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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 3634/2021

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE: 03 /09/2025

In the matter between:

**ADVOCATE JEANNE-MARIE LIEBEL
(CURATRIX AD LITEM FOR LUCKY NKOSI)**

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Msibi AJ

[1] The plaintiff, Mr Nkosi, was a passenger in a motor vehicle which was involved in an accident. He has filed a claim against the defendant, the Road Accident Fund, for damages arising from injuries sustained during the accident.

[2] The accident occurred on 1 September 2018 at Elukwatini, Ekulindeni, Mpumalanga Province. The motor vehicle, bearing registration B[...], was driven

by G. Mathebula. The plaintiff, who was 29 years old at the time of the accident, experienced blunt trauma and subconjunctival haemorrhage to the left eye, as well as impact injuries to the left eye, neck, spine, and ribs following the collision. The plaintiff lost consciousness and was transported by ambulance from the scene to Embuleni Hospital, where he was admitted from 1 September 2018 and discharged on 7 September 2018.

[3] The plaintiff instituted this action in terms of section 17(1) of the Road Accident Fund Act 56 of 1996 (the Act), under various heads of damages, namely general damages, future medical expenses, and past and future loss of earnings.

[4] The defendant and the plaintiff settled the merits, and the defendant conceded to being 100% liable for the plaintiff's proven damages. The parties also settled the issue of future medical expenses and loss of earnings. What remains to be determined by this court is the quantification of general damages.

[5] Advocate Jeanne-Marie Liebel was appointed *curatrix ad litem* for the plaintiff as recommended by the experts, due to the plaintiff's current condition, which renders him incapable of managing his legal and financial affairs.

[6] When the matter came before me, I was advised by the Counsel for the parties that on 18 September 2023, the HPCSA tribunal had held that the plaintiff's injuries do qualify as serious injuries.

[7] The parties requested that the court proceed in terms of Rule 38(2) of the Uniform Rules of Court and dispense with the leading of oral evidence of the Occupational Therapist and the Industrial Psychologist. This request was granted. I was further advised that there was consensus on the nature of the injuries that the plaintiff had suffered. What was in dispute was the sequelae of the said injuries. The plaintiff led the evidence of 4 experts in respect of his general damages.

Summary of the evidence

[8] The neurologist, Doctor Kevin David Rosman, examined the plaintiff on 18 April 2023. The plaintiff complained of the following: pain involving the entire back, inability to control his sphincters, and being doubly incontinent. These symptoms started 2 weeks after the accident. The plaintiff further complained of pain in the left shoulder, lower abdomen and left lower leg. He had none of these complaints before the accident.

[9] Upon examination, the neurologist established that the plaintiff had suffered various orthopaedic injuries. He appeared to have suffered a whiplash injury of the neck, and there was also evidence of compression fractures of the vertebrae T3 and T4. He had signs and symptoms of a central cord lesion, with a degree of double incontinence and mild weakness in the left arm and leg, as well as impotence. These problems could have arisen from either a central cord lesion as a result of syringomyelia or from microvascular changes as a result of compression of the spinal cord. These issues were certainly a result of the injuries suffered in the motor vehicle accident.

[10] The abovementioned problems need urgent medical attention; if not, the spinal cord injury will gradually worsen. The plaintiff suffers from headaches, which could be caused by the shoulder injury. Without surgery, there is a 75% chance of the plaintiff being paraplegic, but with surgery, there is a 50% chance of improvement.

[11] During cross-examination, Advocate Manakana sought to establish the fact that the plaintiff never complained of a back injury while he was in hospital, which negates the fact that the double incontinence was caused by the accident. The plaintiff was X-rayed while in hospital, but this was not picked up. If the sequelae were a direct result of the injuries, he would have complained of same while he was in hospital. In reply, the expert stated that this was probably due to the fact that the plaintiff lay flat on his back on his hospital bed and did not exert weight on his back. The hospital staff would most probably have X-rayed his back

if he had complained about it. The sequelae are a result of pressure being exerted on the spinal cord consistently over a long period of time.

[12] It was further stated by the expert that the incontinence was caused by spinal cord injury, which has since caused sensory deficiencies. The plaintiff never had these issues before the accident.

