

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 323/2022

In the matter between:

THAPELO ANDRIES LENTSOENYANE

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

LINK: 5162471

Coram: Opperman J

Heard: 21, 22, 24, 28 May 2024 & 7 June 2024: The matter was disposed of by agreement between the parties and on order of the court in terms of section 19(a) of the Superior Courts Act 10 of 2013

Judgment: 16 September 2024: The judgment was handed down in court and electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be at 15h00 on 16 September 2024

Summary: Quantum – general damages – motor vehicle collision

ORDER

1.

1.1 The issues of merits, future medical expenses and general damages are separated in terms of rule 33(4) from the issues of past and future loss of earnings and past medical expenses. The claims for loss of earnings and past medical expenses are postponed for trial to 5, 6, and 8 November 2024.

1.2 The Defendant is liable to pay 100% (one hundred percent) of the plaintiffs proven or agreed damages.

1.3 The defendant shall pay the plaintiff the sum of R550 000.00 (five hundred and fifty thousand) in respect of general damages.

1.4 The defendant shall pay the abovementioned amount into the plaintiff's attorneys' trust account the details of which are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]
REFERENCE:	MAT169493

1.5 The defendant will be liable for payment of interest on such amount at 11.75% (the statutory rate per annum) calculated fifteen days from the date of this order.

2.

2.1 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 23 January 2021.

3.

3.1 The defendant will pay the plaintiff's taxed or agreed party and party cost for the trial dates of 21, 22 and 24 May 2024 up to and including the date of the order of court, excluding the costs of 28 May 2024.

3.2 The reasonable qualification and reservation fees up and until 22 May 2024 of plaintiff's experts whose reports had been furnished to defendant:

3.2.1	Dr LF Oelofse	Orthopaedic Surgeon
3.2.2	Dr I Wosu	Specialist Surgeon
3.2.3	Claire Hearne	Clinical Psychologist
3.2.4	Ms J Friedrichs	Rita van Biljon Occupational Therapist
3.2.5	Dr AC Strydom	Industrial Psychologist
3.2.6	Mr J Sauer	Actuary

3.3 The fees of counsel in terms of rule 67A(3)(a) read with rule 69(7) on scale B, which costs shall include but is not limited to the trial dates of 21, 22 and 24 May 2024.

3.4 In the event of default on the payment of the costs, interest shall accrue on such outstanding amount at the statutory mora rate on the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act 55 of 1975 per annum, calculated from the due date until the date of payment.

JUDGMENT

Opperman J

[1] The court is called upon to adjudicate the quantum of the plaintiff's claim for general damages. It was agreed between the parties that the defendant will pay 100% of the plaintiff's proven or agreed damages and that the defendant will furnish the plaintiff with an undertaking certificate as contemplated in section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the Act).

[2] The issues of loss of earning capacity and past hospital and other medical expenses remain in dispute. The parties agreed for the issues to be separated in terms of rule 33(4) of the Uniform Rules of Court and to be postponed for trial to 5, 6 and 8 November 2024.

[3] The plaintiff sustained injuries on 23 January 2021 when he was involved in a motor vehicle collision as a passenger. On the day of the incident the driver of the insured vehicle lost control of the vehicle when one of the tyres burst, causing a collision.

[4] The plaintiff claimed R500 000.00 in general damages at para 7.5 in their particulars of claim but R680 000.00 at para 10.1 of their heads of argument. Counsel for the plaintiff also claims costs on scale B in terms of rule 67A. The defendant is unwavering that an amount of R350 000.00 – R400 000.00 with costs on scale A would be a fair and reasonable award in the circumstances.

[5] The parties agreed that the evidence of the experts contained in their respective affidavits be admitted into evidence on affidavit and as provided for in terms of rule 38(2). It was admitted by court. The reports received on the basis as set out above were those of Dr L.F. Oelofse (Orthopaedic Surgeon), Dr I. Wosu (Physician), Ms C. Hearne (Clinical Psychologist) and Ms J Friedrichs (Occupational Therapist). The defendant did not adduce any expert evidence to refute the said evidence. The evidence was summarized in detail by both parties in their heads of argument and I am indebted to them. I will not repeat it.

