induced by the relationship to unfairly exaggerate any aspect of the plaintiff's pre-accident situation or post-accident situation. Neither the expert witnesses nor the lay witnesses were shaken by cross-examination. All of them impressed me as witnesses. They portrayed positive demeanours in the witness box. I have no hesitation to accept the testimony of each one of them as credible and reliable evidence.

[33] The experts, in particular, Dr. Repko was at pains to explain the nature and severity of the concussive head injury associated with traumatic brain injury the plaintiff has suffered. His evidence in connection with the brain injury was substantially corroborated by Ms Gibson. She identified certain external indicators as evidence of such brain injury. None of these aspects relative to the brain injury were disputed during the course of the hearing. In the absence of any evidence to the contrary, it has to be accepted that the plaintiff has sustained severe diffused brain injury with frontal lobe involvement and a comminuted midshaft femoral fracture of her left leg. According to the expert witnesses both injuries entailed permanent disabilities.

[34] In the case of **SOUTHERN INSURANCE ASSOCIATION LTD v BAILEY NO** 1984 (1) SA 98 (AD) at 113F the court held:

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.”

[35] In his assessment report Dr. Holmes stated that salary figures given in the vocational tables were approximations only of future earnings and that they were not supposed to be regarded as definite salary figures for various vocations. He stressed that much depends on numerous factors such as actual geographical location of a given business, the availability of adequately qualified individuals and conditions of employment under which a particular appointment is made.

[36] Additional factors with a bearing on actual salary figures would, among others, relate to socio-political climate, socio-economic trends, the possibility of errors in the prediction of a victim's lifespan expectancy, victim's estimate age of retirement, likelihood of unforeseen illness or unemployment which would, in any event, have occurred or which may in fact occur. The inflation or deflation of the value of the domestic currency in the future and the possibility that, in spite of the experts' predictions and expectations to the contrary, the plaintiff might be gainfully employed and handsomely remunerated and the uncertainty as regards the precise sector in which the plaintiff would have been employed but for the

accident. See Dr. R.J. Koch 2012: **Quantum Year Book**.

[37] The calculations made by Dr. R.J. Koch, the actuary, in this matter did not contain deductions for general contingencies. When the plaintiff's future loss of earning is determined I shall take into account the foregoing factors in determining appropriate deductions for general contingencies.

[38] In general the standard measure of deductions for general contingencies and hazards of life frequently applied to past loss of earnings is 5% and to future loss of earnings 15%. **GOODALL v PRESIDENT INSURANCE CO LTD** 1978 (1) SA 389 (W); **ROAD ACCIDENT FUND v GUEDES** 2006 (5) SA 583 (SCA)

[39] Ms De Kock urged me to apply the aforesaid rates of contingencies. Mr. Strydom urged me to apply 20% or 25% in respect of future loss of earnings. As regards past loss of earnings he agreed with Ms De Kock that 5% was an appropriate rate of deductions.

[40] The plaintiff's loss of future earnings may be calculated by

means of the following method: Firstly, the estimated value of the income which the plaintiff would have earned in the future, having no regard to the injuries and consequent disability, has to be calculated. Secondly, the estimated value of the income which the plaintiff stands to earn in the future, if any, having regard to the injuries and consequent disability, has to be calculated. Thirdly, the post-morbid figure obtained under the second step must be subtracted from the pre-morbid figure obtained under the first step above. Fourthly, the figure obtained as a result of the foregoing subtraction process, must then be adjusted by taking into account all the relevant factors and appropriate general contingencies already referred to.

