

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

DATE: 3 NOVEMBER 2009

CASE NO: 12560/2008

UNREPORTABLE

In the matter between:

TUMMY NAGINGTON MPANDE

PLAINTIFF

VS

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BOTHA J:

This is a so-called third party case in which only an award for general damages has to be made.

The issue of liability has been settled on the basis of an apportionment of 80:20 in favour of the plaintiff.

The plaintiff, a pedestrian, was run down by an unidentified vehicle on 22 July 2006. He was unemployed at the time. He sustained a simple

fracture of the right tibia and fibula. He lost consciousness after the collision and regained consciousness after his admission to the Baberton hospital. His leg was bandaged and he was given medication to alleviate the pain. He was referred to the Rob Ferreira hospital in Nelspruit where an external fixator was attached to his right leg. He had to walk on crutches for some two months.

Eventually he had to go back to the hospital to have the pins of the fixator removed.

The plaintiff testified that he suffers pain in his right foot or lower right leg when he walks too far. He drinks tablets whenever his leg is painful. He cannot stand on his legs for a long time.

The pain in his leg has subsided. It only resurfaces when he walks long distances and when it is cloudy.

Mr Geach, SC, who appeared for the plaintiff referred to **De Wet v Road Accident Fund** reported in **Corbett & Buchanan V** in which an amount of R95 000.00 was awarded in 2003. He calculated the present day value of that award and argued an amount of R100 000.00 should be awarded after the apportionment.

Mr Mogagabe, who appeared for the defendant, argued that the case of **De Wet supra** was a more serious case. He referred to several cases reported in **Corbett & Buchanan**, such as **Gqangeni v Ciskei MVA (volume**

IV E 5-1), Fielies vs Road Accident Fund (volume V E 4-1), Duduma vs Road Accident Fund (volume IV E4-5) and Deyzel v Santam Insurance Company Ltd (volume I 483) and argued that, having regard to the current value of the awards in those cases, a much lower award should be made than that suggested by Mr Geach.

I agree that the award in the case of **De Wet** *supra*, which was an arbitration award, was in respect of a more serious injury with more serious sequelae.

In **Hodi v RAF [2006] JOL 17764(CK)** the court awarded R50 000.00 for a fractured tibia and lacerations to the groin. The present day value of this award according to the labels in **Koch's 2009 Quantum Year Book** would be R61 500.00.

Having regard to the evidence of the plaintiff, who in no way exaggerated his pain and suffering, and awards in comparable cases, I am of the view that an award of R75 000.00 would be a fair award to both parties. That means that upon an apportionment the plaintiff would be entitled to judgment in an amount of R60 000.00.

The defendant accepted that costs should be allowed on the normal High Court scale.

In the result the following order is made:

1. **Judgment is granted in favour of the plaintiff in an amount of R60 000.00 with interest at the rate of 15.5% from the date of judgment until the date of payment.**
2. **Defendant is to pay the plaintiff's costs.**

C. BOTHA

JUDGE OF THE HIGH COURT