



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 308/2015

In the matter between:

MARTIN ALISTAIR DAMON

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

Neutral citation: *Damon v Minister of Police* (Case no 308/2015) (7 February 2025)

Coram: Tyuthuza AJ

Heard: 06 – 08 May 2024 & 12 September 2024.

Delivered: 7 February 2025.

Summary: quantum and proof thereof – general damages – past and future loss of earnings – past and future medical and related treatment. General damages awarded: – R150 000.00 – no evidence to sustain the plaintiff's claim for past and future loss of earnings, past and future medical related treatment – claims dismissed.

JUDGMENT

Tyuthuza AJ

INTRODUCTION

[1] On 19 February 2015, the plaintiff Mr. Damon, instituted action against the defendant, the Minister of Police. The plaintiff alleged that he was arrested on 03 March 2012 and detained at the Nababeep Police Station, Springbok, Northern Cape Province. During his detention the plaintiff was allegedly assaulted by a fellow detainee who was at the time unknown to him, and as a result of which the plaintiff sustained injuries and had to receive medical treatment at the hospital in Springbok and later at the Kimberley Provincial Hospital.

[2] The plaintiff alleged that he sustained the injuries comprising of serious neck and serious spinal injuries as a result of the unlawful conduct of the defendant's employees, being the members of the South African Police Service.

[3] The merits and quantum were separated. The trial in respect of the merits proceeded, wherein judgment was granted against the defendant in favour of the plaintiff and the matter was to proceed for the purpose of determining the issue of quantum.

[4] The plaintiff claims from the defendant a total amount of R2 600 000.00, comprising of:

- 4.1. R500 000.00 for general damages;
- 4.2. R250,000.00 for past medical and related treatment;
- 4.3. R100 000.00 for future medical and related treatment;
- 4.4. R 1 750 000.00 for past and future loss of earnings.

[5] The plaintiff has delivered one report by Dr Boer, an expert witness, whereas the defendant has not delivered any expert reports.

EVIDENCE

Dr Etienne Herbert Boer:

[6] The first witness called by the plaintiff was Dr Etienne Herbert Boer, a specialist physician. He testified that he received Mr. Damon on 4 March 2012 who was brought into the casualty ward on a stretcher. At the time Dr Boer was employed as a medical officer at Springbok Hospital. According to him, Mr. Damon complained about not being able to move or feel his legs and severe neck pain. He further testified that the plaintiff was fully conscious and able to communicate.

[7] According to the J88, Dr Boer recorded that the plaintiff sustained severe anterolosthesis of the C7 vertebrae on the T1 thoracic vertebrae after the alleged physical assault. He referred the plaintiff to the Kimberley Hospital for a neck operation, as the neck injury was causing compression on the spinal cord which could lead to a neurological fallout, thus the neck operation was necessary to prevent further damage. He testified that the plaintiff was almost partially paralysed. He testified that the plaintiff would need further future medical intervention in the form of pain management.

[8] Under cross examination, Dr Boer testified that he last consulted with the plaintiff before 2014, and that he could not have prepared a report on the future medical issues of the plaintiff. He further conceded that he could not advise the court whether the plaintiff's injuries had deteriorated over time or improved.

[9] His report was undated, and he was unable to tell the Court when exactly he wrote it but conceded that it was before 2014. He stated that his evidence pertaining to the future needs and accommodations of the plaintiff were merely

speculative and could not say that the plaintiff would with certainty require future medical interventions.

Dr Wending He:

[10] Dr Wending He, a medical officer in the neurosurgery ward at Kimberley Hospital, testified that he received the patient (plaintiff) on 5 March 2012. He testified that the plaintiff underwent surgery, and that he has not seen the plaintiff after the surgery and further that there were no further operations that he is aware of.

Nurse Daleen Theron:

[11] Nurse Daleen Theron, the operational manager at the Primary Health Care Clinic in Springbok was also called to testify. She testified that the plaintiff visited the clinic on numerous occasions from 2012 and that he would have seen different nurses during that period.

[12] She testified that the plaintiff received medication at the clinic in the form of panado, paracetamol, vitamin B and vitamin C. According to his clinical records, the plaintiff complained of impotence and wanted to see a doctor in May 2014. In 2015 he was diagnosed with arthritis of both knees and was on voltaren injection for the pain in his knees.

