



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 9403/2022

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
Date: 15 November 2024

In the matter between: -

MIGNON ROSSOUW

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Mamanyuha: Acting Judge of the High Court of South Africa

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on Caselines electronic platform. The date for hand-down is deemed to be 15 November 2024

JUDGEMENT

MAMANYUHA AJ

INTRODUCTION

1. This is a claim for damages arising from a motor vehicle accident that occurred on 16 May 2021. The plaintiff was a passenger at the time of the collision. Merits and loss of earnings were resolved on 16 February 2023 and 29 April 2024 respectively. On 29 April 2024 general damages were postponed *sine die* for purposes of the referral thereof to the Health Professions Council of South Africa. The Tribunal found that the plaintiff had sustained serious injuries according to the narrative test. This court is now called upon to deal with the claim for general damages, proceeding on a default basis.

BACKGROUND

2. On perusal of the papers I noticed that there was a rescission application that was filed by the Road Accident Fund (RAF) for the compel order and default judgment granted on 25 August 2023 and 29 April 2024 respectively. I first wanted counsel to address me on this matter, the counsel for the plaintiff explained that I need not have regard to the rescission application because in any case it doesn't have any effect of suspension on the current orders and that they have opposed the application. I indicated that I will listen to his submission but reserve judgment as I require more time to satisfy myself that the order I grant will not follow the same fate.

THE RESCISSION APPLICATION

3. The defendant in its application for rescission of the default judgement granted in favour of the plaintiff on the 29 April 2023 also seeks variation of the compel order granted previously on the 25th of August 2023. The rescission application is not before me therefore I will not take the matter any further. The compel order granted on the 25th of August 2023 stands, if it were to be varied by a competent court the parties are entitled to seek the necessary recourse in terms of the Court Rules.

APPLICATION FOR DEFAULT JUDGMENT

4. Before I delve on the merits of this application for default, I need to establish that the plaintiff followed the correct procedure in terms of the rules of the court and the Practice Directive¹. The basis for application for default is the compel order granted on the 25th of August 2023. There is an application for a default as well as a notice of set down served on the defendant, I am satisfied that this application for default judgment is properly before me and I further note that it is not opposed or defended.

INJURIES

5. According to the documentation and heads of argument filed on behalf of the plaintiff, the plaintiff who was a passenger, was 22 years of age at the time of the accident and is currently 25 years old, sustained the following injuries:
 - a) Fracture of Thoracic vertebra;
 - b) Traumatic pneumothorax;
 - c) Rib Fracture;
 - d) Severe hip injury;
 - e) The right knee injury;
 - f) Whiplash to the neck;

g) Shock and trauma.

6. As a result of the accident the plaintiff was hospitalised for a week, a spinal fusion was performed at D12/L1 and an instrumentation inserted. Plaintiff was discharged with a back brace which she wore for two to three months.

PLAINTIFF'S EXPERT REPORTS

7. Orthopaedic Surgeon

According to Dr Deodat Mare the plaintiff's Orthopaedic Surgeon, the plaintiff's main injury is the spine and the torn ligaments at D12/L1 level. The rods and screws remain fixed to the vertebrae and the fusion healed well without detectable complications. Plaintiff also had laceration of the right knee which healed with some visible scarring but no remaining symptoms. Plaintiff further has chest injuries which have healed without remaining symptoms.² Dr Mare further notes that plaintiff is limited at present in terms of what she can tolerate and sitting for too long causes symptoms in her legs. Dr Mare opines that plaintiff will in future require surgical treatment for removal of the rods and screws.

8. Neurosurgeon

Dr JH Kruger, plaintiff's Neurosurgeon, confirmed that plaintiff did not sustain a head injury/traumatic brain injury in the accident, he further does not suggest any further clinical evaluation / special investigations to evaluate for possible traumatic brain injury sustained in the accident³.

9. Clinical and neuropsychologist

Mr Leon Roper, the plaintiff's Clinical Psychologist noted that she suffered a mild head injury which is not usually expected to result in significant long-term

neuropsychological difficulties⁴. The clinical assessment indicated that plaintiff was suffering from symptoms of a posttraumatic stress disorder.