[13] The orthopaedic surgeon, Doctor Vic Oelofse, examined the plaintiff and compiled a medico-legal report dated 23 March 2023. He also compiled an addendum report dated 19 July 2023. According to the orthopaedic surgeon, the plaintiff sustained an acceleration and deceleration/whiplash with severe symptomology in the cervical spine, compression fractures of T3 and T4 of the thoracic spine, soft tissue injury of the lumbar spine, soft tissue injury to the acromial clavicular joint with secondary osteo arthritis and soft tissue injury up to the ankle joint.

[14] The sequelae regarding the cervical spine are the following: moderate tenderness over the lower cervical spine, over the midline and left paravertebral regions, and moderate spasms of the trapezius and neck muscles. The range of motion is severely impaired and associated with severe pain.

[15] The sequelae regarding the thoracic spine are the third prominence of the spinous process. With regard to the lumbar spine, there is a complete loss of lordosis muscle, tenderness over the left and right paravertebral regions, and mild pain on straight leg raises. The range of motion is severely impaired and associated with severe pain.

[16] On 18 April 2023, the expert examined the plaintiff and compiled an addendum legal report on 23 May 2023, in which the plaintiff complained that he could not control his sphincters and he was doubly incontinent. He informed the expert that these problems began a few weeks after the accident

[17] Clinical Psychologist, Sune Swart, on 9 June 2023, assessed the plaintiff

to determine the presence and extent of neuropsychological effects stemming from the motor vehicle accident. From her observation, the plaintiff was oriented to person, place and time. He was accompanied by his sister. He appeared dishevelled and wore sandals in cold weather. His mood seemed somewhat dysthymic, and his range of expression was restricted. His responses were appropriate but lacked detail, and additional prompting was needed for elaboration. He could not complete forms independently. He seemed to lack sufficient insight into his difficulties.

[18] He stated that he struggles with urinary and faecal incontinence since the accident, as a result, he prefers not going far away from home or where there is no toilet. As a result, he has reduced his food and water intake.

[19] He experiences chronic pain, worsened by any static posture. He cannot walk long distances or carry heavy objects. The plaintiff had no brain injury before the accident. He is now forgetful, according to his sister, he would leave a pot on the stove and go to his friends while cooking. He is reported to be prone to using his money on alcohol and cigarettes. He has a tendency to put multiple items of clothing in the bath with water and soap and leave them until they rot. When asked why he left his clothes like that, his response was that his arms would get painful when carrying out such chores. His sister added that he did not have these tendencies before the accident.

[20] The expert observed objective indications of cognitive deficits, including executive functioning difficulties. The expert therefore recommended that a *curator ad litem* be tasked to investigate and make recommendations to the court regarding potential protection of funds either by way of a Trust or the appointment of a *curator bonis*, while care is taken against potential exploitation.

[21] On 23 July 2023, the urologist Dr Jacobus Henning examined the plaintiff, who was 33 years of age. He had suffered multiple injuries as a result of a motor vehicle accident, which occurred on 1 September 2018. His urological complaint was that he had been suffering from urinary incontinence since his involvement in

the accident. He had no prior surgical or urological history; however, since the accident, he has been experiencing lower urinary tract symptoms, namely, poor stream, nocturia 3 times a night, as well as incontinence. He is not married, does not have children or a girlfriend. He is not sexually active. He is not working nor taking part in any sport.

[22] Upon examination, his penis and scrotum were normal. Rectal examination was normal with tonus. The plaintiff complained of mild erectile dysfunction. The cause of his incontinence is probably neurological in nature. The expert referred to Dr Rosman's opinion regarding a possible central cord lesion being the cause of the incontinence and erectile dysfunction. The two conditions have a direct effect on his social life, but not on his income as well as his work potential. Due to his whiplash injury, there is a 50% chance of him becoming paraplegic.

[23] During cross-examination, Counsel for the defendant asked the expert the purpose of the examination of the anal tonus, to which the expert stated that this is to establish the good function of the nerves, and to see if the nerves that supply the bladder were intact. He found them to be normal; his conclusion was that the cause of his problems was neurological in nature.

[24] Both Counsel for the plaintiff and the defendant argued on the quantification of the plaintiff's damages, referring me to decided cases that have been of assistance in this regard.

