



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 29609/2012

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

 

25 AUGUST 2025

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SIGNATURE

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DATE

In the matter between:

SIWELA MAKHWELHWE JOHANNES

First Plaintiff

MADONSELA EMILE MAVIKATI

Second Plaintiff

MADONSELA SIPHIWE MARTHA

Third Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT IN RESPECT OF SECOND PLAINTIFF

LABUSCHAGNE J

- [1] Three actions arising from a police shooting incident in Mashishing 16 years ago were consolidated and the actions of the first and third plaintiffs have been settled. The only dispute that remains is quantum in the action of the second plaintiff against the Minister of Police.
- [2] The Minister's liability as against the second plaintiff (the plaintiff hereafter) has also already been determined in a separate trial.
- [3] The heads of damage in issue are general damages, future medical expenses and loss of earnings. Although past medical expenses are claimed on the pleadings, this claim has been abandoned.
- [4] At the commencement of the trial a Rule 38(2) application was brought for expert evidence to be adduced on behalf of the plaintiff by means of affidavit. The application was not opposed, and an order was granted permitting the evidence of the experts to be adduced through affidavits supported by expert reports.
- [5] The matter proceeded before me on the expert reports and joint minutes so received into evidence. The defendant filed reports of four experts but no Rule 38(2) application was brought and the reports are not before me. The defendant relied exclusively on the joint minutes his experts produced with like experts of the plaintiff.
- [6] In light thereof, as will appear below, the issues in dispute are limited.

[7] The plaintiff's claim arises from a shooting that took place on 05 June 2009 in the Mashishing Township, Mpumalanga. As a result of the shooting, the plaintiff sustained a gunshot wound to her righthand and a gunshot wound to the temporal area of the head, with entry through the right temple and exit through the right occiput. The Minister has been found hundred percent liable to the plaintiff in a judgment dated 17 March 2020 by Fourie AJ.

[8] The joint minutes referred to include the following:

8.1 Occupational Therapists – Ms F Steyn and Ms C Sivhabu.

8.2 Neurosurgeons – Dr Moja and Prof J R Ouma.

8.3 Educational Psychologists – Ms A Naicker and Ms N Rajuili.

8.4 Industrial Psychologists – Dr Tsiu and Ms R Y Ntuli.

[9] The following reports are unchallenged before me:

9.1 Orthopaedic Surgeon – Dr Matima.

9.2 Plastic Reconstructive Surgeon – Dr Tshukudu.

9.3 Clinical Psychologist – Ms N Sewpershad.

9.4 ENT Specialist – Dr CJB Smit.

9.5 Ophthalmologist – Dr DT Cornelius.

9.6 Speech and Language Therapist – Ms A Stipinovich.

[10] According to Dr Matima, the plaintiff's history of injuries are:

10.1 A gunshot injury to the head with brain injury and loss of consciousness/recall.

10.2 Right sided facial nerve palsy.

10.3 Bleeding from the right ear with associated hearing loss.

10.4 Multiple facial bruises.

10.5 Gunshot injury to the right hand.

[11] As a result of the injuries the plaintiff reported the following complaints to Dr Matima:

11.1 Frequent and recurring headaches.

11.2 Persistent righthanded facial nerve palsy resulting in a skew, deformed mouth.

11.3 Noticeable forgetfulness and memory difficulties post-accident.

11.4 Impaired vision in the right eye with inability to fully close the eye and excessive tearing.

11.5 Deafness in the right ear.

- [12] According to Dr Matima, the plaintiff suffers permanent sequelae from the brain injury and her prognosis is poor with poor long-term morbidity.
- [13] According to Prof Lekgwara, Specialist Neurosurgeon, the plaintiff lost consciousness after being shot and awoke two days later at the Rob Ferreira Hospital. She was initially treated by a general practitioner at the Lydenburg Hospital but was airlifted to Rob Ferreira where she underwent head surgery behind the right ear and the insertion of a left intercostal drainage tube. She was hospitalised for a month.
- [14] Prof Lekgwara's report deals with future treatment for meningitis and skull repair, a topic on which the other experts referred to below made no contribution. He allowed, as far as treatment for meningitis is concerned an amount of R100 000.00, and for skull repair R300 000.00. Those figures were adjusted by the actuary to reflect current rates.
- [15] The plaintiff appointed another Neurosurgeon, Dr TP Moja who also filed an addendum report dated 23 June 2025. Dr Moja listed the complaints which coincided with those reported to Prof Lekgwara. He however indicated that her right eye is now completely blind with a pupil that is non-reactive to light. In her left eye she had poor vision (20/100). She had a complete right lower motor neuron facial nerve paralysis, complete deafness in her right ear and the scarring was noted: right zygomatic arch, right suboccipital region and left intercostal area. His neurological findings include the following:
- 15.1 Brain contusion which led to residual gliosis (scarring) in the right cerebellum.

