

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2009/26192

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
15 October 2025	
DATE	SIGNATURE

In the matter between

ERIC SALONI

Plaintiff

And

MINISTER OF POLICE

Defendant

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 15 October 2025.

JUDGMENT

KEKANA AJ

Introduction

[1] On 15 October 2025, I gave an order in which I directed that:

1.1 The defendant pays the plaintiff an amount of R 1850 000,00 for full and final settlement of this claim.

1.2 The defendant is ordered to pay the costs of this action on a party-and-party scale, including costs for obtaining the following medico-legal reports:

1.2.1 Dr T.H. Ndlovu - Ophthalmologist

1.2.2 DR D.M. Manyane - Neurologist

1.2.3 SISEKO Mkalipi - Occupational therapist

1.2.4 DR Z. Shaik - Industrial psychologist

1.2.5 PG Human - Actuary

[2] Before me was a claim in which the plaintiff had instituted an action for damages arising from injuries sustained caused by the defendant's negligence. Both parties agreed that the matter proceed in terms of Rule 38(2) of the Uniform Rules of the Court, wherein the Court was requested to accept evidence (expert evidence) by way of reports.

Background

[3] It is alleged that the plaintiff was shot with a rubber bullet in his right eye by a police officer during a service delivery protest. The incident took place on or about 26 June 2009. The merits have since been settled on 29 July 2019 before

the Honourable Notojane J, with the defendant/s ordered to pay 100% of all the plaintiff's proven damages. The only issue that remains in dispute is the quantum.

Contentions by the parties

[4] The plaintiff's claim on the quantum in brief is as follows:¹

4.1. Past and future medical expenses – R450 000,00

4.2. General damages – R2 000 000,00

4.3. Past and future loss of income – R1915 464,00

[5] As regards past and future medical expenses, the plaintiff submitted that, based on the injuries sustained, he should be awarded an amount of R450 000,00. This was motivated by the reports from Drs Ndlovu and Carmichael (the "Doctors") who have agreed in their joint minutes that the cost of both surgical and non-surgical future medical expenses, including professional interventions, transportation, home assistance, assistive devices, and other services, is estimated at an amount of R450 000,00.²

[6] In retort, the defendant submitted during the hearing that the two experts' computation of medical expenses was based on the use of private health care rates, whereas the plaintiff utilises public health care.

[7] As regards general damages, the plaintiff, in its main heads of argument, cited relatively comparable authorities³, was of the view that the amount of R500 000,00 would be fair. This amount was raised in the plaintiff's supplementary heads of argument to an amount of R2 000 000,00. Again, the plaintiff cited relatively comparable authority in raising this amount.⁴ The defendant also citing relatively comparable authorities, contended that an amount of R500 000,00 was to be awarded.

¹ Plaintiff's supplementary heads of argument.

² Dr TH Ndlovu "Medicolegal Report" at 3 & 4.

³ *Minnie v Santam Insurance Co Ltd* (1) 1975 2 QOD 629, *JV v Road Accident Fund* 2019 (7B4) QOD 104 (FB), *Mtembu v Minister of Police* [1991] LNQD 10 (D).

⁴ *Julius v McKenzie t/a Peter McKenzie Attorneys* (1117/2019) [2024] ZAECQBHC 87 (23 May 2024), *Rapudungwane v Minister of Police* (5524/2019) [2023] ZAFSHC 317 (4 August 2023) at para 40.

- [8] On the claim for past and future loss of income, the plaintiff, relying on the expert report from the actuary, argued that an award of R1915 464,00 would be fair. In retort, the defendant argued that an amount of R750 000,00 was fair. In which case, the defendant submitted that a total amount of R1500 000,00 would be fair.

Legal principle and analysis.

- [9] In analysing the evidence before me in its conspectus, peripheral facts and aspects taken into account by the experts when compiling their reports were reviewed. Upon perusal of the reports, I was able to deduce as regards medical expenses, that Drs Ndlovu and Carmichael (the “Doctors”), in arriving at an amount of R450 000,00, used private health care rates. The submission by counsel for the defendant during the hearing that the two experts’ computation of medical expenses was based on the use of private health care rates, whereas the plaintiff utilises public health care for medical treatment, is hereby accepted. Subserviently, this point was neither contested nor disputed by the plaintiff; for that reason, public health care rates should have been considered. A reduced amount of R250 000,00 is considered by this Court to be fair.
- [10] I will now deal with the claim for general damages. The authority relied on by the plaintiff in its supplementary heads, while highly persuasive, is not binding on other High Court divisions (like Gauteng), though they would likely consider it seriously. The principle adopted by the Appellate Division, now the Supreme Court of Appeal (SCA), remains not only applicable but most importantly binding.
- [11] In **Sandler v Wholesale Coal Suppliers Ltd**⁵ it was held that:

“...it must be recognised that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general

⁵ 1941 AD 194.

considerations, and the figure arrived at must certainly be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case."

