

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 37128/17

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
28/5/24	
DATE	SIGNATURE

In the matter between:

RADINNE LERATO PRINCESS

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 28 May 2024.

Summary: Plaintiff injured whilst alighting from a train. The issue of liability was settled. The remaining issue related to quantum. There is no evidence to prove any other heads of quantum other than general damages. The plaintiff is entitled to general damages only. Held: (1) The defendant is ordered to pay to the plaintiff compensation in the amount of R400 000.00 in respect of general damages. Held: (2) The defendant is to pay costs of the plaintiff on a party and party scale to be taxed or settled at scale A.

JUDGMENT

Moshoana J

Introduction

[1] These are action proceedings, in terms of which the plaintiff Ms Lerato Princess Radinane (Ms Radinane) claims against the Passenger Rail Agency of South Africa (PRASA) compensation for injuries sustain when she was alighting from a train operated by and under the control of PRASA. The issue of liability was settled.

[2] The only issue that came for determination relates to quantum of damages claimed by the plaintiff. Ms Radinane contends that she suffered damages in respect of general damages; future hospital and medical expenses; and past and future loss of earnings. This judgment shall deal with the issue of quantum of damages only.

Background facts and evidence led

[3] Since the merits have been resolved, it is not necessary for the purposes of this judgment to narrate how the accident leading to the injuries happened. It suffices to mention that on 11 January 2016, Ms Radinane, an adult female born on 11 August

1997 was pushed by other passengers in the process of alighting and she fell off the train when the doors opened. She sustained head injuries and was hospitalised.

[4] The hospital records reflected that she was epileptic and was on epileptic medication. When she discovered this notation, she disputed the veracity thereof. Ultimately the situation was corrected and experts were congruent to each other that she was not epileptic, although there may be a risk for epilepsy to set in. At the time she testified before Court, seven years later since the injury, she had not developed epilepsy.

[5] This issue of her being epileptic was one of the hotly contested issues. In that regard, the evidence of Doctor Mdhuli (Dr Mdhuli) was tendered. In the Court's view, this evidence was not necessary given where the matter was at the time. Dr Mdhuli testified about the dispute regarding the veracity of the notation and the manner in which it was corrected.

[6] Ms Radinane herself testified. In the main she disputed any previous injuries, hospitalisation and taking of any medication. On the fateful day she had returned from a college to register for a course. She did not recall events that occurred when she was hospitalised. All were related to her by her sister after being discharged from the hospital.

[7] After being discharged she resolved not to study further because she considered herself as a forgetful person. Her family members told her she has memory problems. Later she obtained employment at *Nandos*¹. She worked there for six months as she was standing in for a woman who had gone on maternity leave. At a later stage she obtained another employment as a waitress at *Debonairs*². She worked there for four months. She resigned because of complaints that she was mixing orders.

[8] Later she obtained another employment as an assistant teacher. That was a tenured position for a period of 12 months. She encountered no difficulties until she concluded the period. In July 2023, she obtained learnership at Germiston, which learnership was suspended for no reason. As at the time of testifying she was

¹ An outlet selling chicken meat.

² An outlet selling pizza.

unemployed. Although she had hoped to study for a teaching diploma, she could not do so because her matric pass only allowed her to study for a certificate.

[9] With regard to the errors she was committing at *Debonairs*, she was not the only one and it happened during busy times, but she considered herself to be more prone to those errors than the rest. As an assistant teacher she completed her term without any difficulties, it is only that the contract was not extended. However she never asked for or obtained an opportunity to teach children. Nevertheless had she been given an opportunity, she would have been able to teach.

[10] The evidence of Doctor Segwapa (Dr Segwapa), a neurosurgeon was also tendered. In his opinion every uninjured or normal person has 1-3% risk of developing epilepsy. In his opinion Ms Radinane as a result of the head injuries has 5% risk of developing epilepsy. This 5% risk is based on clinical studies and not clinical diagnoses. The fact that Ms Radinane continues to suffer from headaches is based on what she tells him. The fact that no surgery was required to be performed on Ms Radinane means that her head injury was not severe.

