REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 1168/2019

- REPORTABLE: **NO**
- OF INTEREST TO OTHER JUDGES: **NO**
- REVISED: **YES**

9 January 2025 _____

28 DECEMBER 2024 _____

Date of Hearing: 9 October 2024

Date of Judgment: 9 January 2025

In the matter between:

MODIBEDI AFRICA AARON **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

JUDGMENT

INTRODUCTION

[1] On 13 March 2017 and at approximately 22h30 at an intersection along Elias Motsoeledi Street, Jabavu in Soweto, a collision occurred between a motor vehicle with registration numbers F[…] being driven by the plaintiff (who was about 42 years of age at the relevant time) and a motor vehicle with registration numbers T[…] being driven by Mike Moloi ("the insured motor vehicle").

[2] The plaintiff instituted action for damages against the Road Accident Fund ("RAF") in terms of s17(1)(a) of the RAF Act 56 of 1996, as amended, as the statutory insurer. In paragraph 8 of his amended particulars of claim the plaintiff claims damages in respect of:

2.1	Past medical expenses	R0 000.00
2.2	Future medical expenses	Undertaking certificate in terms of section 17(4) of the RAF Act
2.3	Past and future loss of earnings	R3 467 358.00
2.4.	General damages	R3 000 000.00
TOTAL		R6 467 000.00

[3] Prior to the matter serving before me on 9 October 2024, the issue of the future hospital and medical expenses became settled, with Merits being settled at 80% in favour of the plaintiff. The issue of the loss of earnings became postponed *sine die* by agreement between the parties.

[4] **ISSUE FOR DETERMINATION**

In light of paragraph 3 above, the only issue remaining for determination by this court was the general damages.

PRELIMINARIES

[5] Mr R Kay appeared on behalf of the plaintiff and Mr L Mtshemla for the defendant. During the course of his arguments Mr Kay brought two applications, arguing that the court grants the orders in respect of the following two applications as there would be no prejudice suffered by any party. :

5.1. Pursuant to rule 38(2) of the Uniform Rules of Court, an order that evidence on affidavit that the factual evidence of the plaintiff and his witnesses as well as the reports of his experts, more specifically the facts, assumptions and opinions expressed by such experts as contained in their reports, notices of which were furnished in terms of rule 36(9)(b) of the rules to the defendant be admitted; and

5.2. That That the following be admitted as evidence in terms of 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988: The RAF1 form completed by Dr. Desmond Mohapi stamped 23 May 2018 and served on the Defendant on 8 June 2018 (002-19 to 002-30 of case-lines), the Hospital and Medical Records (002-31 to 002-107 of case-lines) served on the Defendant on 1 February 2019, the outpatient hospital and medical records (002-124 to 002-137 of case-lines) served on the Defendant on 2 October 2024, the Diagnostic Radiological Services Inc. report with examination date 30 September 2024 and X-rays (004-304 to 004-314 of case-lines) and the Diagnostic Radiological Services Inc. report dated 1 July 2022 (004 -330 to 004-331). Finally, the Diagnostic Radiological Services Inc. report dated 25 March 2022 and x-rays (004-332 to 004-335) of case-lines which was served on the Defendant on 15 September 2022.

5.3. On proper consideration and in the absence of any opposition by the defendant, I granted both applications, having found that it is fair and in the interest of justice to do so.

BACKGROUND FACTS

[6] On 28 February 2024 the RAF sent an Acceptance Letter to the defendant's attorneys of record in terms of which it recorded its formal acceptance of the plaintiff's claim for General Damages under the Narrative Test 5.1 for the following reasons:

6.1 The claimant sustained the following injuries:

a. Fracture of the left proximal femur;

b. Fracture of the right ankle;

c. Lung contusion; and

d. Small right haemothorax.

6.2 In noting and accepting the above stated injuries as having been suffered by the plaintiff, the RAF further stated its acceptance of the RAF4 Form by Dr Peter T. Kumbirai, the Orthopaedic Surgeon, in terms of Regulation 3(3)(c) and (d) of the Road Accident Fund Amendment Act 19 of 2005.