[13] Under cross examination, she testified that the plaintiff was not charged any fees for his consultations at the clinic, and the pain medication which he received on a regular basis. She testified that during his visits the plaintiff would sometimes be walking, and other times be using a walking stick. She testified that she has not seen the plaintiff at the clinic for the past two years.

Dr Esme Olivier:

[14] Dr Esme Olivier is the Chief Executive Officer of the Robert Sobukwe Hospital previously known as the Kimberley Hospital. She was called to testify

regarding the availability of the plaintiff's X-rays. She testified that the hospital was not in possession of the X-rays as the server crashed in 2015 and caused damage to the control of the disc error. The hospital has therefore lost all images prior to 2015 and there was no way of retrieval.

Mr Damon:

[15] Mr. Damon (the plaintiff) testified that he was assaulted in the police cells in Nababeep between 23h00 and 00h00 midnight, as a result of the assault, he was not able to move or stand up. He testified that he was put on a stretcher in the cells and arrived at the hospital on a stretcher. According to him, he was always conscious.

[16] He testified that since the incident he is unable to walk on his own without support and has difficulty sleeping. He stated that he is in pain during the day and at night and uses pain medication three times a day. He testified that he cannot sit for long and must stand up after a certain time. He testified that he has been in pain from March 2012 to date. He testified that he currently receives the testosterone injection monthly, because of impotence, which medication he did not need prior to the incident.

[17] He testified that prior to the incident, he was working as an independent broker and had been working from home since 2011. He testified that he is no longer able to do the work he did previously, as his driving ability and movement is limited. He testified that prior to the incident, he was involved in community work/organisations, but he is no longer involved because of his disability.

[18] He testified that the fact that he now walks with a walking stick has impaired his integrity and makes him feel worthless. As a result of his injuries, he spends a lot of time at home with his wife and that he is dependent on a state pension and an income from his wife. He testified that had it not been for the incident, he would still be employed as a broker and living a good life.

[19] Under cross examination, he testified that he has been working as a broker since he was twenty-five years old and that in 2021 his income varied between R30 000.00 and R40 000.00. When asked why there was a difference in the amount of income which he stated in his discovery affidavit and the amount he stated in Court, he replied that he had been referring to the income he received as a broker and the income he received as a tax consultant was not included. He stated that he was also offering tax and financial services. When asked if he was tailoring his evidence, he denied this.

[20] He testified that he did not have any bank accounts, tax returns etc. in that all his documents were stored in his previous house and that he looked for them but could not find them and even approached the South African Revenue Service (SARS) to assist, but SARS was unable to assist him. He testified that he did not have a business e-mail address and operated his business without an email address. He testified that he had between 200 to 500 clients in his brokerage business, and when asked why he did not obtain an affidavit from at least one client to confirm his position as a consultant, he replied that if such a request was made to him, he would have done so. It was put to him under cross examination that his evidence was improbable and fabricated, he denied this. Counsel for the Defendant put it to him that there was no evidence before the Court to give a glimpse of the amount of money he was earning before the assault, he replied that if he had the evidence in his possession, he would have provided it to the Court.

[21] He testified that he was not charged for medical expenses incurred at Springbok Hospital and Kimberley Hospital, but that he has spent money for pain medication and doctors' appointments since 2012 but could not disclose the amount. He testified that he has not been going to the clinic for a year but that he would visit the clinic again. Under cross examination, he stated that he initially did not need the assistance of a walking stick and conceded that at times, he walked without the walking stick as he did not want to accept that he needed the

assistance of a walking stick. He testified that he did not have arthritis despite it being recorded in his clinical records that he received medication for arthritis.

[22] That then was the evidence for the plaintiff, and he closed his case.

[23] The Defendant did not adduce any evidence.

ANALYSIS

General damages:

[24] It is trite that in consideration and determination of the quantum of general damages, a trial court has a discretion to determine and arrive at what it considers a fair and reasonable amount. The court must have regard to the plaintiff's nature of injuries sustained, pain and suffering, scarring and discomfort, loss of amenities of life and further consider and determine whether any of these are of a temporary or permanent nature.

