

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

CASE NO: 42536/2021

DATE: 29-04-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 29/4/2025

SIGNATURE 

10 In the matter between

ME MASEKO obo ESTATE LATE MOERONE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ: Matter 28 on this week's roll, case number 42536/2021, the matter of Maseko Elisabeth Mpumulani,
20 *nomino officio* on behalf of the Estate late Moerone Isaac Sipholo. This matter came before court in respect of two heads of damage that transferred to the estate after the death of the erstwhile plaintiff who succumbed in circumstances not connected to the accident.

On or about 3 June 2022 the defendant conceded 100%

liability on the part of the insured driver. The defendant did not accept the plaintiff's claim for general damages and the matter was referred to the Health Professions Council of South Africa.

On 30 June 2023, a month after the concession of liability, the Health Professions Council of South Africa qualified the plaintiff for general damages. At that stage *litis contestatio* had already been reached. The plaintiff passed on, on 8
10 September 2023. In the circumstances the claim for past hospital and medical expenses as well as the claim for general damages transferred to the estate, and was pursued by the *executrix* on behalf of the estate.

Despite the Health Professions Council of South Africa having qualified the plaintiff on 30 June 2023, no attempt has been made by the defendant to settle the aspect of general damages until today i.e. 29 April 2025, close to 2 years or 22 months after the Health Professions Council's
20 ruling. It is inherently iniquitous that any plaintiff is placed in a position that a period of 22 months expires after the Health Professions Council qualifies the plaintiff without any attempt by the defendant to dispose of the claim for general damages.

As far as costs are concerned, I understand, in principle, the argument presented by the defendant today that it does not matter whether I follow the suggestion of the plaintiff's counsel or the offer of settlement submitted today by the defendant, the amount will fall within the jurisdiction of the Regional Court. That is correct, however litigation had already commenced at the time that the Health Professions Council qualified the plaintiff. At the time when summons was issued it could not have been anticipated that the
10 plaintiff would die before the litigation had been completed.

I have considered the documentation on CaseLines relating to the modest amount of R2 273.95 being claimed by the estate in respect of past medical expenses and consider same substantiated.

As far as the claim for general damages is concerned, the primary injuries on which the claim is based consist of the following:

- 20 Laceration of the left side of the forehead;
a left knee laceration;
abrasions to both shins;
a further left leg injury with abrasions;
permanent disfiguring scarring; and
psychological sequelae due to the injuries.

These constitute the injuries as contained in the particulars of claim. These do not sound particularly serious yet the HPCSA found it so. Having considered the case law, as uploaded by counsel for the *executrix*, as well as my own research *via* the electronic quantum of damages, I am of the view that the appropriate award should take into consideration the limited time period between the date of accident of 24 November 2020 and the date that the plaintiff
10 passed on 8 September 2023. However, this would be the period when most of the discomfort and pain would have been experienced. Given the nature of the injuries, over a period of time, the effects would have waned and the limited time period of the calculation does not favour the defendant. On that basis I am satisfied that an award of R300 000 is fair and equitable to both the estate and the defendant.

My order will provide for both for the past medical expenses
20 and general damages.

I asked counsel for the defendant to address the court on whether the reluctance of the defendant to finalise the matter should not attract an adverse cost order. The plaintiff was compelled to incur the costs of the continuation of the

high court litigation up to today, despite the fact that the assessment of the seriousness of the injuries had been done approximately two years ago. Having been given the opportunity to comment and not having presented an argument that persuaded me that it would be inappropriate to do so, my order therefore reads as follows:

1. The defendant shall pay the plaintiff the sum of R2 273.95 in respect of past hospital medical expenses.

10 2. The defendant shall pay the plaintiff the sum of R300 000 in respect of the claim for general damages.

3. The estate is entitled to party and party costs, as taxed or agreed, from the commencement of the matter up to 30 June 2023. The plaintiff is entitled to attorney and client costs from 7 July 2023 up to and including today. Counsel's fees to be on scale B.



.....

20 **WEIDEMAN, AJ**

JUDGE OF THE HIGH COURT

DATE: 29/4/2025