- [12] Nugent JA observed in **Minister of Safety and Security v Seymour**⁶, that while comparing cases may be a useful guide, it is:

"fraught with difficulty . . . (t)he facts of a particular case need to be looked at as a whole and few cases are directly comparable . . . (t)hey are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that."

- [13] It is important to note that the award must be fair to both parties – adequate to console the plaintiff but not overly generous to unjustly enrich them. The Constitutional Court also cautioned in the case of **Mahlunga and Another v Minister of Police**⁷ that such awards are a goodwill gesture for the successful plaintiff and not to rectify the wrong that has been committed.

- [14] Having considered all issues brought before me and having regard to the physical and psychological sequelae of the plaintiff's injuries, and considering the comparable cases cited by both parties, the defendant, including the plaintiff in its main heads of argument, I conclude that an award of R500 000,00 for general damages would be fair. Also, considered is the plaintiff's success in other segments of the case i.e. the other awards successfully claimed from the same incident, the damages, all of which are to be incurred by the defendant. In the case of **Pitt v Economic Insurance Company Limited**⁸, Holmes J (as he then was) stated that:

"The court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense."

- [15] Lastly, I will now turn to the issue of past and future loss of income. It was indicated that the plaintiff started working for Malleable Castings from 11 August

⁶ (295/05) [2006] ZASCA 71 at para 17.

⁷ 2021 (7) BCLR 698 (CC).

⁸ 1957 (3) 284 (D) at 287E.

2008 and was dismissed for misconduct on 13 June 2019⁹. There was no evidence on the papers nor during the hearing linking the dismissal from Malleable Castings to the injury sustained on or about 26 June 2009 (*the shooting incident*). It is for that reason that I am of the view that but for the misconduct, which is a completely unrelated issue, the plaintiff would be employed and working for Malleable Castings, maybe even to date. Consequently, the income that the plaintiff would have received from this employment would have been considered in the computations of past and future loss of income by the actuary, and this would have triggered a major difference in the actuaries' calculations and conclusions.

- [16] In the case of **Road Accident Fund v Guedes**, it was held that the actuaries' evidence only serves as a guide to the Court.¹⁰ At this point, as regards this aspect, I can state that part of the actuarial calculations which have been provided is therefore of no assistance to this Court. I have therefore decided to exercise the court's discretion and deviate therefrom and grant an amount that I consider to be fair and just to the plaintiff. An amount of R1 100 000, 00 would be a fair and just amount for past and future loss of income.

Conclusion

- [17] Experts are advisors, not decision-makers; the court is not bound to simply accept the numbers proposed by expert witnesses (such as actuaries, doctors, or industrial psychologists). The experts provide the evidential foundation and their professional opinion. Judicial discretion is paramount: The Court has the ultimate responsibility to assess all the evidence, test the assumptions in the expert reports, consider the credibility of the witnesses, and apply legal principles to arrive at a fair and just award. The Court may then adjust the final award upward or downward based on its overall view of the case. The total amount of R1 850 000,00 is considered a comprehensive compensation package designed to place the plaintiff in better financial terms, for the losses suffered due to the defendant's negligence.

⁹ Para 5 of the Plaintiff Main Heads of Argument – 019 – 9.

¹⁰Road Accident Fund v Guedes 2006 (5) SA 583 (SCA) at para 8.

Order

[18] In the premises, the following order is granted:

a) The defendant shall pay the plaintiff the sum of R1 850 000, 00 calculated as follows:

- i. Past and future medical expenses and related assistance devices:
R250 000,00
- ii. General Damages: R500 000,00
- iii. Past and future loss of income: R1100 000,00

(b) The defendant is ordered to pay the costs of this action on a party-and-party scale, including costs for obtaining the following medico-legal reports:

- i. Dr T.H. Ndlovu - Ophthalmologist
- ii. Dr D.M. Manyane - Neurologist
- iii. Siseko Mkalipi - Occupational therapist
- iv. Dr Z. Shaik - Industrial psychologist
- v. PG Human – Actuary



KEKANA ND

Acting Judge of the High Court

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