[41] The results of the actuarial assessment report by Dr. R.J. Koch were as follows:

“Based on the foregoing considerations the calculation yields the following values as at 13 March 2012:

Results:	Uninjured	Injured	NetValue
Diploma/degree private sector	R	R	R
Past income:	120,515	0	120,515

Future income:	8,289,421	0	8,289,421
Control total for above items			8,409,936

Results:	Uninjured	Injured	NetValue
Post-graduate degree private sector	R	R	R
Past income:	42,179	0	42,179
Future income:	10,602,931	0	10,602,931
Control total for above items			10,645,110

Results:	Uninjured	Injured	NetValue
Diploma/degree public sector	R	R	R
Past income:	144,271	0	144,271
Future income:	8,512,203	0	8,512,203
Control total for above items			8,656,474

Results:	Uninjured	Injured	NetValue
Post-graduate public sector	R	R	R
Past income:	66,040	0	66,040
Future income:	10,765,441	0	10,765,441
Control total for above items			10,831,481

Note that the above values will change with the passage of time and may need to be recalculated if there is an extended delay before payment of compensation.

Note that the above items have not been adjusted for general contingencies save that full allowance for early and late death, in accordance with the life table, has been included in the capitalization process.”

[42] It will be readily appreciated that the actuary made no allowance for the plaintiff's post-morbid future earnings. He assumed that the plaintiff would not earn any income in the future now that she has been injured and permanently disabled. The actuary's assumption was on all fours in line with the majority opinion expressed by the experts, namely: Ms M. Gibson, Dr. O. Guy and Dr. R.G. Holmes. However, Dr. P. Repko differed. The actuary's assumption was not in line with that minority opinion.

[43] Mr. Strydom, relying on the majority opinion of the experts, submitted that the plaintiff's post-accident earnings should be taken as zero. Ms De Kock differed. She submitted that the assumption and argument that the plaintiff would not earn any remuneration in the future was unrealistic. Obviously, counsel's submission was informed by Dr. P. Repko's minority opinion.

[44] To deduct or not to deduct? That is the question. Counsel for the plaintiff contended that the plaintiff has become totally unemployable as a result of the injuries she sustained and the consequent impairments. About the plaintiff's post-morbid prospects of employment the opinions and evidence of the experts were:

- That Ms Dlangamandla would not be a suitable candidate for many vocational positions on the competitive job market;
- That she would be at a higher risk than her unimpaired competitors of being underemployed and altogether unemployed;
- That she would find it very difficult to retain sustainable employment;
- That she would face curtailed prospects of advancement; and
- That she would be regarded as an underachiever, if she should be fortunate enough to obtain work – given her increased risk of social, behavioural, relational and affective difficulties – Ms. Gibson.

[45] On the same topic Dr. Guy's opinion and evidence was that, given her now compromised speech, language and communication, Ms Dlangamandla would experience difficulties in a workplace that has become replete with novel jargon. Lack of articulate speech, expressive language and effective communication skills were all the factors that would negatively impact on her ability to function efficiently in the workplace.

[46] Still on the same topic Dr. Repko expressed the opinion that, notwithstanding her underlying traumatic brain injury, Ms Dlangamandla would still be able to compete on the open labour market. He nonetheless acknowledged, as an accomplished fact, that she would not realise her full pre-accident potential. He was the most optimistic of all the experts.

[47] The most pessimistic of them all was Dr. Holmes. This is what he had to say concerning the young lady's post-accident prospect of employment:

“Although it is anticipated that Miss Dlangamandla could well

complete her current studies, the Writer is very pessimistic regarding her future ability to compete on the open labour market, given her pervasive cognitive, neuropsychological and socio-emotional impairments. Her problems, as manifested and confirmed during psychometric assessment and clinical examination would, in the Writer's opinion, make the pursuit of most occupational paths extremely difficult, if not impossible.

Simply, it is unlikely that Miss Dlangamandla would obtain meaningful employment on the open labour market – even at a lower-skilled level.

That Miss Dlangamandla is likely to suffer a very significant loss of her assumed pre-morbid employment prospect, employability and potential to derive an income, given her post-accident cognitive, neuropsychological and socio-emotional impairments, should be accepted.”

[48] Ms Gibson and Dr. Guy, but the former in particular, were neither as pessimistic as Dr. Holmes nor as optimistic as Dr. Repko. Perhaps it is fair to say they were more inclined to subscribe to the pessimists' than to the optimists' opinion. It will be recalled that the plaintiff was only 16 years of age at the time she met the crippling disaster which has irreversibly altered the course of her life and shattered her dreams.

