

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

Reportable/Not Reportable

Case no.: 4136/2022

In the matter between:

IRIS JONELDINE VAN STADEN

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: Opperman J

Heard: 10-11 September 2024; heads of argument filed 20 September 2024

Delivered: 3 April 2025. This judgment was handed down in court and electronically by circulation to the parties' legal representatives by email and release to SAFLII. The date and time for hand-down is deemed to be on 3 April 2025 at 15h00

Summary: Claim – merits – motor vehicle accident – general damages.

ORDER

1. The defendant shall pay the plaintiff an amount of R700 000-00 (seven hundred thousand rands) for general damages suffered as result of a motor vehicle accident which occurred on 27 February 2021.
2. The amount in para 1 above shall be payable within 180 (one hundred and eighty) days of date of this order into the account of the plaintiff's attorneys with the following particulars:

Peyper Botha Attorneys

Name of account: PEYPER & BOTHA ATTORNEYS INC.
BANK: FNB
Account number: 6[...]
Branch code: 241 138
Reference number: VP0130

3. The defendant shall pay the plaintiff's taxed or agreed party and party costs.

JUDGMENT

Opperman J

[1] On 30 August 2022 summons was issued by the plaintiff wherein she, *inter alia*, claimed for general damages suffered as result of a motor vehicle accident that happened on 27 February 2021. She claimed R1 000 000.00 (one million rands) for general damages. After evidence was adduced and the law considered, she reduced the claim to R700 000.00 (seven hundred thousand rands).¹ This is the only issue that lies before court now.

¹ Paragraphs 118 and 119 of the heads of argument for the plaintiff dated 19 September 2024.

[2] On the day when the incident happened, the insured driver skipped a red traffic light, drove faster than the reasonable speed expected in the circumstances, failed to keep a proper lookout and collided with the plaintiff crossing the street as a pedestrian. The plaintiff sustained a left leg injury, left knee injury, pelvis/hip injury, soft tissue injury of the lumbar spine with residual pain and internal derangement of the left knee with residual pain and possible meniscal tear.

[3] Judgment was handed down on 14 March 2024 after trial whereby the defendant was held liable for 100% of the plaintiff's proven damages, the defendant was ordered to pay the plaintiff an amount of R1 073 038.00 for loss of earnings and the defendant was ordered to furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996. The issue of general damages was separated and ordered to stand down for later adjudication in terms of rule 33(4). On request of the plaintiff, it was ordered that the matter be disposed of without hearing oral argument.

[4] On the date of hearing of this matter, the attorney appearing on behalf of the defendant formally withdrew from the matter due to a lack of instructions. The defendant, therefore, did not take part in the trial proceedings and the matter was essentially undefended.

[5] The plaintiff was called to testify on the general damages suffered as a result of the accident. It was furthermore, at the hearing of this matter, on application and by order of the court, ruled that the reports of the occupational therapist and orthopaedic surgeon be admitted into evidence. Both were called as expert witnesses and testified at the previous hearing of this matter on 13 to 14 March 2024. The transcript of the proceedings held on 13 March 2024 also formed part of the evidence adduced.

[6] The plaintiff's testimony showed that the injuries suffered, and the *sequelae* thereof are the following:

- a. Daily and constant pain in her lower back and recurring cramps in her left knee;
- b. the pain she experiences daily is exacerbated when either sitting or standing for extended periods;
- c. she cannot drive for long periods before the pain reaches a point of being unbearable;
- d. she is forced to consult doctors, physiotherapist and biokinetics regularly to manage her condition;
- e. she was prescribed chronic pain medication in an attempt to address the pain she experiences. Limited success in regulating the pain she suffers daily was obtained;
- f. she is allergic to and on occasion experiences adverse side effects from the medication for pain management prescribed. The better alternative causes her to experience drowsiness and nausea, impacting her day-to-day activities. Notwithstanding having been prescribed specific doses of the chronic pain medications, she has on occasion felt the need to take an additional dose to deal with the pain. Due to the pain in her left knee and lower back as well as the medication, she cannot drive a motor vehicle safely.
- g. She is employed in the South African Police Services (SAPS) and holds the rank of sergeant. After the accident, she is unable to perform operational duties in her employment. She particularly thrived during operational duties. She is currently only able to perform administrative duties and has been so deployed.
- h. She was a member of the SAPS netball team and would regularly participate in sport activities hosted by the SAPS. She can no longer participate in these activities.

- i. Prior to the accident, she used to be an avid hiker and would regularly go on hikes with her friends. She had to cease from partaking in this activity too. This is due to the pain she experiences in her lower back and left knee;
- j. she used to be a very physically active person who exercised daily and visited the gym regularly. Her exercise activities are now restricted to only those exercise plans provided to her by medical practitioners which are intended to address the injuries she had suffered in the accident and the pain resulting therefrom.
- k. Her personal relationships have been impacted. She used to be a very outgoing and social person. As a result of the injuries and the persistent pain she suffers, she no longer participates in as many social gatherings which has resulted in her losing contact with many of her friends. She avoids social gatherings since she believes that she may be perceived as a burden to her friends due to her being unable to keep up with them.
- l. Her family is primarily resident in Kimberley, and she cannot visit them as regularly as she used to prior to the accident, since it would require her to drive to Kimberley which is difficult for her due to the pain she experiences when driving. Her experience is that her family appears to be particularly worried about her wellbeing due to her not having as much contact with them and that she is saddened by the fact that her mother, in particular, appears to be concerned about her. She relies on the assistance of others, particularly one of her close friends and her sister, and she believes it is unfair to those who assist her to have to rearrange their lives to help her.
- m. The plaintiff testified that the pain is sometimes simply ‘too much to handle’ and she is constantly in a state of anxiety and has been diagnosed to suffer from anxiety. She has experienced panic attacks due to her increased anxiety levels. This exacerbates difficulty sleeping.