EVIDENCE BY WAY OF EXPERT REPORTS

[7] To establish a causal link between the accident and the injuries sustained by the plaintiff and the sequalae thereof, the plaintiff presented evidence by way of expert reports on affidavits by the relevant authors, the said experts having consulted with and examined the plaintiff post the accident.

[8] **Dr Peter Kumbirai (Orthopaedic surgeon)**

8.1. Dr Kumbirai posited the following:

8.1.1 That according to the plaintiff himself and the hospital notes together with the information on the RAF1 Form, the plaintiff sustained the following injuries:

a. Fracture of the left proximal femur;

b. Fracture of the right ankle;

c. Lung contusion; and

d. Small right haemothorax.

8.1.2 The plaintiff, whom Dr Kumbirai consulted with for the first time for examination purposes on 22 June 2022, the collision *in casu* was his first. The plaintiff was known as a hypertensive patient on treatment. He was diagnosed with syringomyelia in December 2019 and had surgery then. He is wheelchair-bound since. Due to the accident he stopped jogging because of the pain and weakness in both lower limbs

8.1.3 His major complaints were the following:

a. Pain in the left thigh/femur;

b. Painful, swollen and scarred right ankle; and

c.Weakness of both lower limbs and that he has been using a wheelchair since 2019.

8.1.4. The definitive treatment received after the accident included the following:

a. Clinical and radiological examination;

b. Cephalomedullary nailing of the left femur – implants were later removed and the X rays of the left femur done in September 2024 showed that the bone tissue is forming outside the skeleton;

c. Open reduction and internal fixation of the right ankle with plate and screws;

d. Pain and anti-septic management;

e. Physiotherapy, rehabilitation and crutches; and

8.1.5. The following are plaintiff's related scars:

a. 28cm x 6cm scar on the left buttock/thigh;

b. 10cm x 2cm scar on the medial aspect of the right ankle; and

11cm x 2cm on the lateral aspect of the right ankle.

8.1.6. Dr Kimburai calculated the plaintiff's whole person impairment at 20% WPI and also found that the plaintiff's injuries have resulted in serious long-term impairment/loss of body function. He further opines that the plaintiff suffered severe acute pain for 3 weeks subsiding over 3 weeks. He continues to suffer the inconvenience and discomfort of chronic pain from the left femur/thigh and right ankle which is exacerbated by prolonged standing, walking, lifting of heavy weights and cold weather.

[9] **Dr L.M. Wynand-Ndlovu (Neurologist)**

9.1 Dr Wynand-Ndlovu posited the following:

9.1.1. The neurologist states the date of the plaintiff's admission to the hospital as 13 March 2017 and his discharge as 28 March 2017 (that is, two weeks). He lists the following injuries as sustained by the plaintiff, according to the medical records:

a. Rib fracture;

b. Small haemothorax;

c. Sternum fracture;

d. Cardiac contusion;

e. Left femur fracture; and

f. Left ankle fracture.

9.1.2. The neurologist's outcome diagnosis of the plaintiff was that of him presenting with slowly progressive difficulty walking following the accident and undergoing a spinal surgery 2 years post-accident. He is now paraplegic with a T8 sensory level, urinary incontinence and erectile dysfunction. The accident left him with profound physical manifestations that carry a poor prognosis for recovery. His ability to be independent has been hampered and he will be dependent on the assistance of him family/caretakers for the rest of his life. He has deteriorated physically and the septic wound on his left lateral thigh is causing him immense discomfort which requires vacuum-assisted closure. It has been six months since the wound emerged and healing has not taken place.

[10] **Dr Nakedi Duncan Chula (Neurosurgeon)**

10.1 **Dr Chula** posited the following:

10.1.1. She states that she assessed the plaintiff for the first time on 18 March 2022 and later on 2 October 2024. According to the plaintiff he suffered a mild head injury with a loss of consciousness after the impact but regained consciousness whilst still at the scene. He had a period of amnesia and confusion after the collision, although for a very short period.

