

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 16158/2018

(1)	REPORTABLE: Y/N
(2)	OF INTEREST TO OTHER JUDGES: Y/N
(3)	REVISED: Y/N
10/03/2025	
DATE:	SIGNATURE

In the matter between:

NKALA, REFERRED

Plaintiff

AND

RAF

Defendant

JUDGMENT

MIA J:

[1] On 4 September 2016, the plaintiff was a pedestrian walking along the N14 near Usambara, Kromdraai, Krugersdorp. A single-vehicle collision occurred when the driver of a vehicle bearing registration number ZHM 858 GP was driving behind a minibus taxi. It attempted to overtake the taxi and collided with the plaintiff who was waving the taxi down for a lift.

[2] In this action, the plaintiff claimed from the Road Accident Fund (the Fund) delictual damages arising from injuries sustained in the collision in the amount of R 3 854 500.00.

[3] When the matter appeared before me on 19 July 2023, the parties had agreed that the wasted costs of counsel and experts reserved were costs in the cause for the date of set down for 18 July 2023. The Fund conceded the merits and accepted liability for 80% of the plaintiff's proven damages including future medical expenses wherein the Fund undertook to issue a section 17(4) certificate to cover any future medical expenses. The issue in dispute was the quantum of general damages and the loss of earnings. The matter proceeded with reliance on the plaintiff's expert's reports and the plaintiff's evidence relating to the incident, his previous income and work history as well as his present ability.

[4] The Fund's response to the plaintiff's claim to damages and loss of earnings was that given the Industrial psychologist had not had any collateral and supporting information or proof of earnings, thus it regarded the postulations and actuarial calculations as inaccurate.

[5] The plaintiff is required to prove its case which includes the claim for loss of earnings. In the absence of factual proof of income, the postulations hold no merit relating to a claim for loss of income.

[6] The issues to be determined thus relate to the plaintiff's general damages as agreed between the parties.

[7] The Fund accepted the injuries as serious in terms of the regulations after assessment. The injuries sustained were:

- a. Fracture of the right tibia and fibula,
- b. Fracture of the left tibia and fibula,
- c. Fractured right humerus.

[8] In determining an appropriate award for damages, the court was requested to consider the plaintiff was 31 years old when the accident occurred. He was admitted for a month at Helen Joseph Hospital, discharged with his arm in an arm sling, and was wheelchair bound for a month, whereafter he mobilised on crutches. He required the assistance of his sister to care for him during this period. He bears a series of scars on his upper and lower limbs from the surgery on the right arm and pain in the shoulder during movement. He experiences residual weakness in the dominant right arm, weakness in both legs and cannot lift heavy objects or run and walk for long periods.

[9] Both counsel for the plaintiff and the Fund expressed views relating to appropriate amounts. The obiter dictum and precedent in the *De Jongh v Du Pisanie NO*¹ is kept in mind where the court cautioned against a tendency to award higher amounts than in the past for general damages. This must be contrasted with the move away from an over-conservative approach emphasized in *RAF v Marunga*². The guidance in *Marunga*³, is apposite where the Court confirmed the dictum of Broom DJP in *Wright v Multilateral Motor Vehicle Accident Fund* 1997, which states:

"I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in the society, the recognition of greater

¹ [2004] 2 All SA 565 (SCA)

² 2003 (5) SA 164 (SCA)

³ As above at 6170F-G

individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most countries.”

[10] The statement above must be considered in the circumstances of each case, considering all relevant factors as well as the dictum of Holmes J in *Pitt v Economic Insurance Co Ltd*⁴ where the court commented as follows:

‘(T)he Court must take care to see that its award is 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 the present instance, it is not contested that the injury was serious. It is inevitable that emotional distress follows from such an injury and is confirmed by the plaintiff’s evidence that he had to enlist the assistance of his sister to care for him. He could not afford a caregiver. The impairment and discomfort occasioned by the injury was more extreme whilst he was wheelchair bound and then required to use crutches. The plaintiff has recovered but cannot engage in manual labour that requires heavy lifting and carrying heavy objects. In respect of an amount for general damages, Counsel referred to the industrial psychologist’s report which states that the plaintiff washed taxi’s and worked at a glass fitment establishment. He is unable to engage in either form of labour which requires lifting heavy objects. The last form of labour the plaintiff engaged in was selling chickens. This appeared to have afforded a comfortable income having regard to the loss of income having regard to the plaintiff’s evidence. Considering his ability to continue selling chickens which is less labour intensive than the previous form of labour indicates the impact of the injury on the plaintiff is mitigated and affects the damages to be awarded.