[25] In *Mashigo v Road Accident Fund*¹, the court stated that:

"A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature, both difficult and discretionary with wide-ranging permutations. As will be illustrated herein later, it is very difficult if not impossible to find a case on all four with the one to be decided. The oft-quoted case of *Southern Insurance Association v Bailey* NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to the way in which the problem of an award for general damages should be approached. The accepted approach is the 'flexible one' described in *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199, namely: 'The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at

¹ (2120/2014) [2018] ZAGPPHC 539 (13 June 2018) para 10.

must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case."

[26] It is trite that the Court will also consider previous awards to determine the amount, whilst these cases will be of assistance, each case must be adjudicated upon its own merits, and no one case is factually the same as another.

[27] Counsel for the plaintiff referred me to a number of previous cases. In *Damana v Minister of Safety and Security*², a 48-year-old male plaintiff was assaulted by members of the South African Police Services. As a result of the assault, he was admitted to hospital and placed in cervical skeletal traction for 13 days. After a C5/6 fusion, he was discharged and wore a neck brace five days after the procedure. The plaintiff seldomly suffered pain and took analgesic medication. In 2016 the court awarded an amount of R275 000 for general damages.

[28] He also referred the court to *Ramolobeng v Lowveld Bus Services (Pty) Ltd and Another*³. In this case, a male aged 34 years old, who was a passenger in a bus that was involved in a motor vehicle collision, sought compensation for injuries he sustained. As a result of the collision, he continued to experience chronic moderate to severe cervical spine pain as well as lumbar spine pain with associated paraspinal muscle spasm. The pain and discomfort was aggravated when travelling or walking long distances, sitting too long or bending forward. He further suffers from severe erectile dysfunction, moderate depression and low self-esteem. The court awarded damages of R550 000.00.

[29] Mr Ramabulana for the defendant submitted that there was no proof before the court as to the extent the plaintiff's injuries have gotten worse or whether they have gotten worse at all. He submitted that the issues experienced by the plaintiff are from arthritis, and that the plaintiff has not presented any evidence from an orthopedic surgeon regarding the seriousness of his injuries. The plaintiff also

² (1418/2011) [2016] ZACPEHC 12 (26 January 2016).

³ (29836/09) [2015] ZAGPPHC 31 (3 February 2015).

failed to adduce any medical evidence to link his alleged impotence to the injuries he sustained.

[30] He referred me to *Dlamini v The Road Accident Fund*⁴ wherein the Court held that, “*any discretion a court may exercise must be exercised on consideration of the facts before the court, and on application of the applicable legal principles.*”

[31] The Plaintiff was aged 55 years at the time of the incident. There is no proof before the court regarding the seriousness of the plaintiff’s injury and the effect thereof on his daily life. He placed no evidence before the court that he suffered permanent orthopaedic injuries. Despite the inscription in his clinic records, he disputed having complained of painful knees and having received medication for arthritis. The last medical examination which the plaintiff underwent was in 2014, there has been no effort to examine him since or to produce a supplementary medical report regarding his current state.

[32] As I observed, the plaintiff appeared frail and to be suffering from pain. This is also evident from the fact that he received chronic medication for pain management monthly. The plaintiff, however, adduced very little information regarding his personal circumstances, save for the factors as alluded above. Having considered all the evidence, I am of the view that an amount of R150 000.00 is justified to award the plaintiff.

Past and future loss of earnings:

[33] It is trite that the plaintiff must prove the extent of his loss and damages on a balance of probabilities. With regard to loss of income, the plaintiff must adduce evidence of his income in order to enable the court to assess his loss of past and future earnings. In addition, the plaintiff must prove the amount of income he will reasonably lose in the future as a result of the injury.

⁴ (21375/2019) [2022] ZAGPJHC 657; [2022] 4 All SA 360 (GJ) para 70.

[34] In *Mvundle v Road Accident Fund*⁵, it was held that:

“It is trite that damages for loss of income can be granted where a person has in fact suffered or will suffer a true patrimonial loss in that his or her employment situation has manifestly changed. The plaintiff’s performance can also influence his/her patrimony if there was a possibility that he/she could lose his/her current job and/or be limited in the number and quality of his/her choices should he/she decide to find other employment.”