- 15.2 An injury classified as a severe diffuse and focal primary brain injury;
 - 15.3 Clinical signs of circulatory shock upon admission, which may have caused a secondary high proxy brain injury.
 - 15.4 Permanent right facial nerve paralysis.
 - 15.5 A complete deafness in the right ear (possible vestibulocochlear nerve injury).
 - 15.6 Visual impairment (on which he defers to an Ophthalmologist).
 - 15.7 Persistent post-traumatic headaches and neurocognitive deficits (deferring to a Clinical Psychologist).
 - 15.8 As far as future treatment for headaches and earache is concerned, Dr Moja permitted R2 500.00 per year lifelong.
- [16] The plaintiff was approximately 18 years old at the time that she was shot and 35 years old at the time of the trial. Her occupational history included 1 year in a community work programme performing litter collection. She has had no other employment and remains unemployed.
- [17] Dr Moja describes the head injury as a severe one, while the defendant's expert, Prof Ouma, regards the injury as being moderate. There is no dispute however about the sequelae and the parties are ad idem that not much turns on the categorisation of the seriousness of the brain injury in the circumstances.

[18] An addendum was produced, prepared by the Actuary, in which he has listed the future medical expenses proposed by each of the experts together with the regularity with which it is expected to be incurred. The amounts are stated in current value terms. The amount for future medical expenses, according to the plaintiff, is R3 926 069.00. This includes the application of a general 20% contingency save for the cost of one item.

[19] The contentious issue pertaining to future medical expenses relates to an amount of approximately R3,5 million (Item 52 on the addendum) pertaining to an activity centre. The plaintiff at present resides with her mother, on whom she is dependent.

[20] The expense pertaining to future aftercare relates to periods when the plaintiff's mother is unable to render such services as caring for the plaintiff. The cost is on a living in basis. The plaintiff has suggested the application of a 50% contingency, as this is not a cost currently incurred and relates to a future event, for example after the plaintiff's mother has passed away.

[21] The defendant has postulated a 60% contingency, but without any specific factual basis. I am satisfied with the application of a 50% contingency to the aftercare/activity centre claim, reducing it to R1 752 288.00.

[22] A breakdown of that claim therefore reads as follows:

22.1 PL Lekgwara (Neurosurgeon)

22.1.1	Meningitis treatment - R15 070.00 minus 20% contingency	R12 056.00
22.1.2	Base skull repair – R452 070.00 minus 20% contingency	R361 656.00
22.2	Dr TKP Moja (Neurosurgeon)	
22.2.1	Headache and right earache treatment – R95 290.00 minus 20% contingency	R76 232.00
22.3	Dr DLC Stolp (Ear Nose and Throat Specialist)	
22.3.1	R1 238 990.00 minus 20% contingency	R991 192.00
22.4	GM Tshukudu (Plastic Surgeon)	
22.4.1	R403 260.00 minus 20% contingency	R322 608.00
22.5	A Stipinovich (Speech Therapy & Audiology)	
22.5.1	R4 110.00 minus 20% contingency	R3 288.00
22.6	N Sewpersad (Clinical Psychologist)	
22.6.1	R273 600.00 minus 20% contingency	R218 880.00
22.7	DT Cornelius (Ophthalmologist)	

22.7.1	Lateral tarsorrhaphy - R42 900.00 minus 20% contingency	R34 320.00
22.8	F Steyn / Phasha (Occupational Therapist)	
22.8.1	Long-term occupational therapy – R92 360.00 minus 20% contingency	R73 888.00
22.9	Case Manager	
22.9.1	R99 580.00 minus 20% contingency	R79 664.00
22.10	Activity Centre – live in	
22.10.1	R3 504 570.00 minus 50% contingency	R1 752 285.00
TOTAL		R3 926 069.00

GENERAL DAMAGES

- [23] The plaintiff had no prior history of neurological impairment, psychiatric or psychological problems. She had progressed academically up to Grade 10 at the age of 18 when she was shot. Following the traumatic brain injury, she failed Grade 10 twice and ultimately dropped out of school. Her premorbid intellectual functioning was based on an average IQ.

[24] The physical consequences of the plaintiff's injury include the following:

- 24.1 Right-sided facial nerve palsy (the seventh cranial nerve), resulting in visible facial disfigurement, dry-eye syndrome and an incomplete closure of the right eye.
- 24.2 Total right-sided hearing loss, anosmia, altered taste sensation and reduced right eye vision.
- 24.3 Persistent post-concussive symptoms like headaches, dizziness, fatigue and difficulties with balance and coordination.
- 24.4 Dysarthria affecting verbal communications.