10.1.2. From the hospital records his initial GCS was 14/15. He has chronic headaches, neck pains, thoracic spine and lower back pains and left shoulder pains. He suffered acute pain which was managed for a duration of three weeks. As a result of the head injury, he has a 3% future risk of seizures when compared to the general population.

[11] **Prof. M Langa (Neuro-psychologist)**

11.1 **Prof. Langa** posited the following:

11.1.1 That the assessments done indicated that the plaintiff's cognitive domains appear to be functioning inadequately. Prof Langa further stated that according to the DSM-IV, those that present with moderate to severe Traumatic Brain Injury may present with neurophysiological, emotional and

behavioural challenges such as aggression, depression, fatique, deterioration in interpersonal relationships and an inability to resume occupational and social functioning at pre-injury level.

11.1.2. According to Prof Langa, the plaintiff presents with a negative emotional experience. He presents with symptoms of severe depression and high severity of PSTD symptoms. Using the DSM-V, the plaintiff appears to meet the criteria for a formal diagnosis of PTSD and Major Depressive Disorder, thus, the accident seems to have contributed to the plaintiff's negative emotional experience.

[12] **Ms Caroline Rule (Occupational Therapist and Driving & Mobility Specialist)**

12.1. **Ms Rule** posited the following:

12.1.1. That her first assessment of the plaintiff was on 15 March 2022 and the last one on 30 September 2024. She lists the following injuries as sustained by the plaintiff: Fractured left femur, right ankle and later development of Syringomyelia.

12.1.2. Ms Rule summarised the plaintiff's injuries as follows:

That he lacks accessibility both within his house and in the surrounding environment due to his high pain levels and his inability to push his own wheelchair in his current environment. Since March 2022 the plaintiff's health has deteriorated with the main influence being his pressure sores on his left thigh, although there is also evidence of deterioration in his muscle function and increasing sensory disturbances which now occur in his hands, suggesting a progressive syringomyelia.

[13] **Dr Sello S. Selahle (Plastic & Reconstructive Surgeon)**

13.1. **Dr Selahle** posited the following:

13.1.1. That the plaintiff sustained a 28x3cm scar on the lateral aspect of the thigh; a 11cm scar on the lateral aspect of the right ankle; and a 10cm scar on the medial aspect of the right ankle. According to Dr Selahle's addendum report, the surgical incision area of the femur fracture developed a small sinus

which enlarged into a large with exudate. The vacuum assisted therapy (VAC) had started and is continuing with therapy. He opined that the plaintiff's wound which developed from a surgical scar will heal.

THE PLAINTIFF'S LIST OF AUTHORITIES

[14] The plaintiff relied on the following authorities:

1. ***N.M. Maholela v Road Accident Fund* 2006 (5A3) QOD 3 (O) p3**

The 2024 valuation awarded is R1 628 000.00 for general damages to a 40 year old male (at the time of the accident) who had suffered paraplegia which was caused by an injury to the lumbar spine. ***Maholela*** also sustained multiple fractures of the ribs on the right side. There was paralysis extending from L3 downwards into both legs. He had no control of the bladder and the rectal function. There was evidence of pressure sores, urinary tract infection, loss of sexual function and clinical depression. He, to a very limited extent, was able to drag his feet forward using arm crutches, but was unable to lift legs against gravity.

2. ***Kalabatane v Road Accident Fund* 2011 (6A3) QOD 9 (GSJ) p9**

The 2024 valuation awarded is R2 027 000. In this matter the court awarded the 2024 valuation equivalent The plaintiff was a boy who sustained a fracture of the T4 vertebra resulting in permanent paraplegia. He also sustained a minor head injury, bilateral haemothorax with bilateral lung contusions and laceration of his liver. He will be wheelchair bound for the rest of life and profoundly retarded. He is unemployable.

