

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 26723/21

Reportable: No

Of interest to other Judges: No Revised: No

Date: 24 June 2025

In the matter between:

S[...] P[...]

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

Mooki J

1 The plaintiff claims the amount of R1 200 000.00 for general damages against the defendant. The claim arises from the plaintiff having been injured in a car accident on 3 May 2012, when he was 5 years and 9 months old. The Court (Bam J) made an order on 31 March 2023 appointing Mr Dikadi Dolf Mosoma, an advocate, as the plaintiff's *curator ad litem*. The plaintiff substituted himself as the claimant on 25 September 2024.

2 The plaintiff relied on evidence by several experts, which the Court received by way of Rule 38(2). The evidence is made-up of reports by the neurosurgeon, the

orthopaedic surgeon, the clinical psychologist, the educational psychologist, the occupational therapist, the industrial psychologist, and the actuary.

3 The plaintiff relied on reports that were prepared a long time ago. The report by the orthopaedic surgeon was based on an assessment conducted on 3 December 2021. The reports by the industrial psychologist and the occupational therapists were based on an assessment conducted on 24 August 2022. The report by the neurosurgeon is dated 25 August 2022. The report by the educational psychologist was based on an assessment conducted on 5 April 2023. The report by the actuary is dated 15 June 2023, with the “date of calculation” recorded as 1 July 2023.

4 Counsel for the plaintiff made submissions based on the reports by the orthopaedic surgeon and by the neurosurgeon. The Court was referred to the report by the orthopaedic surgeon dealing with what the plaintiff’s grandmother told the orthopaedic surgeon. Dr Bogatsu asked the plaintiff’s grandmother to list all symptoms, functional impairment, disfigurements and health problems pertaining to the plaintiff “at this stage.” The grandmother listed the following in reply: “Pains worse with activities and weather changes, inability to lift heavy objects, disruptive behaviour, headaches, impaired concentration, and poor memory”. The statements by the plaintiff’s grandmother are hearsay.

5 Counsel informed the Court that the plaintiff relied on the fracture to the left humerus and a head injury as the bases for his claim for general damages. For example, the plaintiff no longer persisted with being unable to lift heavy objects as part of his claim.

6 The Court was referred to two decisions in support of the plaintiff’s claim, with the Court invited to consider the quantum in those decisions but with amounts adjusted for present-day value. These are *Modisana v Road Accident Fund*¹ and *Noble v Road Accident Fund*.²

7 The decision in *Noble* concerned an adult motor cyclist who was involved in a

¹ (3303/2009) [2012] ZANWHC 19

² (39254/2008) [2011] ZAGPJHC 6 (24 February 2011)

collision with a truck. Noble suffered several orthopaedic injuries, including a fracture of the right femur complicated by a 2.9cm shortening of the right leg, along with a 20 to 25° rotational deformity; a fractured right tibia rendering ongoing pain and difficulties with the right ankle and right foot with significant scarring; a fracture of the right fibula resulting in extensive scarring and deformity; a fractured right foot with scarring including a malunion of some of the metatarsal bones of the foot; a fractured right patella with extensive scarring of which the Kirchner and Cerclage wires broke some time following the corrective surgery which the plaintiff underwent, and a fractured left patella with associated scarring and knee pain which similarly required future corrective surgery which would likely result in a total knee replacement. The head injury in Noble resulted in Noble suffering reduced cognitive ability, an altered personality, and resultant mood disorders.

8 Counsel for the plaintiff did not submit why Noble was an appropriate comparator in relation to the plaintiff in this matter. The plaintiff's humerus fracture has healed (it being important to recall that the plaintiff was 5 years old when he was injured). The orthopaedic examination of the plaintiff's upper and lower limbs did not reveal any concerns. An x-ray was done, revealing a normal left arm.

9 The plaintiff in *Modisana* suffered the following injuries: a head injury with loss of consciousness and loss of recall; bruises/laceration over the right side of the face; a neck injury; contusions of both elbows and of the left leg. The plaintiff in *Modisana* was found never to have been completely pain free since the accident and had to take pain medication whenever the pain became severe.

10 The Court invited counsel to indicate how the decision in *Modisana* also served as a comparator. Counsel submitted that the plaintiff in *Modisana* also suffered an injury to the head with a loss of consciousness. The plaintiff was injured on 3 May 2012, when he was 5 years old. Dr Ntimbani, the neurosurgeon, assessed the plaintiff in 2022 when the plaintiff was 16 years old. Dr Ntimbani summarised the recordal in the hospital records when the plaintiff was admitted following the incident. There is no mention of the plaintiff having lost consciousness. The Court enquired from Counsel as to the basis for Dr Ntimbani's statement that the plaintiff lost consciousness. Counsel submitted that the plaintiff did not contend for loss of

consciousness as a basis for his claim.

11 The plaintiff's counsel did not make submissions as to the claim for general damages based on the plaintiff having suffered a head injury. Counsel was contended to say only that there was a "head injury" with the result that the plaintiff was entitled to compensation. Ultimately, plaintiff's counsel submitted that compensation in the amount between R900 000,00 and R1 200 000,00 would be fair and reasonable as general damages.

12 The award of general damages is compensation for pain and suffering, disfigurement, permanent disability and loss of amenities of life. The Court has a wide discretion to award what it considers constitute fair and adequate compensation to the injured party.³ The award must be fair to both sides, with a court granting just compensation to a plaintiff.⁴

13 Compensation between R900 000,00 and R1 200 000,00 is unjustified. The Plaintiff sought to make his case with reference to the quantum in the two decisions referred to above. Those decisions are far from being on all fours with the plaintiff's circumstances. This is apart from the fact that decisions on previous awards do not bind a subsequent court.⁵

14 Counsel for the plaintiff advanced a case for general damages based on an unspecified "head injury" and a fracture of the left humerus. The orthopaedic surgeon determined that there was nothing untoward with the plaintiff's limbs, including the left arm. The plaintiff was 5 years when he was injured. He was 15 years when assessed by the orthopaedic surgeon on 3 December 2021.

15 The plaintiff did not furnish supplementary reports to bring his circumstances up to date. Counsel did not refer the court to the reports by the other experts. The plaintiff is required to have submitted how the evidence in those reports substantiate his case in showing any pain and suffering, any disfigurement, any

³ See *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA), para 23

⁴ *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (D) at 287E-F

⁵ See *Protea Assurance co Ltd v Lamb* 1971 SA 530 at 536 A - B

permanent disability or any loss of amenities of life. As already mentioned, the plaintiff's case was argued on the bases of an unspecified head injury and a fracture of the left humerus.

16 The plaintiff claimed R1 000 000,00 for general damages in the pleadings. He now seeks R1 200 000,00 at the top end. The pleaded case was non-specific. The basis for loss of amenities of life was framed as follows: "The Plaintiff has lost those amenities of life normally associated with the injuries and consequences as set out above." I consider that an award of R350 000.00 for general damages constitutes just compensation.

17 The plaintiff only sought an order for general damages in these proceedings. I make the following order:

- (1) The defendant is ordered to pay the plaintiff the amount of R350 000.00 (Three hundred and fifty thousand rands) in respect of general damages, such payment to be made within 180 days of the date hereof.
- (2) Interest shall not be payable during the period referred to in paragraph 1.
- (3) The defendant is ordered to pay costs, including the costs of counsel on scale B.

O Mooki

Judge of the High Court Gauteng Division, Pretoria

Counsel for the plaintiff:

L B MaphELELA

Instructed by:

Lesiba Mailula Attorneys

Date heard:

10 June 2025

Date of judgement:

24 June 2025