[6] The summary of counsel for the defendant as per her heads of argument dated 5 June 2024 is in line with the evidence.

'9.1 It is trite that the Plaintiff is entitled to compensation for physical pain resulting from the bodily injuries and caused by the negligent and unlawful driving of a motor

vehicle. The amount of compensation recoverable in respect of pain and suffering depends on the extent of and duration of the pain and suffering actually experienced.

9.2 Important to note in respect of the injuries sustained, is that Plaintiff relies on only one RAF4 serious injury assessment report, being that of the Orthopaedic Surgeon. The focus of Plaintiff's claim for general damages, is therefore clearly the orthopaedic injuries which he was diagnosed with. In this regard, the diagnosis is: (a) left shoulder injury with residual biceps tendinitis and (b) Left knee injury resulting in a chronic painful knee. Medical meniscus injury / probable tear, PTOA. Although initial additional injuries were present, it is the left shoulder and knee, which seem to remain troublesome.

9.3 The balance of the initial injuries (which caused early and short-term pain and suffering) will not be disregarded but rather considered *in combination with* the longer term *sequelae* of the should (sic)-and knee injury.'

[7] The balance of the initial injuries and injuries in total is described by counsel for the plaintiff to be; and correctly so, as: '9.2. Multiple Injuries: Multiple left sided Rib Fractures, Abdominal Injuries (Splenic injury grade ii and Kidney Injury grade iii), Post-post (sic)-traumatic stress Disorder, Poly Trauma, Crash syndrome, Pulmonary contusion and soft tissue injuries.'

[8] Counsel for plaintiff and defendant assisted the court with caselaw¹ applicable to the facts of this case. I will not repeat it here. With due regard to the law applicable to the facts *in casu* the conclusion must be that the amount of R550 000.00 for general damages will restore justice to the plaintiff.

[9] As to costs: rule 67A is clear as to the principles that apply when costs in civil

¹ *Sebatjane & Another v Federated Insurance Company Limited* 1989 (4H2) QOD (T); *Morris v Road Accident Fund* [2018] ZAGPPHC 486; *Grobelaar v Road Accident Fund* [2014] ZAGPPHC 794; *Ndaba v Road Accident Fund* [2011] ZAECELLC 6; and *Litseo v Road Accident Fund* [2019] ZAFSHC 52. The defendant correctly submitted that the injuries and awards listed in the matters of *Mlatsheni v Road Accident Fund* [2007] ZAECHC 108; 2009 (2) SA 401 (E); *Dichabe obo GN v Road Accident Fund* [2020] ZAGPPHC 250, and *Kannenbergh v RAF* [2018] ZAGPPHC 630; are mostly related to sustained fractures, which are not applicable to the injuries in this case. Further, see *Janse Van Rensburg v Road Accident Fund* [2014] ZAGPJHC 71; *Qondo v RAF* [2015] ZAGPPHC 168; *Grimbeek N.O. v Road Accident Fund* [2020] ZAGPPHC 279 and *Kaduku v RAF* [2017] ZAGPPHC 432.

litigation are at issue. The plaintiff has instructed senior-junior counsel. Considering the seniority of counsel and the nature of the case, scale B is to be applied.²

[10] In the result, I make the following order:

1.

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² The practitioner has been practicing for more than thirty years.

2.

2.1 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 23 January 2021.

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OPPERMAN J

For the plaintiff:

DJ MARX

Western Cape

Instructed by:

VZLR Inc.

Johannesburg

c/o Du Plooy Attorneys Inc.

Bloemfontein

For the defendant:

J GOUWS

Bloemfontein

Instructed by:

The Office of the State Attorneys:

Free State

Bloemfontein