3. ***Webb v Road Accident Fund* 2016 (7A3) QOD 24 (GNP) p24.**

The 2024 valuation of the award is R2 242 000. The plaintiff was a 20 year male second year BCom student who sustained paraplegia. He sustained, *inter alia*, an L1 burst fracture with T12/L1 dislocation resulting in paraplegia. He also sustained a displaced radius and ulna fracture. He is wheelchair bound with all the accompanying difficulties of being a paraplegic.

4. ***Pretorius v Geldenhuys 1968 (1A3) QOD 803 (W) p803***

The 2024 valuation of the court's award is R2 584 000. The plaintiff was a young male aged 22 years and a mine worker. As a result of the accident he was paralyzed from his shoulders downwards because of a fracture of his fifth neck vertebra. In consequence of the paralysis of the nerves between the ribs he could only breath with his diaphragm. An air tube had to be inserted by incision to assist the breathing. He had no control over his urinary and rectal functions and actually did not know when he was relieving himself. He could neither feed nor assist himself and will spend the rest of his life in a wheelchair. He can read and this would be his only means of passing the time.

5. ***Joko v Road Accident Fund 2016 (7A2)QOD 1 (WCC0)***

The 2024 valuation of the court's award is R2 990 000. The plaintiff suffered from tetraplegia. He suffered, *inter alia*, a fracture dislocation of the sixth and seventh vertebrae of his neck, as well as a complete injury to his spinal cord at this level. He underwent an attempted closed reduction of the fracture, which was unsuccessful. Subsequently an open reduction, discectomy, decompression, internal fixation and fusion by means of a bone block was performed. One month later the cervical orthosis was removed because the reduction proved successful. Later a cystoscopy, sphincterotomy and bladder neck resection were performed. This operation was also unsuccessful. A repeat sphincterotomy was advised but the plaintiff refused this because of the attendant risks. A permanent indwelling urethral catheter was then reinserted. This causes frequent urinary tract infections.

6.***Geldenhuys v South African Railways and Harbours 1962 (1A3) QOD 185 p185***

The 2024 valuation of the court's award is R3 025 000. The plaintiff was a motorist who sustained severe injuries, including a fracture of the 11th dorsal vertebra, which had resulted in total and permanent paralysis of his body from waist downwards. He had suffered a great deal of agony.

7.***Steenkamp v Minister of Justice 1960 (1A3) QOD 186 (T) p186***

The 2024 valuation of the court's ward is R3 119 000. The plaintiff was a young male aged 25 years. As a result of a fractured dislocation of the neck he was paralyzed from the shoulders down wards and 100% disabled. His brain had remained clear and his life expectation was reduced to 15 years of 'living death'. He would have to return to hospital every six months for a week to ten days with surgery possible for kidney, skin and probable blood transfusions. He had no control of his natural functions and required a permanent attendant.

8. ***Sibanda v Road Accident Fund* 2019 (7A2) QOD 13 (GP) p13**

The 2024 valuation of the court's award is R3 573 000. The plaintiff suffered a fracture of C6 and C7 vertebrae and was rendered a C5/C6 quadriplegic patient. He also suffered a mild diffuse traumatic brain injury. A C5 to C7 anterior corpectomy and decompression was done and a fusion was performed. He was discharged approximately three months after his admission to hospital. His injuries also include, *inter alia*, his inability to use his upper limbs and his hands are non-functional. He cannot transfer himself out of his wheelchair into his bed or to bathroom facilities. He had to be bed-washed.

PLAINTIFF'S SUBMISSIONS

[15] The plaintiff's counsel submits that the plaintiff has become socially dysfunctional and suffers from clinical anger. He has become aggressive to his household members, suffers from mild neurocognitive disorder and is suicidal.

[16] Despite Mr Kay conceding to Mr Mtshemla's argument that in spite of the plaintiff being paraplegia, a host of the authorities he cited and relied on *to wit*, Joko; Steenkamp; Geldenhuys and Sibanda are for the tetraplegics and quadriplegics, he (Mr Kay) nevertheless argued for an award of R3 million less 20% apportionment, bringing the award to a total of R2 400 000.00.

