

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case no: 79497/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: **01/07/2024**

SIGNATURE:

In the matter between:

K[...] M[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

PIENAAR (AJ)

JUDGMENT

Introduction

[1] The Plaintiff is Lebohang Cecilia Ranthocha, an adult female person with passport number: R[...]. The Plaintiff institutes this action in her representative capacity as the mother and natural guardian of K[...] M[...] who was born on 09 February 2001. He was 16 (sixteen) years old at the time of the accident.

[2] A Notice of Substitution was served on the Defendant on 20 January 2020 when the minor became major (K[...] M[...])¹

[3] On 07 February 2022 before the Honourable Judge Millar, the Defendant's defence in the main action is struck out for non-compliance with the Court Order dated 22 November 2021.²

[4] On 13 April 2023 the Plaintiff served the Defendant with the amended particulars of claim in terms of Rule 28. The Plaintiff hereby claim R1 800 000,00 for General Damages.³

[5] The RAF conceded liability for 100% of plaintiff's proven damages.⁴

[6] The Defendant further made an undertaking for future medical expenses in terms of Section 17(4)(a) of Act 56 of 1996.

[7] The RAF also made an Offer for General Damages and Loss of Earnings/capacity. On the issue of loss of earnings there was no Collateral information before the Court, therefore this issue is *postponed sine die*.

[8] The only issue before the Court for determination is General Damages.

[9] This matter came before me on the basis that the Plaintiff rely on the contents of various medico legal reports. An application in terms of rule 38(2) of the Uniform rules was dealt with in court.

THE FACTS

¹ Notice of Substitution - Caselines 054 Application for Default Judgment, bundle 50

² Court Order dated 07 February 2022- Caselines 000

³ Amended Particulars of Claim - Caselines 000 051 Index to Pagination, bundle 24

⁴ RAF Offer dated 25/04/2023 - Caselines 054 Application for default judgment bundle 47

[10] The Claimant was a passenger in a small private car sitting at the back when she got involved in a head on collision moving vehicle accident. The Claimant lost consciousness and woke up at the hospital. She was taken to Moses Kotane Hospital where she was admitted for two weeks.

[11] It is a pity that the Expert Reports are all dated 2019, one year after the accident. The upside thereof is that the Plaintiff has reached the maximum medical improvement of the injuries sustained in the motor vehicle accident.⁵ During the time the Plaintiff spent in hospital after the accident, she complained about headache pain.

[12] Dr Phila M Mpanza (Neurosurgeon) reported that the Claimant sustained a severe traumatic brain injury with a history of loss of consciousness of unknown duration. The recorded admission, Glasgow coma scale is 13/15 with a documented head injury (laceration on the head and a CT brain showing a left haemorrhagic contusion on the left parietal lobe.

[13] According to Dr Mamelang A Morule (Orthopaedic Surgeon) the Claimant sustained an undisplaced open fractures of big and second metatarsal fractures. Right foot laceration debrided and sutured. A CT Brain scan was done, confirmed Haemorrhagic contusion of left parietal lobe which was treated conservatively.

[14] According to the Plaintiff's Clinical psychologist, Mr Samuel Mphuthi, the Claimant sustained a moderate traumatic brain injury and has resulted in significant permanent neurocognitive deficits. Ms Mokone's clinical psychological status is characterised by symptoms of post traumatic stress mood dysregulation associated with diminished neurocognitive capacity as well as persistent pain and changed social functioning and status.

GENERAL DAMAGES

⁵ Salphina Ngwenyama vs RAF 1969/2020

[15] Ms Tsabedze suggested that a sum of R2 500 000,00 should be awarded to the Plaintiff. Ms Tsabedze referred me to several comparable cases for General Damages. However, each case must be adjudicated on its own merits within the overarching maxim of *stare decisis*. In the case of Van Heerden J in *Dikeni v Road Accident Fund* ⁶ stated: “Although these cases have been assistance, it is trite law that each case must be adjudicated upon on its own merits and no one case is factually the same as another..... previous awards only offer guidance in the assessment of General Damages.

[16] General damages include a person’s physical integrity, pain and suffering, emotional shock, disfigurement, a reduced life expectancy, and loss of life amenities.

[17] In *Mashigo v Road Accident Fund*,⁷, Mr Justice Davis summarizes the well known approach to General Damages and the use of previous comparable awards as follows:

A claim for General Damages or non-patrimonial damages requires an assessment of the Plaintiff’s pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature, both difficult and discretionary with wide ranging permutations. The accepted approach is the “flexible one” described in *Sandler v Wholesale Coal Suppliers Ltd* ⁸ the submissions were: “The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge’s view of what is fair in all the circumstances of the case”

[18] The Plaintiff in the *De Jongh* matter sustained a head injury consisting of extensive fragmented fractures of the frontal skull extending into the orbits (eye socket)

⁶ *Dikeni v Road Accident Fund* 2002 C&B (Vol 5) at B4 171

⁷ *Mashigo v Road Accident Fund* (2120/2014) {2018} ZAGPPHC 539 (13 June 2019)

⁸ *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199

and the zygomatic arches-cheekbones, as well as the jaw, causing extradural haematoma which led to unconsciousness and which had to be surgically removed. Importantly, in this matter the SCA, quoting Holmes J, also pointed out the following fundamental principle relative to the award of General Damages:

“that the award should be fair to both sides, it must give just compensation to the Plaintiff, but not pour largesse from the horn of plenty at the defendant’s expense”

[19] In the case of *Dyssel NO v Shield Insurance 1982, 3 (C & B)* the Plaintiff sustain a severe head injury and was grossly retarded and a possibility of developing epilepsy, slow speech, and could not take care of herself, an original award of R45 000,00 by the court was awarded and the present 2021 valuation of the award is R1 200 000,00

ORDER

In a result, I make the following order:

[20] The Defendant is liable for 100% of Plaintiff’s proven or agreed damages;

[21] The Defendant shall pay the Plaintiff an amount of R1 500 000,00 (One million five hundred thousand rand only) for General Damages.

[22] The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1956 in respect of future medical expenses, hospital and related expenses.

[23] The issue of Loss of earnings/earning capacity is *postponed sine die*.

[24] The Defendant shall pay the Plaintiff’s costs either as agreed or taxed including the costs of those expert witnesses whose reports had been served in terms of Rule 36(9)(b)

[25] The payment shall be made within 180 days of this judgment into the trust account of the Plaintiff's attorney the details of which are:

Account holder : Mariana Mashedi Attorneys
Name of Bank : ABSA
Account number : 4[...]
Branch name : Montana
Type of account : Trust account
Reference : Mashedi/MMA527/17

[26] The Plaintiff shall serve the notice of taxation on the Defendant's attorneys of record.

[27] The Plaintiff shall allow the Defendant 14 (fourteen) days to make payment of the taxed costs.

[28] There is a contingency fee agreement.

M PIENAAR (AJ)

Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

Hearing date : 10 April 2024

Judgment delivered : 1 July 2024

Attorney : Ms Tsabedze

Instructed by : Mariana Mashedi Inc

Counsel for Defendant : No appearance

Defendant : Road Accident Fund

Link no: 4289403