10. It is trite that general damages compensation is within the discretion of the courts. This discretion must be exercised reasonably and judiciously. In **Pitt v Economic Insurance Co Ltd**⁵, it was held that; *'an award must be fair to both sides – it must give just compensation to the plaintiff but it must not pour out largesse from the horn of plenty at the defendant's expense.'*

11. In their heads of argument, the plaintiff referred the court to following comparable cases:

Parity Indurance v Hill 1965 1 QOD 680 (A), Injuries neck, lung, ribs, knee and foot. - General damages in 2024 monetary terms amounts to R1 450 000.00. **Currie v Road Accident Fund 2008 5J2 QOD 201 (SE)**, Injuries face head and arms - General damages in 2024 monetary terms amounts to R1 264 000.00 **Hall v Road Accident Fund (632) QOD 115 KZD**, Injuries: humerus, ribs, concussion, soft tissue injuries of neck and back, abrasions. General damages in 2024 monetary terms amounts to R1 299 000.00. **Abrahams v Road Accident Fund 2014 (732) QOD 1 (ECP)**, Fractured ribs and other injuries. General damages in 2024 monetary terms amounts to R928 000.00. **Oosthuizen v Road Accident Fund 2016 (7C4) QOD 5 (GNP)** Post-Traumatic Stress Disorder General damages in 2024 monetary terms amounts to R818 000.00.

12. Comparable cases considered by the court include:

- 12.1 **Fouche v RAF**⁶ Injuries: Fracture of the right clavicle, fracture of the left humerus, fracture of the left scapula, fractured left rib, a pneumothorax on left and right side, a pulmonary contusion, soft tissue injury to the left knee, lacerations to the face, anterior wedge fractures of T3 and T4, a mild concussive head injury, a crush injury. The current value of the award is R565 000,

- 12.2 **Stestenko v Road Accident Fund** ⁷. Injuries: Fracture of the mid-body of the sternum, fractures of the anterior right 4th and lateral right 6th ribs with hemopneumothorax, Spinal fractures involving superior end plate of T12, compression fracture of L1, superior end plate fracture of L2 and burst fracture of L5, blunt abdominal trauma with small bowel perforation. The current value of the award is R596 218.00,
- 12.3 **Van Den Berg v Road Accident Fund** ⁸. Injuries: a fracture of the left tibia plateau, fractures of the right distal radius and ulna, fracture of the pelvis, pelvic haematoma, pelvic haematoma, fracture of the sacrum, fracture of T5, fracture of the sternum with fractured ribs - he developed a haemothorax and collapsed lung, Compression fracture of L3, Abrasions left thigh. The current value of the award is R922 000.00

CONCLUSION

13. Consideration of previous cases is only for the purpose of offering guidance in the assessment of general damages. Each case must be decided on its own merits, and no one case is exactly the same as another. After considering the previous awards granted in the comparable cases, plaintiff's injuries and the sequelae thereof, I conclude that R700 000.00 is a fair and reasonable compensation for general damages.

ORDER

14. The defendant is ordered to:
- 14.1 Pay plaintiff an amount of R700 000.00 (Seven hundred thousand rands only) for General Damages;
- 14.2 Should payment not be affected after Judgment, the plaintiff will be entitled to recover the said amount with at an interest rate at 11.75% per annum.
15. The defendant is ordered to pay the plaintiff's costs of suit, of 02 October 2024, such costs to include further:
- 15.1 the costs of Senior counsel; [Scale C];
- 15.2 The costs of preparing the Practice note and the head of argument.

16. It is noted that the amount in paragraph 14.1 and the costs are to be paid into the trust account of Surita Marais Attorneys as follows:

Bank: Standard Bank
Account holder: Surita Marais Trust
Account number: [...]
Branch code: 01-15-45

- 16.1 The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale, subject thereto that:

16.1.1 In the event that the costs are not agreed;

16.1.2 the plaintiff shall serve a notice of taxation on the defendant's attorney of record

16.1.3 the plaintiff shall allow the defendant 180 (one hundred and eighty) Court days from date of allocatur to make payment of the taxed costs;

16.1.4 should payment not be affected timeously, the plaintiff will be entitled to recover interest at the rate applicable mora interest rate per annum on the taxed or agreed costs from date of allocatur to date of final payment.

- 16.2 such costs shall include:

16.2.1 the costs incurred in obtaining payment of the amounts mentioned in paragraphs 14.1 above;

17. It is noted that the plaintiff has agreed to furnish the defendant with at least 7 (SEVEN) days written notice of taxation.

18. The contingency fee agreement is hereby declared valid


T. Mamanyuha
Acting Judge

FOR THE PLAINTIFF

RJ de Beer SC
Instructed by:
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FOR THE DEFENDANT No appearance

¹ Judge President 's Practice Directive 01 of 2021 as Amended on 8 July 2022

² Caselines: Plaintiff Expert Reports, 0009 – 1 paragraph 3

³ Caselines: Plaintiff Expert Reports, 0009 – 10 paragraph 11.8-11.9

⁴ Caselines: Plaintiff Expert Reports, 0009 – 19 paragraph 17.9.1

⁵ 1957 (3) SA 284 (D) at 287 E-F

⁶ Unreported Case no: 3214/2017

⁷ 2023 ZAGPPHC 155 78479/2017 3 March 2023

⁸ 69404/2019 2023 ZAGPPHC 673