“... it is always difficult to be precise when projecting a career path of a claimant who sustained injuries during childhood.”

ARTHUR RENS v MEC FOR HEALTH: NORTHERN CAPE

PROVINCIAL DEPARTMENT OF HEALTH (799/06) [2009]

ZANCHC 10 (17 April 2009) per Majiedt J, as he then was.

[49] The evidence shows that the experts are not unanimous as to what the future holds for the young claimant's prospects of being gainfully employed and thus earning income post-morbidly. Since predictions as to the future are difficult and speculative, these divergent view do not come as a surprise. The minority opinion in this matter carries some weight. Although the majority opinion appears more persuasive than the minority opinion, I am of the firm view that it cannot absolutely prevail.

[50] I am not totally convinced that the plaintiff has become virtually unemployable. I think it remains debatable but not unreasonable for me to estimate that, on the proven facts, the plaintiff will probably have no less than 15% chance of working and earning some income from gainful employment in the future notwithstanding her severe impairments as alluded

to by the experts. I would, therefore, not accept the proposition that she has become totally unemployable and that her post-accident future earnings be taken as zero.

[51] The contingency deductions have to be applied as follows, in other words, the first and third scenarios (60/40):

In respect of past loss earnings: 5% should be applied;

In respect of future loss of earnings: 20%.

[52] As regards scenario 1:

Past loss	R120 515	-	given (vide Dr Koch)
Less 5%	= R120 515 x 95/100%	=	R114 489
Future loss	R8 289 421	-	given (vide Dr Koch)
Less 20%	(R8 289 421 x 80/100%)	=	R6 631 537
Total (s1)	R114 489 + R6 631 537	=	R6 746 026 (s1)

[53] As regards scenario 3:

Past loss	R144 271	-	given
R144 271 less 5%		=	R144 271 x 95/100%
		=	R137 057
Future loss	R8 512 203	-	given
R8 512 203 less 20%		=	R8 512 203 x 80/100%

$$\begin{aligned}
 &= \text{R6 809 764} \\
 \text{Total (s3)} &= \text{R137 057} + \text{R6 809 764} \\
 &= \text{R6 946 819}
 \end{aligned}$$

$$\begin{aligned}
 S1 + S3 \div 2 &= (\text{R6 746 026} + \text{R6 946 819}) \div 2 \\
 &= \text{R6 846 422}
 \end{aligned}$$

$$\begin{aligned}
 \text{Adjustment} \quad \text{R6 846 422 less 15\%} &= \text{R6 846 422} \times 85/100 \\
 &= \text{R5 819 459}
 \end{aligned}$$

This is an estimated average between scenario 1 and scenario 3. It represents the midway figure between the two probable sector's of future employment.

[54] The contingency deductions have to be applied as follows to second and fourth scenarios (60/40 ratio)

In respect of past loss of earnings 5%

In respect of future loss of earnings 25%

[55] As regards scenario 2:

$$\begin{aligned}
 \text{Past loss} \quad \text{R42 179} &\quad - \quad \text{given} \\
 \text{Less 5\%} \quad (\text{R42 179} \times 95/100\%) &= \text{R40 070} \\
 \text{Future loss} \quad \text{R10 602 931} &\quad - \quad \text{given}
 \end{aligned}$$

Less 25% (R10 602 931 x 75/100%) = R7 952 198

Total (s3) R49 070 + R7 952 198 = R7 992 268

[56] As regards scenario 4:

Past Loss = R66 060

Less 5% (R66 040 x 85/100%) = R62 738

Past loss R10 765 481 - given

Less 25% (R10 765 481 x 75/100%) = R8 074 111

Total (s4) (R62 738 + R8 074 111) = R8 136 849

S2 + S4 (R7 992 268 + R8 136 849) ÷ 2 sectors

= R8 064 558

This is the average of the aforesaid two scenarios 2 and 4 and represents a figure somewhere between the public sector domain and the private sector domain. Provision has to be made for such uncertainty.