[12] The case law referred to awarded damages where the injuries did not compare exactly to the plaintiff’s injuries. This is seldom the position and reference to such cases are merely a guide to inform the submission and amounts proposed. In *Roe v Road Accident Fund* (South Gauteng High Court: Case No: 16157/2009, the

⁴ 1957 (3) SA 284 (D)

injuries indicated the plaintiff sustained soft tissue injury to the neck, facial injuries with a fracture of the cheek and loose teeth, a comminuted fracture of the right femoral shaft, comminuted fractures of the right tibia and fibula, a fracture of the right patella, a fracture of the humeral shaft, a supra intra fracture of the left distal humerus, a degloving injury over the lateral aspect of the right foot and a fracture of the upper incisor teeth. The amount he was awarded translates into the current value of R 1 259 000. The plaintiff's injuries in this case do not appear to be as extensive.

[13] In *Abrahams v Road Accident Fund*⁵ the plaintiff suffered a badly communicated fracture of the right proximal femur, fractures of the right distal fibula and patella, a fracture of the right medial malleolus and mild concussive traumatic head injury. Due to the injuries, the plaintiff was rendered unemployable. The present value of the award is an amount of R754 000.00.

[14] In *Ndaba v Road Accident Fund*⁶ the plaintiff suffered multiple orthopaedic injuries including a straddled pelvic fracture, right femoral fracture, dashboard left knee and right shoulder injuries. A ruptured bladder was occasioned by blunt abdominal trauma. Open reductions and fixations were performed on the hip joint, femur and tibia. These injuries rendered the plaintiff unfit for any type of employment in the open labour market and it appeared that she could not continue as the hawker. She was awarded the sum of R796 000.

[15] In the present matter, the plaintiff's injuries compare partially to the cases referred to above. He has recovered the use of his limbs although he is unable to walk or run for long periods of time. He is unable to do heavy labour. He is not precluded from labour. The plaintiff was engaged in informal business having lost his employment prior to the injury collision. There appears to be no reason that he cannot continue, and this is indicative of his recovery. Having regard to the injuries and in comparison, to the cases referred to by counsel for the plaintiff above, I

⁵ *Abrahams v RAF* 2014 (7J2) QOD 1 (ECP)

⁶ *Ndaba v Road Accident Fund* 6 QOD E3-14 (ECB)

consider the amount of R500 000.00 to be fair and reasonable compensation to the plaintiff, the injured party, for general damages.

[16] Consequently, I grant the following order in favour of the plaintiff against the defendant:

ORDER

1. Payment of the sum of R500 000.00,
2. Payment of interest on the said sum of R500 000.00 at the prescribed legal rate from fourteen days from date of this judgment to date of final payment.
3. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, Act 56 of 1996 ('the Act'), to pay 80% of the costs of future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to him, arising out of the injuries he sustained in the motor vehicle collision on the 4 September 2016, after such costs have been incurred and upon proof thereof.
4. Payment of the plaintiff's costs of suit, including the reasonable costs of all medico-legal reports and joint minutes obtained by the plaintiff, and the qualifying fees and court attendance fees of his expert witnesses


S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be **10h00** on **10/03/2025**.

Appearances:

On behalf of the applicant : Atty Chepape Mashao
Instructed by : Z and Z Ngogodo Attorneys inc.

On behalf of the respondent : Atty Nomqhele Moyo
Instructed by : Office of the State Attorney
Johannesburg

Date of hearing : 20 July 2023
Date of judgment : 10 March 2025