THE DEFENDANT'S LIST OF AUTHORITIES

[17] The defendant relied on the following authorities:

1. ***MC v Road Accident Fund*** ***(2299/2018)[2019] ZAGPJHC 242***.

In this matter the court awarded R1'2 million for general damages (now equivalent to R1 533 039.65 in today's monetary terms to a 44 year old male who had sustained, *inter alia*, a traumatic injury into the cervical spine which caused paralysis on both legs and arms resulting in severe quadriplegia.

2. In ***Mafiri v Road Accident Fund*** ***(62529/2021) [2024] ZAGPPHC 127****,* the court awarded a male plaintiff who was 41 years old at the time of the accident R1'8 million for general damages. The plaintiff had sustained injuries including a mild brain injury; a fracture of the left scapula; a T3/T4 vertebrae fracture causing paraplegia (he was wheel chair bound); fracture of the middle third of the left clavicle and fracture of the sternum.

3. In ***Nokemane v Road Accident Fund*** ***621/2008)[2010] ZAECGHC 24***, the court awarded R8000 000.00 for general damages, an equivalent of R1 633 802.82 in today's terms. The 34 year old plaintiff had sustained a thoracic spinal cord fracture which resulted in permanent paraplegia which was an ASIA B T8; a fracture of the right humerus and scapula; fracture of the right fibula and fracture of the two ribs. This type of paraplegia meant the plaintiff had no preserved sensory or motor function below the mid-chest. He was left with mild spasticity; lack of bladder and bowel control; erectile dysfunction and inability to ejaculate. The paralysis resulted in his inability to cough, sneeze or blow his nose. He was found to be prone to possible conditions being: osteoporosis, faecal impaction and bowel obstruction, haemorrhoids, bladder infection and urinary tract infection.

4. In ***Claassens v Road Accident Fund*** ***(35716/2017)[2019] ZAGPPHC 471***, the court awarded R1'2 million, today's equivalent of R1 527 991.22. The injuries sustained by the plaintiff included a blunt abdominal trauma; laparotomy for spleen laceration; severe head injury; injury to the neck; left rib fracture; polytrauma injury to the left lung; injury to the right foot, left leg and shoulder; injury to the spinal cord and injury to the eye.

THE DEFENDANT'S SUBMISSIONS

[18] As already stated in paragraph 16 above, the defendant's counsel argued that whereas the plaintiff is paraplegic, the majority of the authorities relied on by his counsel, namely: Joko; Steenkamp; Geldenhuys and Sibanda, are primarily for the tetraplegics and quadriplegics. He submitted that the plaintiff's injuries are apposite to the ***Maholela's*** where an award of R1'6 million was made by the court. On that basis he submitted that this court makes an award of nothing more than R2 million pre- the 20% merits apportionment.

ANALYSIS

[19] As already accepted and admitted by the RAF, the plaintiff does indeed qualify for compensation for general damages for serious injury in terms of the narrative test in that he suffered, *inter alia*, long-term impairment and loss of a body function, permanent serious disfigurement, and further that his injuries disadvantage him immensely and adversely affect his quality of life.

[20] The plaintiff claimed an amount of R3 000 000.00 for general damages and referred the court to a number of comparable cases. It is trite that general damages are often determined by comparing cases under scrutiny and those previously decided. It is generally accepted that previously decided cases are never similar and that their purpose stops at comparing them to the current.

[21] In ***Protea Insurance Co. v Lamb* 1971 (1) SA 530 (SCA)**, the court held that:

> "*In assessing general damages for bodily injuries, the process of comparison with comparable cases does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation, nor should the process be allowed to dominate the inquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance in a general way towards assisting the Court in arriving at such an award which is not substantially out of general accord with previous awards in broadly similar cases, regard had to all the factors which are considered to be relevant in the*

assessment of general damages. At the same time, it may be permissible, in an appropriate case to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration ."