[11] He testified that often times, hospital records, particularly the recordings by nursing staff may be unreliable. However, the CT brain scan is reliable. On the first occasion when he consulted with Ms Radinane, he performed an elementary memory loss exercise. However such was not repeated on the second occasion. He also testified about recovery and confirmed that regard being had to the injuries of Ms Radinane, a recovery would have occurred.

Analysis

[12] At present, what is involved is the contested issue of general damages, future hospital/medical expenses; and loss of earnings. The plaintiff bore the overall *onus* to prove the damages she allegedly suffered. Such can only be proven by evidence. Unlike general damages, special damages required quantification. Often, a party will tender evidence of a technical nature to prove such special damages.

[13] On 25 April 2024, Ms Radinane uploaded an application in terms of rule 38(2) of the Uniform Rules. In terms of that application she prayed that evidence be led by way of affidavit. No such application was moved or granted by this Court. Rule 38(2) order is not there for a mere taking, nor a subject of agreement between the parties. Absent

order by a Court, evidence by way of affidavit is inadmissible. Accordingly, all the reports by other experts, barring that of Doctor Segwapa, does not serve as evidence before me and shall for the purposes of this judgment be ignored.

[14] With regard to general damages, Ms Radinane having referred to various judgments contended that a R1 million would be a fair compensation. The head injuries sustained by Ms Radinane are not severe and did not require surgery. According to the hospital records, upon admission her GCS was 15/15, which meant that she was fully conscious. Absent evidence of serious head injuries, it will be unfair to compensate her for R1 million. Upon admission, because of the bleeding from the ears, intracranial fracture was suspected. The CT scan disproved such.

[15] Taking into account the pain and suffering and the limited loss of amenities of life, a compensation of R400 000.00 in respect of general damages would be fair. Such will be subjected to a 50% apportionment as already settled.

[16] With regard to future hospital/medical expenses, no evidence was led to substantiate the claim R633 046.00. The report by the experts do not serve as evidence before me. Accordingly, such a claim must fail. Regarding the loss of earning amounting to R4 493 323.00, this Court heard no evidence from the relevant experts. There is no evidence that the earning capacity of Ms Radinane was compromised at all.

[17] No evidence was led that her patrimony was reduced after the accident. On the contrary, she secured employments post-accident. She on her own volition resigned from *Debonairs*. There is no collateral evidence to support her claims that she was a non-useful worker. When she worked as an assistant teacher, she had no difficulties and she was, on her own version, able to follow instructions.

[18] Clearly her earning capacity, on the strength of this evidence, was not compromised in any manner whatsoever. The intermittent headaches she told Dr Segwapa about, have no connection to her alleged loss of earning capacity. She had managed to work for *Nandos*; *Debonairs*; the school; and underwent learnership with such conditions present. Dr Segwapa confirmed that given the age of a person recovery from mild traumatic brain injury is possible. He had no way of establishing that the alleged headaches were occurring other than the *ipse dixit* of Ms Radinane.

[19] With regard to costs, since Radinane failed to prove her special damages, any costs including the qualifying or preparatory fees of her experts cannot be carried by PRASA. Although, Dr Segwapa testified before me, his evidence proved to be unhelpful to Ms Radinane. Therefore, the plaintiff is only entitled to the costs on a party and party scale in relation to proving general damages.

[20] For all the above reasons, I make the following order:

Order

1. The defendant is ordered to pay to the plaintiff an amount of **R200 000.00** (Two hundred thousand Rands) being 50% of the proven general damages.
2. The defendant is to pay the costs of the plaintiff on a party and party scale to be taxed or settled at **scale A**. Such costs do not include the costs of the experts.



GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For Applicant:

Mr M G Molai

Instructed by:

Rapfumbedzani Attorneys, Kempton

For Respondent:

Mr L B Pilusa

Instructed by:

Makhubela Attorneys, Pretoria.

Date of the hearing:

09-10 May 2024

Date of judgment:

28 May 2024