[7] The occupational therapist testified in her oral testimony that the plaintiff's employment duties prior to the accident, as it were, would only aggravate her symptoms had she continued to perform said duties. Lifting and carrying loads aggravated the pain the plaintiff experiences in her lower back and left knee. The witness confirmed that the plaintiff can no longer participate in recreational sporting activities and exercise. Pain management intervention is recommended for the plaintiff which would involve recurring visits to occupational therapists, physiotherapists and a practitioner in biokinetics. As per para 6.2.3 of her report, the occupational therapist noted that the plaintiff's quality of sleep has been affected. This coincides with the plaintiff's testimony that the pain in her lower back and left knee has caused her difficulty in sleeping. The plaintiff has become less sociable after the accident and indicated that she prefers to stay indoors, is anxious in crowds and is easily irritable. During the evaluation she presented with certain mood changes due to the accident-related limitations. The occupational therapist did, however, refer the plaintiff to a clinical psychologist for a detailed assessment. The occupational therapist opines that the implementation of a holistic intervention will likely improve functional capacity to an extent and that the plaintiff will benefit from the use of assistive devices and by continual adherence to joint and spinal protecting principles.

[8] The orthopaedic surgeon testified that he foresees the possibility that the injury to the plaintiff's knee may require further intervention. This involves an additional surgical procedure which may require a hospital stay and a healing period. There is a possibility that the surgery might worsen the plaintiff's situation. He predicts that the procedure may have to be repeated at a later stage which would again involve a recovery period. Such further complications will, undoubtedly, lead to further pain and suffering for the plaintiff and will have a

negative impact on her ability to enjoy the amenities of life and may lead to further disability for the plaintiff.

[9] Since the defendant has failed to participate in the hearing on general damages, the evidence for the plaintiff stands uncontested. No evidence has been presented which would refute the evidence presented by the plaintiff. The evidence cannot be faulted and the case for the plaintiff has been proven as claimed.

[10] In the matter of *RAF v Marunga*² it was held that in cases in which the question of general damages arose, a trial court had a wide discretion to award what it considered to be fair and adequate compensation to the injured party. There is no hard and fast rule of general application requiring a trial court to consider past awards, although the court might derive some assistance from the general pattern of previous awards.

[11] The adjudication of quantum is primarily based on the specific merits of the case. Awards granted in similar cases is a good compass.³ It was ruled in the matter of *Pitt v Economic Insurance Company Ltd*⁴ that an award for general damages must be fair to both sides.

‘It must give just compensation to the plaintiff but must not pour out largesse from the horn of plenty at the defendant's expense.’

² *Road Accident Fund v Marunga* (144/2002) [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) (26 March 2003).

³ Cases such as *Mashigo v Road Accident Fund* (2120/2014) [2018] ZAGPPHC 539 (13 June 2018), *Protea Insurance Company v Lamb* 1971 (1) SA 530 (A), *Mseleku v Road Accident Fund* (72406/2016) [2023] ZAGPPHC 1208 (19 September 2023), *Mudau v Road Accident Fund* [2023] JOL 64399 (GP), *Mseleku v Road Accident Fund* (72406/2016) [2023] ZAGPPHC 1208 (19 September 2023), *Cassim and Others v Road Accident Fund* (2005/15914) [2022] ZAGPJHC 763 (23 September 2022), *April v Road Accident Fund* (2338/2018) [2021] ZAFSHC 206 (15 September 2021), and *Radebe v Road Accident Fund* (14645/17) [2019] ZAGPPHC 475 (8 August 2019) referred to by counsel for the plaintiff provided relevant guidance.

⁴ *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) 287E-F. Also see *Kampi v Road Accident Fund* (5216/2021) [2024] ZAGPPHC 790 (12 August 2024).

[12] This court is convinced that given the above, an amount of R700 000.00 (seven hundred thousand rands) will be just and equitable. Costs will follow the cause and on the scale of party and party.

Order

[13] In the result, the following order is made:

1. The defendant shall pay the plaintiff an amount of R700 000-00 (seven hundred thousand rands) for general damages suffered as result of a motor vehicle accident which occurred on 27 February 2021.
2. The amount in para 1 above shall be payable within 180 (one hundred and eighty) days of date of this order into the account of the plaintiff's attorneys with the following particulars:

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Opperman J

Appearances

For applicant: JJ GRUNDLINGH
Bloemfontein
PEYPER & BOTHA Attorneys

Bloemfontein

For respondent:

The State Attorney: Free State
Bloemfontein