[22] As was held by the Supreme Court of Appeal ("SCA") in the matter of ***Road Accident Fund v Marunga [2003] (5) SA 164 (SCA) para 23***, for the court to award general damages which comprise of pain and suffering; disfigurement; permanent disability and loss of amenities, it has to exercise a wide discretion in what it considers to be fair and reasonable to compensate the plaintiff.

[23] Having had regard to the cases relied on by both parties and their respective submissions for and/or against same, particularly in regard to the injuries sustained by the plaintiff and their sequelae, I am satisfied that the said cases are by and large comparable, bar those four relied on by the plaintiff and discounted by the defendant due to the severity of the injuries relevant thereto and their sequelae. In the premises I find that the amount of R2 300 000.00 for general damages would be fair and reasonable under the circumstances less the 20% apportionment.

[24] Accordingly I make the following order:

1. The defendant shall pay the plaintiff in total and post 20% Merits apportionment **R 1 840 000.00 (ONE MILLION EIGHT HUNDRED AND FORTY THOUSAND RAND** for general damages.

2. The said amount shall be payable to the following banking account:-

Account name	N[…] N[…] I[…]
Bank name	Absa Bank
Branch name	J[…] B[…]
Account number	4[…]
Branch Code	6[…]

3. The Defendant shall furnish the plaintiff with an undertaking in terms of the provisions of Section 17(14)(a) of Act No. 56 of 1996, 80% in respect of costs

of the future accommodation of AARON MODIBEDI in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff after such costs have been incurred and on proof thereof resulting from the accident which occurred on 13th day of March 2017.

4. The Defendant shall pay the Plaintiff's taxed or agreed costs on the High Court Scale to date hereof, as between party and party, inclusive of the cost for trial on 8 October 2024 and 9 October 2024, and including but not limited to, the costs as set out hereunder and which costs are to include:

4.1 The reasonable taxable costs of obtaining all expert medico-legal reports and addendum reports from the Plaintiff's experts if any, which were furnished to the Defendant:

4.1.1 Dr Kumbirai (RAF4 and Orthopaedic Surgeon)

4.1.2 Dr Chula (RAF4 and Neurosurgeon)

4.1.3 Prof. Langa (Neuropsychologist)

4.1.4 Dr Selahle (RAF4 and Plastic Surgeon)

4.1.5 Dr Wynand Ndlovu (Neurologist)

4.1.6 Ms Caroline Rule (Occupational Therapist and Mobility Expert)

4.2 The reasonable taxable preparation, reservation and qualifying fees, if any, of the experts of whom notice was given to the Defendant;

4.3. The reasonable taxable transportation costs incurred by the Plaintiff in attending medico-legal consultations with the parties' experts, subject to the discretion of the Taxing Master;

4.4. The reasonable taxable costs of uploading the documents to case-lines;

4.5. The reasonable costs of the Plaintiff's attorney for preparation for trial;

4.6. The reasonable costs of obtaining expert affidavits and letters subject to the discretion of the taxing master.

4.7. The reasonable costs incurred by the Plaintiff in its investigation to secure medical records and documents in relation to general damages.

4.8. Costs of the correspondent attorneys, travelling costs and attendance to court;

4.9. The costs of a consultation between the Plaintiff and his attorney to discuss the settlement offer received from the Defendant;

4.10. Costs of counsel on tariff B, subject to the discretion of the Taxing Master.

5. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:

5.1. The Plaintiff shall in the event that costs are not agreed serve the Notice of Taxation on the Defendant's attorneys of record;

5.2. The Plaintiff shall allow the Defendant 180 (one hundred and eighty) days to make payment of the taxed costs from date of settlement or taxation thereof;

5.3. Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the prescribed rate per annum on the taxed or agreed costs from date of agreement or date of allocator or the date of this order to date of final payment.

6. The issue of past and future loss of earnings is postponed *sine die.*

LIVHUWANI VUMA
ACTING JUDGE OF THE HIGH COURT
SOUTH GAUTENG LOCAL DIVISION

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Date of Hearing: 9 October 2024

Date of Judgment: 9 January 2025