Submissions by Counsel on legal principles and comparable awards

[25] In her argument, Advocate Delport referred me to the matter in *De Jongh v Du Pisanie NO*¹ to advance a contention that in exercising my discretion, I should take into account a broad spectrum of facts and circumstances that include the nature of the injuries, the severity thereof and how it impacts on the quality of life

¹ *De Jongh v Du Pisanie NO* 2005 (5) SA 457 (SCA); [2004] 2 All SA 565 (SCA).

of the plaintiff. Furthermore, I should also consider the modern approach, which takes into account the rising standards of living and the growing tendency of higher awards in respect of general damages.

[26] In the unreported judgment of *Benade and Benade v The Road Accident Fund*,² the plaintiff had suffered multiple orthopaedic injuries that included, fracture of the left clavicle, a compound fracture of the radius and ulna, fracture of the left 4th and 5th metacarpal shafts of the knuckle joints of the hand, fracture of the right superior and inferior pubic rami of the pelvis and fracture of the right tibia. He could not use his right hand. He had no bladder control, no bowel sensation. In 2008, the award for general damages that was made was the sum of R600 000.00, which translates to R3 709 683. 18 in 2025.

[27] In *Schmidt v Road Accident Fund*,³ the plaintiff had suffered fractures of the left humerus, left proximal radius and ulna at the elbow, right midshaft radius and left fibula. She also had a knee injury that became infected at some stage, thus increasing the possibility of a bilateral knee replacement and one revision later on. She was awarded R600 000.00, which translates to R1 098 432 in 2016.

[28] In *Morake v Road Accident Fund*⁴ the plaintiff sustained a C5/C7 fracture coupled with a dislocation to his spine at C6/C7, a fracture of C7, contusion to his right hand and lungs and a head trauma with degloving injuries over the occipital skull. The plaintiff was awarded general damages that translate to R3 531 520 in current monetary value.

[29] In *Klein v Road Accident Fund*,⁵ the plaintiff had sustained fractured ribs and, L1 burst fracture. A fracture of the spine at T12, a severe fracture of the pelvis, and a rupture of the anterior inferior aspect of the bladder. Open fracture to the ankle. He was awarded an amount that translates to R1 604 011.93 in

² *Benade and Benade v The Road Accident Fund* (Case number 536/2007, Eastern Cape High Court).

³ *Schmidt v Road Accident Fund* [2006] ZAGPHC 64.

⁴ *Morake v Road Accident Fund* [2017] ZAGPPHC 761.

⁵ *Klein v Road Accident Fund* [2008] ZAECHC 203.

current monetary value.

[30] In *Khumalo v Road Accident Fund*,⁶ the plaintiff, who had sustained a left humerus midshaft fracture and left tibia fracture, was awarded R1 145 412.31 in current monetary value.

[31] Counsel for the plaintiff submitted that an amount of R1 700 000.00 is a fair award for the plaintiff's general damages.

[32] Advocate Manakana referred to the following decided cases in support of his submission that the plaintiff deserves lesser damages award.

[33] In the matter of *A M and Another v MEC for Health, Western Cape*⁷ where it was held that before any weight can be given to an expert's opinion, the facts upon which that opinion is based must be found to exist. The court held further that inferences must be reasonably capable of being drawn from facts.

[34] In *Road Accident Fund v S M*⁸ it was held that in a trial action, it is fundamental that the opinion of an expert must be based on facts that are established by evidence.

[35] In *Myburgh v Road Accident Fund*,⁹ the plaintiff had sustained L2 compression fracture, a C5/6 compression fracture, an atraumatic annular tear C4/5 intervertebral disc, spinal narrowing and volume loss in the brain. The plaintiff was awarded that translates to R1 379 747.00 in respect of loss of earnings and general damages in 2021.

[36] In *H.P.F. v Road Accident Fund*,¹⁰ the plaintiff had suffered a fracture of the right clavicle, fracture of the left humerus, left scapula and a left rib and

⁶ *Khumalo v Road Accident Fund* [2006] ZAGPHC 26.

⁷ *A M and Another v MEC for Health, Western Cape* [2020] ZASCA 89; 2021 (3) SA 337 (SCA) paras 20 and 21.

⁸ *Road Accident Fund v S M* [2019] ZASCA 103 para 1.

⁹ *Myburgh v Road Accident Fund* [2021] ZAGPPHC 202.

