

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

CASE NO: 4925/2010
DOH: 23 AUGUST 2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
 SIGNATURE 8/11/2024 DATE	

KAGISO KAMOGELO RATHLOGO

Plaintiff

-and-

ROAD ACCIDENT FUND

Defendant

This Judgment was handed down electronically and by circulation to the parties' legal representatives' by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 8/11/2024

JUDGEMENT

MALI J

1. This matter concerns a claim for general damages in the amount of R250 000.00 arising from the motor vehicle accident which occurred on 8 December 2007. On 10 August 2012 the defendant was ordered to pay 50% of the plaintiff's proven damages. The defendant was not represented.
2. The plaintiff testified that during the same year, 2007, he was involved in two motor vehicle accidents, the first being that of 3 March 2007. The second one which occurred in December 2007, is the subject matter of this judgment. He testified that in the first accident, he was driving a motor vehicle, and he drove under the bus as he was busy switching on the cigarette lighter. He sustained head injuries. In the process of his treatment two holes were drilled into his head.
3. Pertaining to the accident in the present matter he testified that he was a pedestrian, whilst walking with his cousins he was hit and ran over by a taxi from behind. He was later taken to hospital where he was hospitalized for a period of two months. He suffered severe injuries, on his left arm, loss of consciousness, and a fractured jaw on both sides of the face.
4. In support of the claim for general damages, reliance is placed on the neurosurgeon's report, Dr Moja. The report is dated 6 June 2017, 7 years 2 months as at the date of trial. The following bears from his report:

“....9.4 His teeth were wired to stabilize the mandible fracture. He was apparently told that he needed an operation on his jaw. The operation was not done. Clinical records state that he refused treatment on the 19/12/2007.

Post Injury Status

9.5 The claimant suffered from chronic headaches, memory loss and behavioural problems since the accident in March 2007. Clinical notes state that he was referred to the psychologist and psychiatrist for his behavioural problems.

9.6 Since the accident in December 2007, he has a loss of smell and loss of taste. He complains of jaw pain, and he struggles to chew solids. He also complains of recurrent right knee pain, exacerbated by walking long distances. He does not suffer from epileptic seizures. He had no other complains systemically.

General Damages

Pain and suffering

9.7 The claimant suffered acute pain from his multiple injuries sustained in the March 2007, and the December 2007 accidents. He complains of chronic post traumatic headaches. Treatment is conservative. He complains of residual pain in his right knee. Deference is made to the orthopaedic surgeon for an opinion. He complains of residual pain in his jaw. He struggles to chew solids. Deference is made to the maxillofacial surgeon for an opinion....”

5. In the report by the Maxillofacial and Oral Surgeon (Dr TI Munzhelele), the following is stated:

Injuries:

10.1 Minor lacerations on the face, broken lower jaw, laceration on the right hand between 1st and 2nd fingers, right leg superficial injuries/bruises.

Main complaint:

10.2 He cannot open his mouth fully, he has right temporo-mandibular joint pains in eating at all times and neck pains, he would like to be able to bite his teeth together so that he can be able to eat properly.

10.3 X rays show that there are some degenerative changes in the right mandibular condyle. Where one of the upper molars was removed, there is a root rest in situ. There are no evident signs of fractures at this stage.

Life Expectancy

10.4 His jaw injuries will not affect his life expectancy; however, his quality of life is affected as he cannot eat all the foods that he would like to eat due to pains and discomfort from his joints and deviating jaw.

Comment

10.6 The claimant's life expectancy has not been affected by his jaw injury; however, his quality of life is affected as he cannot chew his food properly as he claims he still experiences some discomfort on chewing and some unbalanced occlusion. ...

10.7 He suffers from constant pains from his right temporo-mandibular joint which has undergone some degenerative changes. To start with the treatment of the joint, he needs to be placed on long term pain medications and the wearing of a bite plate to ease the pains. This will be followed by arthrocentesis procedure which will be done in theatre to clean out his joint.

10.8 He definitely needs a second theatre procedure for his jaw surgery (osteotomy) to correct his bite as soon as possible before he loses much more than he already has (i.e. further degeneration of his joints and bone loss)."

6. "It is well established that an assessment of an appropriate award of general damages (sometimes also referred to as non-pecuniary damages) is a discretionary matter and has as its objective to fairly and adequately compensate an injured party (see *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A and *Road Accident Fund v Marunga* ZASCA (144/2002) [2003] ZASCA 19; 2003 (5) SA 164 (SCA) para 23)."¹
7. In supporting the award, the counsel for the plaintiff did not refer to any comparable cases. The court having regard to *Minister of Police vs Steve Dlwathi*², Mr Dlwathi suffered (a) damage to, amongst others, the tympanic membrane of the left ear with resultant loss of hearing; (b) blunt force trauma to the head and jaw resulting in, amongst others, facial and dental injuries with multiple loss and damage to Mr Dlwathi's teeth and the temporo mandibular joints; (c) blunt force trauma to the face resulting in

¹ (20604/14) [2016] ZASCA 6.

² Above (1).

lacerations and bleeding; (d) a soft tissue injury to the cervical spine., on appeal the award of R675 000, was reduced to R200 000. The award also took into account the pain for mental suffering.

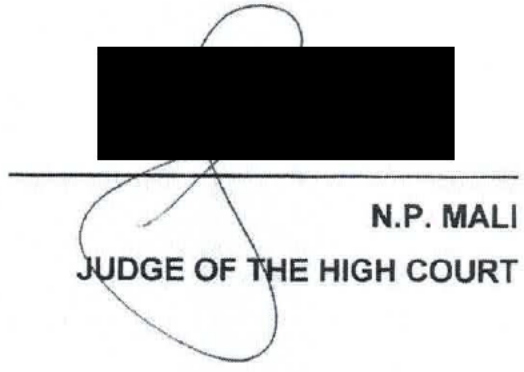
8. In *Sokombela v Minister of Safety and Security*³ the plaintiff had sustained a fractured mandible, laceration of the tongue, soft palate and lower lip and the destruction of the two lower teeth (which subsequently had to be removed) after a bullet from a firearm had struck him behind the right ear and had exited through his mouth. In that instance the plaintiff was awarded R70 000.00 for general damages, the updated amount is R211 000.00.
9. It is trite that the facts of a particular case need to be looked at as a whole and few cases are directly incomparable. Comparable cases are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that.
10. In the present case the main complaint is that due to the jaw injury the plaintiff cannot chew properly. The Maxillofacial surgeon concluded that he needed a second theatre procedure for his jaw surgery to correct his bite as soon as possible, and that was in 2013. There are no further reports pertaining to the correction of his bite.
11. After careful consideration and having regard to the physical sequelae of the accident I am of the view that an award R190 000 for general damages

³ 2003 5 QOD G6-1 (Tk).

will be fair and adequate compensation in this case. I have derived some guidance from the awards on Sokombela and Dlwathi, above. The award to be made should be calculated at 50% of the proven damages.

ORDER

12. The defendant is to pay the plaintiff the sum of R95 000 for general damages with costs on party and party at scale A.



N.P. MALI
JUDGE OF THE HIGH COURT

APPEARANCES:

For the Plaintiff:

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