[57] I have given careful consideration to all four scenarios presented. Having done so, I have come to the conclusion that greater weight should be apportioned to scenario two and four. I have given consideration to the real difficulties

practically encountered in accurately determining the ultimate educational and vocational outcome of someone injured before the completion of an academic goal and prior to the commencement of a defined career.

[58] The plaintiff's pre-accident scholastic track record and her post-accident unrelenting determination to overcome a great variety of seemingly insurmountable obstacles were appropriately acknowledged by the expert witnesses. Given such cognitive potential and predicted further level of actual intellectual functioning, but for the crippling accident or any other unforeseen adverse circumstances – I was impelled to believe that the young lady was on track to attain post graduate academic accolades.

[59] Now the final adjustment, taking into account all the general contingencies including possible post-accident earnings, is as follows:

R8 064 558 less 15% (R8 064 558 x 85/100%) = R6 854 874

This disposes of the issue of an estimated prediction of future loss of earnings.

[60] I now turn to the issue of general damages. Under this head the plaintiff claimed R1 million. In his closing argument Mr. Strydom scaled down to R900 000. However, Ms De Kock argued that a figure of R600 000 would be a fair estimate. In this regard guidance is frequently sought from decided caselaw. I am mindful of the general principle that comparison with earlier cases, though not decisive, is nonetheless instructive – **HULLEY v COX** 1923 AD 234; that comparative analysis of awards can only be meaningfully undertaken where the circumstances of a matter at hand and those of an earlier decided case are clearly shown to be broadly similar in all material respects - **CAPITAL ASSURANCE CO LTD v RICHTER** 1963 (4) SA 901 (AD) on 908; that regard should be had to a general sort of figure which, by experience, is generally regarded as reasonable in the circumstances of a particular type of an injury - **SIGOURNAY v GILLBANKS** 1960 (2) SA 552 (AD) at 556B and that a court merely needs to draw on its own experience and that it does not require to be reminded of earlier awards by the citation of an array of earlier decided cases – **MARINE AND TRADE INSURANCE CO LTD v GOLIATH** 1968 (4) SA 329 (A).

[61] The plaintiff was initially diagnosed with a fracture of the left femur. A surgical operation was performed. The fracture femur was surgically exposed. The injury was treated by means of internal fixation with an intramedullary nail. The surgical wound was then sutured. The internal fixatives are still *in situ*. There is a visible surgical scar. The operation, like most surgical procedures, was undoubtedly followed by a long spell of pain and suffering. The femoral injury has adversely affected the plaintiff's left knee. The flexion of the joint is restricted. There is correlation between her femoral fracture and ipsilateral knee injury. She sustained cruciate ligament injury and not complete ligament tears. There are symptoms of joint space narrowing. The narrowing puts her at risk to develop degenerative changes. She will endure further pain and suffering as a result of the expected traumatic degenerative changes. She will have to wear elastic knee brace. Wearing it entails some discomfort. There is a 70% probability that she will require total knee replacement in the future.

[62] She must have experienced a great deal of pain on the scene

before the paramedics arrived to attend to her. She must also have been in pain during the course of her transit from the scene to the hospital. She was immobilised before she was operated upon. She suffered acute pain and endured considerable physical discomfort as a result of the operation and immobilisation. It is hoped that her pain over the trochanteric region will completely clear up after the removal of the fixative hardware. So far she has endured pain over there for over six years. Meanwhile she continues to walk with a gait. Walking in that fashion entails discomfort. She is physically deformed. After her discharge from the hospital she walked on crutches for some time. She had to endure discomfort while she was on crutches. She was deprived of her natural mode of ambulation.

[63] She was discharged from the hospital and sent home to recuperate. She could not return to school. The anguish she experienced when she hopelessly failed matric must have been incredible. She suffered from persistent headache, dizziness, imbalance and sleeplessness. The concussive head injury and its consequent traumatic brain damage drastically complicated her already bad communitied midshaft

fracture of the femur. Her physical disability was made a whole lot worse by a wide range of other devastating impairments as fully highlighted in the assessment reports and evidence of the experts. All those impairments have remarkably changed her personality and permanently destroyed her vocational aspirations.