¹⁰ *H.P.F. v Road Accident Fund* [2024] ZAFSHC 73.

anterior wedge of the fracture of the T3 and T4 with mild concussive head injury. The plaintiff was awarded general damages, translating to R525 000.00 in 2024

[37] Advocate Manakana argued that it has been proven that the plaintiff suffered orthopaedic injuries. On the contrary, there is no conclusive evidence that he suffered a neurological issue as a result of the injuries. If his current sequelae were a direct result of injuries sustained during the accident, he would have complained of such while in hospital; alternatively, the extent of the injury would have been established from the hospital X-rays. He further argued that the neurosurgeon failed to prove that the plaintiff might be quadriplegic in future. He also could not state with certainty that he will be a paraplegic in future. Secondly, the experts failed to prove that his incontinence was a result of spinal cord injuries. The expert testified that the plaintiff complained of double incontinence, but he could not establish its medical origin. Counsel submitted that an amount of R600 000.00 would be fair under these circumstances.

Application of the law to the facts

[38] The approach and process of comparison of previous awards was described as follows in the matter of *Protea Assurance Co Ltd v Lamb*:¹¹

“It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court’s general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may

¹¹ *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H-536A-B.

be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their *sequelae* may have been either more serious or less than those in the case under consideration.”

[39] In the matter of *De Jongh v Du Pisanie*,¹² on the fairness of the award, Brand JA also cited, with approval, a passage from the judgment of Holmes J in the matter of *Pitt v Economic Insurance Co Ltd*¹³ where he stated the following:

“... the Court must take care to see that its award is 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.”

[40] In determining general damages, the court is called upon to exercise a broad discretion to award what it considers to be fair and adequate compensation, having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered, including their nature, permanence, severity and the impact on the plaintiff's lifestyle. There is no hard and fast rule of general application requiring the court to consider past awards, as they are seldom on all fours with the facts of the case under consideration.

[41] The plaintiff has suffered orthopaedic injuries that have resulted in pressure on his spinal cord with a 50% probability of him developing paraplegia despite surgical intervention. He already has incontinence for faeces and urine, meaning that he has to rush to the toilet as soon as he gets the urge to do so, failing which there will be uncontrollable urine or bowel movement.

[42] He is said to be suffering from back and shoulder pain and finds various tasks challenging. He cannot walk long distances or carry heavy objects as he used to. It is clear that he has suffered severe functional impairment, which might deteriorate with time.

¹² *De Jongh v Du Pisanie* [2004] 2 All SA 565 (SCA) para 60.

¹³ *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (N) at 287E.

[43] The neurosurgeon could not state with absolute certainty that the lower spinal injuries are the cause of his double incontinence. His evidence is to the effect that the accident is the most and only probable cause.

[44] It is not in dispute that the plaintiff was working as a bricklayer before the accident, and that he was a healthy young man with no physical or neurological limitations. He is currently unemployable. He started experiencing double incontinence two weeks after the accident. From the evidence led in this regard, which includes the fact that he suffered injuries to his spine, this court can safely exclude the possibility of another unrelated injury or condition that could have caused these sequelae.

[45] I am satisfied that the plaintiff has proven his claim for general damages on a balance of probabilities.

[46] The sequelae referred to in some of the plaintiff's cases are more serious than those suffered by the plaintiff. The sequelae closest to that of Mr Nkosi are the ones suffered by the plaintiff in *Klein v RAF (supra)*.

[47] Counsel for the defendant has referred this court to cases where the plaintiffs suffered only orthopaedic injuries with no neurological sequelae. It is therefore my considered view that an amount of R1 500 000.00 is a fair and reasonable award for general damages in the circumstances.

[48] With respect to the issue of trial costs, and considering that this case required legal counsel due to its complexity, I conclude that the plaintiff is entitled to recover trial costs for three days at scale C.

[49] I make an order in terms of the Draft Order marked "X", as amended, and initialled by me, which is incorporated in this paragraph.

S MSIBIACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

Plaintiff: Advocate IEM Delport
Instructed by: Frans Schutte & Matthew Phosa INC
Mbombela

Defendant: Advocate S Manakana
Instructed by: The State Attorney
Mbombela

Matter heard on: 28- 30 July 2025
Judgment delivered on: 03 September 2025