



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A2025-023274

1. Reportable: No
2. Of interest to other judges: No
3. Revised

WRIGHT J

In the matter between:

MAUELELE, ORLANDO FRANCISCO

APPELLANT

and

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT – WRIGHT J

1. The appellant, Mr Mauelele was 42 years old when he was knocked over by a car on 3 November 2018. He instituted action against the respondent Fund, claiming damages under various heads. It was agreed that the Fund would be liable for 80% of proven damages. The only claim not settled was that for general damages. That issue went to trial, on a default judgment basis, the Fund having been barred from pleading.
2. Joseph AJ awarded R500 000 as general damages. The award of R500 000 appears to be before the deduction of the 20% apportionment. Mr Mauelele now appeals and with the leave of the court below.
3. At the trial, Mr Pilusa appeared for Mr Mauelele and Ms Ameersingh appeared for the Fund. At the outset, Ms Ameersingh, duly authorised by the Fund expressly tendered R500 000 in respect general damages. It is not clear from the record whether the tender was pre or post apportionment. In the end, nothing turns on this uncertainty.
4. There is no document on record which contains an express acceptance of liability by the Fund for general damages but I take Ms Ameersingh's offer as implied acceptance by the Fund of liability for general damages.
5. The Fund has not opposed this appeal by filing heads of argument. At the hearing, Ms M Mhlongo appeared for the Fund and said that the appeal is not opposed. She expressly did not concede the appeal. She said that the matter had not settled. We are thus not relieved of the duty to consider the appeal.

6. The trial hearing was very short. No witnesses were called. A written application by Mr Mauelele, under Rule 38(2) that “ *the factual evidence of the plaintiff and witnesses as well as the reports*” of certain named medical experts be admitted into evidence by way of affidavit was not expressly dealt with at the hearing, as far as one can tell from the record, itself something which does not make for easy reading.
7. Both counsel appear simply to have assumed that the judge should read the hospital records and doctors’ reports, filed for Mr Mauelele, and make a decision. Ms Ameersingh did however tell the judge that the Fund did not accept that Mr Mauelele had suffered a head injury.
8. There is no affidavit on record by Mr Mauelele on any aspect of the case. Nor is there any affidavit by any medical expert which turns a report into evidence.
9. In short, it would appear to have been common cause that the judge could look at the hospital records and doctor’s reports for the purposes of assessing all aspects of general damages except the head injury and its consequences.
10. It is not necessary to deal in great detail with every medical report. I shall set out below the relevant facts as gleaned from the reports.
11. Mr Mauelele had no existing medical conditions before the accident.
12. There is on file a report by Dr Mosadi, a neurosurgeon. Mr Mauelele was examined on 17 August 2021. Mr Mauelele had attended school until grade 10. He was a contract worker. He was rendered unconscious in the accident. His Glasgow Coma scale was 11/15 on admission which improved to 13/15 and then to 15/15. He was operated on both fractured legs and discharged after two

months. He suffered a pneumocephalous head injury. Memory problems and headaches started after the accident. During the consultation he spoke fluently. He has a short limb antalgic gait. Dr Mosadi described the head injury as moderate and the headaches as chronic. A 5-8% chance of later development of epilepsy is noted. Acute pain was suffered for two weeks and chronic pain thereafter to date of consultation.

13. Ms N Joy is a clinical psychologist. According to her report, she examined Mr Mauelele on 28 July 2022. Ms Joy notes, in respect of Mr Mauelele, an inability to walk properly, headaches, irritability, decline in sexual interest and poor sense of smell. He spoke fluently during the interview and interacted well with Ms Joy. There was no evidence of peculiar thought patterns and he was in touch with reality.
14. There is a report on file by an orthopaedic surgeon, Dr Bila, who notes, from hospital records, a head injury with scalp lacerations and bilateral “*tib-fib*” fractures. Dr Bila records a painful right leg and abnormal motion at the fracture site. Mr Mauelele had an antalgic gait and used crutches. He had a vulgus deformity of the left ankle. He had a septic wound over the right shin area. There is a septic non-union of the right tibia and a malunion of the left tibia. He will need surgical debridement of the left focus. Should the sepsis not heal, amputation may follow. He has a 31% whole person impairment.
15. From the learned judge’s reasons in the application for leave to appeal it seems that he found that the head injury had not been proven nor the alleged consequences of the alleged head injury.

16. I agree. There is no evidence, from any person under oath, that there was a head injury nor that the consequences of the alleged head injury are as relied upon.
17. Ms Ameersingh had apparently consented to various hospital records and experts' reports being used by the trial judge, on issues other than those relating to a head injury. She had expressly denied the alleged head injury.
18. In my view, the injuries and their consequences, apart from the head injury are proven but the head injury and its consequences are not proven.
19. In my view, the award of R500 000, before the 20% apportionment is fair compensation.
20. Regarding costs, the legal teams for both sides seem to have agreed that scale B would be appropriate in respect of the order as a whole, for the settled items and the general damages combined. Despite this apparent agreement, Joseph AJ allowed costs on scale A.
21. The agreed amount, apart from general damages, was R532 466,40 pre-apportionment. That is R425 973,12 after apportionment.
22. Mr Mauelele sought R900 000 for general damages. R500 000, pre-apportionment was awarded. The total award was R865 973,12, that is net after apportionment.
23. The learned judge expressly made the finding that general damages were R500 000. That seems to be pre-apportionment. After apportionment, the amount is R400 000. R425 973,12 plus R400 000 is R825 973,12. It would appear that the learned judge over calculated the general damages after apportionment at

R440 000 instead of R400 000. It would appear that the Fund has to pay R40 000 too much. But there is no cross-appeal.

24. In my view, Joseph AJ was not bound by the agreement relating to scale B.

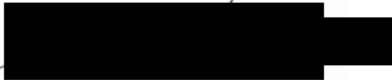
Scale B is not necessarily too high for a case like the present but there is no clear misdirection on the part of the judge who has a wide discretion.

25. Mr Mabunda, the attorney for Mr Mauelele, being a person of honour and a senior and respected person in the profession, would naturally do the right thing and not snatch at the calculation error.

26. In the circumstances relating to the non-opposition of the Fund to the appeal, no order as to costs should be made.

ORDER

1. The appeal is dismissed.


WRIGHT J, with whom Sutherland DJP and Carrim AJ agree.

HEARD : 12 November 2025

DELIVERED : 20 November 2025

APPEARANCES :

APPELLANT Adv LB Pilusa

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