[64] She attended some sessions of physiotherapy treatment. She will have to do so again, not only after the removal of the fixative hardware, but also after the anticipated further surgical operation for the total replacement of her left knee. Ms Gowa's evidence was that such a treatment was often vigorous and that it could be quite a painful exercise at each session. The plaintiff did not give evidence. Therefore there is no direct evidence as to how she personally experienced such treatment. However, it has to be readily accepted as a given fact, that she must, at least, have endured some moderate if not severe pain during each session. Moreover she will probably endure such pain and suffering again in the future. The hip and knee joint will again be manipulated in various ways in an endeavour to strengthen the joint muscle and to improve the restricted movement.

[65] The evidence was overwhelming that the plaintiff is now permanently disabled. She has experienced and will continue to experience pain and suffering. She was deprived of certain amenities of life such as learning, loss of retentive memory, employment opportunities and socially appropriate conversation ability, among others. She was cosmetically disfigured by the surgical scar. She is permanently deformed – physically and mentally.

[66] As regards the plaintiff's aspired dream, the witness commented:

“Although it was Miss Dlangamandla's ambition to qualify as a chemical engineer, this would not have been a realistic and attainable goal, given her pre-morbid performance in Mathematics.”(Dr R. G. Holmes)

[67] It is my considered opinion that, in the light of all the aforesaid factors, an award of R950 000 would be a fairly reasonable general compensation for all amenities lost, such as disfigurement, deformity, discomfort, pain and suffering. Compare **TORRES v ROAD ACCIDENT FUND** 2010 (6A4)

QOD 1 (GSJ); **CORDEIRA v ROAD ACCIDENT FUND** 2011
(6A4) QOD 45 (GNP).

[68] Accordingly I make the following order:

68.1 The defendant is directed to pay the plaintiff compensation in the total award of R7 804 874,00;

68.2 The defendant shall also pay interest thereon at the rate of 15,5% per annum from the fifteenth day of this order;

68.3 The defendant shall furnish the plaintiff with a written undertaking in terms of section 17 of the Road Accident Fund Act 56 of 1996 to cover the plaintiff's costs in respect of future medical expenses to the sum of R300 000,00.

68.4 The defendant is directed to pay R5 million of the capital award over to the Master of the High Court, Bloemfontein, to be held and invested in "The Guardians Fund" for the plaintiff's benefit until the court orders otherwise.

68.5 The Master of the High Court, Bloemfontein, is directed to pay unconditionally pay the plaintiff an allowance of R25 000,00 per month as from 7 July 2013.

68.6 The defendant is further directed to pay the balance of

R2 804 874,00 directly to the plaintiff's attorneys of record.

68.7 The plaintiff is granted leave to approach this court, if so advised, at any time hereafter, for the reconsideration of paras 4 to 6, *supra*.

68.8 The costs of this action as well as those relative to an application for the appointment of curator(s), should such an application become necessary, to the plaintiff's person and estate and the remuneration of a curator *bonis* for the administration of her estate shall be borne and paid by the defendant on the party and party scale.

68.9 The defendant is further directed to pay the fees and qualifying costs of the following witnesses of the plaintiff plus interest thereon at the rate of 15,5% per annum from the fifteenth day after the date of taxation:

Dr. P. Repko

Ms M.A. Gibson

Dr. O. Guy

Ms A. Gowa

Dr. R.G. Holmes

Dr. P.A. Olivier

Dr. R.J. Koch

Ms F A van Vuuren

M.H. RAMPAL, AJP

On behalf of plaintiff:

Adv. S. Strydom
Instructed by:
SS Mehlomakulu Co
STERKSPRUIT
and
Matsepes Inc
BLOEMFONTEIN
Ref.: M DU PLOOY/MEH1/0034

On behalf of respondent:

Adv. D. de Kock
Instructed by:
Bokwa Attorneys
BLOEMFONTEIN
Ref.: S MABENA/CN/TP.312
and
Mashazi Sishi & Mathibela Inc.
BENONI

/sp