[25] She has the following psychological consequences:

- 25.1 A moderate to a severe impairment in memory, attention, executive functioning, learning and processing speeds. These shortcomings were consistently observed from the assessment by experts in 2021 and also in 2025 at follow-ups.
- 25.2 The plaintiff has undergone emotional trauma and suffers from a major depressive disorder and PTSD. She has a marked personality change, and now displays irritability, low frustration tolerance, is socially withdrawn and her mood is unstable.

25.3 Her psychometric score supported diagnoses are severe depression, generalised anxiety and PTSD with longstanding trauma symptoms and a severely diminished quality of life.

[26] Dr Tshukudu also records scarring on the left shoulder, which may benefit from a revision.

[27] Pre-morbidly the plaintiff had the capacity to pass matric and obtain a diploma at NQF6 level. Post accident, she is permanently unemployable due to cognitive, physical and emotional sequelae.

[28] Comparative judgments give some guidance in determining an appropriate quantum. In the matter of **Van Rooyen NO v Road Accident Fund** 2022 (8A4) QOD156 (GNP), (77303/2018) [2021] ZAGPPHC 334:

28.1 The plaintiff was a minor who sustained a fracture of the right tibia together with a concussive head injury.

28.2 The plaintiff suffered neurocognitive deficits albeit that the experts differed as to the seriousness of the head injury. There were behaviour changes which were confirmed by poor school reports. There was post-traumatic stress disorder as well as major depressive disorder present.

28.3 An award of R2 200 000 in 2018 represents R2 755 000.00 in current terms.

[29] In the matter of **Anthony v Road Accident Fund** (27454/2013) [2017] ZAGPPHC 161:

29.1 The plaintiff was a 22 year old female who suffered:

29.1.1 a bilateral medial orbital fracture;

29.1.2 an inferior blow out fracture;

29.1.3 multiple facial lacerations and open wounds;

29.1.4 bruising to the upper arm;

29.1.5 broken and lost teeth;

29.1.6 a moderate to severe head injury; and

29.1.7 severe scarring and disfigurement.

29.2 The plaintiff's neurocognitive and neuropsychological difficulties were permanent, and she presented with depression, anxiety and behaviour changes.

29.3 She had a wide scar on the top of her head with loss of hair and extensive facial scars.

29.4 An award of R1,6 million for general damages in 2017 represents R2 357 000.00 in current terms.

- [30] In argument counsel for the defendant postulated an award of damages in the region of R1,5 million to R2 million. The plaintiff's counsel moved for an award of general damages of R2 million. The high end of that scale is more appropriate in my assessment, taking into account all the facts and circumstances of the matter as set out above. An award of an amount of R2 million is made for purposes of the claim for general damages.

FUTURE LOSS OF EARNINGS

- [31] The plaintiff was at school at the time of the shooting and has not had significant employment since, other than picking up litter for a year. It is common cause that the plaintiff is unemployable. A total loss is therefore on the cards. The only contentious issue between the parties relates to the application of an appropriate contingency. The plaintiff's counsel argued for a 15% contingency, while the counsel for the defendant argued for a 20% contingency.
- [32] I am satisfied that the period that is to be covered by a loss of earnings claim represents a past loss of 16 years and a further 30 year career. The parties applied a 5% contingency to the past. The plaintiff contends for a 15% contingency for future loss while the defendant contends for a 20% contingency. 15% is insufficient in these circumstances and a higher contingency, due to the long duration involved, is justified. The plaintiff's claim for future loss of earnings is therefore subject to a 20% contingency deduction.
- [33] It is common cause that a Trust needs to be created to protect the funds for the benefit of the plaintiff.

[34] The loss of earnings is therefore calculated on the following basis:

Premorbid earnings (had the accident not occurred)

34.1	Past loss of earnings	R2 126 600.00
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34.2	Less contingency – 5%	R106 330.00
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	Subtotal	R2 020 270.00
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34.3	Future loss of earnings	R10 539 900.00
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34.4	Less contingency – 20%	R2 107 980.00
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	Subtotal	R8 431 920.00
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34.5 The amount of actual earnings, post morbidly is so negligible that it is disregarded.

34.6 The plaintiff's total loss of earnings is therefore R10 452 190.00.

[35] The claim is quantified as follows:

35.1	Future medical expenses	R3 926 069.00
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35.2	Future loss of earnings	R10 452 190.00
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35.3	General damages	R2 000 000.00
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TOTAL		R16 378 259.00
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In the premises I make an order reflecting the aforesaid in terms of the draft annexed hereto marked "X", incorporating the trust deed of the trust to be established.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

Counsel for the Second Plaintiff:	Adv MV Botomane
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Counsel for the Defendant:	Adv L Kalashe
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