[35] In order to determine if the plaintiff has indeed suffered a loss of income, it is expected of the plaintiff to adduce evidence of his income to enable the court to assess his loss. Thus, when claiming for loss of income, it is trite that the plaintiff must adduce evidence of his income to enable the court to assess his loss of past and future earnings and the amount of income he will reasonably lose in the future as a result of the injury.

[36] There is no evidence to support the plaintiff’s version that he was employed at the time of the incident. He was unable to provide reliable evidence of what services he allegedly rendered, the amounts charged and received and the amount he indicated as his income was not supported by any evidence. Thus, there was no evidence at all to substantiate the existence of this alleged income.

[37] The plaintiff, therefore, failed to place the court in a position to determine his past and future earnings. In the circumstances, this court finds it difficult to exercise its discretion and assess the plaintiff’s loss of past and future earnings. In the circumstances, I find that there is no evidence to sustain the plaintiff’s claim for past and future loss of earnings in the amount of R1 750 000.00.

Past and future medical related treatment:

[38] The plaintiff did not submit any evidence in proof of his claim of R250 000.00 for past medical and related treatment and R100 000.00 for future medical and related treatment.

⁵ (63500/2009) [2012] ZAGPPHC 57 (17 April 2012) para 42.

[39] Counsel for the plaintiff in advancing the plaintiff's claim for future medical treatment sought to place reliance on the evidence led by Dr Boer. Dr Boer himself conceded under cross examination that he had not examined the patient (the plaintiff) since 2014 and that his evidence regarding the future medical intervention was speculative.

[40] Counsel for the plaintiff submitted that the plaintiff relied on self-medication for pain by acquiring same from a local pharmacy for the past two years, despite this, no vouchers or receipts evidencing same were produced by the plaintiff.

[41] The defendant contends that the plaintiff has been relying on the state for medical treatments and that there is no evidence before the court that the plaintiff incurred past medical expenses. Counsel for the defendant submitted that Dr Boer was not the correct expert to bring to court, as he was not in a position to state how much the plaintiff's future medical expenses would be, thus the plaintiff failed to lead evidence on his future medical needs. He submitted that the amount claimed for future medical expenses was merely speculative.

[42] It is trite that an expert witness is required to assist the court to decide on the facts. The facts expressed by the expert must be based on the correct facts and not mere speculation. The court is not bound by any conclusion or finding by an expert, as an expert's report and evidence is only part of all the evidence to be considered in determining the issues before court. The court is bound to consider reliable evidence put before it, that can be proven. The way courts deal with expert evidence is explained in *Michael v Linksfield Park Clinic (Pty) Ltd* 2001 (3) SA 1188 (SCA) at [37] to the effect that a court will accept evidence of a witness if, and when it is satisfied that such an opinion has a logical basis, in other words that the expert has considered comparative risks and benefits and has reached 'a defensible conclusion'. At paragraph 36, the court said that: "[36] *That being so, what is required*

in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning.”⁶

[43] I did not find the evidence of Dr Boer helpful in this matter or that it sought to advance the plaintiff’s case regarding his current medical condition or his future medical needs and expenses, the report was outdated and Dr Boer conceded to not having examined the patient in the past ten years.

[44] Ordinarily costs would follow the result. However, the plaintiff was not wholly successful in his claim and failed to substantiate his case in regards for loss of earnings and past and future medical expenses. In the circumstances, I am of the view that it will be fair and just that each party pay their own legal costs.

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

- a) The Defendant shall pay the Plaintiff the sum of R150 000.00 in respect of general damages.
- b) The Plaintiff’s claim for past and future loss of earnings is dismissed.
- c) The Plaintiff’s claim for past and future medical and related treatment is dismissed.
- d) Each party pay their own legal costs.

⁶ *Recklies v Road Accident Fund* (22457/2017) [2024] ZAWCHC 217 (21 August 2024), para 78.


T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Plaintiff: Adv C. Simon
 Instructed by: Cornelissen Inc.

For the Defendant: Mr Ramabulana
 Instructed by: Office of the State Attorney