

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 33574/11

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
2025/12/10 [Signature] [Redacted]	

In the matters between: -

MDANESE ENERST VINGER

PLAINTIFF

AND

MINISTER OF SAFETY AND SECURITY

DEFENDANT

JUDGMENT

KEKANA, AJ

Introduction

- [1] Plaintiff, Mr Vinger, instituted a claim against the defendant, the Minister of Police, for injuries sustained when he was shot in the thigh by members of the South African Police Service.
- [2] The liability part was disposed of previously, with the defendant being found to be liable (100%) to the plaintiff for proven or agreed damages.
- [3] The matter came to court for the determination of quantum on 17 October 2025.
- [4] The parties' legal representatives approached me in chambers and informed me that the matter was only allocated for the adjudication of the head of general damages.
- [5] When the proceedings started in court, there was an argument between the parties as to whether the matter should instead proceed on the head of general damages only, or whether other heads of damages should be included.
- [6] Plaintiff also made a Rule 38(2) application in order to submit the reports of the experts into evidence through affidavits. I pause to mention that this application was opposed by the defendant.
- [7] After listening to submissions by both counsels, I made a ruling that the trial continue only on the issue of general damages and also allowed the Rule 38(2) application for the following reasons:

7.1. When the parties approached me in chambers, they unequivocally informed me that the matter was to proceed on general damages only.

7.2. I was referred to correspondence indicating that the parties agreed that the matter is to proceed on general damages only, and there is no need to call experts to come and testify.

[8] The plaintiff filed amended particulars of claim on the first day of trial. The defendant did not oppose this, save to indicate its intention to amend its plea. By the time I penned this judgment, the amended plea had not yet been filed.

8.1. Initially, the plaintiff claimed six hundred and fifty thousand rand (R650 000.00) for general damages, and this figure was amended to three million rand (R3 000 000.00)

[9] In order to determine a fair compensation to the plaintiff, I am going to summarise the report of the first five experts, since the remaining experts' reports are only relevant for the determination of loss of earnings and future medical costs.

[10] The reports of the following experts were admitted into evidence:

- 10.1. Dr. D. Lekalakala (Orthopaedic Surgeon)
- 10.2. Dr. M.J. Tladi (Orthopaedic Surgeon)
- 10.3. Prof. D Pantanowits (Vascular Surgeon)
- 10.4. Dr. V Medipa (Plastic & Reconstructive Surgeon)
- 10.5. Ms. Linda Maye (Clinical Psychologist)
- 10.6. Dr. Z. Gumede (Educational Psychologist)
- 10.7. Ncumisa Ndzungu (Occupational Therapist)
- 10.8. Mr. Tshepo Kalango (Industrial Psychologist)
- 10.9. Wim Loots (Actuary Consulting)

[11] Orthopaedic Surgeons:

Plaintiff was assessed by Dr D. Lekalakala on 16 May 2013, and reassessed by Dr M.J. Tladi on 23 November 2020, and followed up on 05 August 2025.

Injuries sustained:

According to the Plaintiff and the hospital records kept at Dr George Mukhari Hospital, the plaintiff sustained the following injuries:

- Right leg gunshot with vascular injury (popliteal). The bullet lodged on the lateral aspect of the patella.
- Undisplaced right distal femur fracture.
- Right knee effusion.

Treatment received:

After the incident, he was evacuated by a police van to Dr George Mukhari Hospital, where he received the following treatment:

- Clinical and radiological examinations.
- Analgesia and antibiotics.
- Repair the right superficial femoral artery.
- Fasciotomy of the right leg
- Wound care.
- Physiotherapy and occupational therapy.
- The management of femur fractures is not documented.

Future treatment:

- Plaintiff later had a skin graft.

Present main complaint:

Right foot pain: this pain is constant in nature. Exacerbated by prolonged walking and standing. Plaintiff is walking using his toes, and he has to buy shoes frequently.

Clinical examination

Incident-related scars: skin graft donor scars. Healed fasciotomy scars, and the scars are starting from the thigh to the leg.

Deformity:

Heel not touching the floor. He walks on his toes.

Opinion on damages:

Pain and suffering

The plaintiff suffered pain following the injuries he sustained in this incident. He further endured acute exacerbations of the pain following the surgical procedures that he had undergone. Plaintiff continues to suffer discomfort of chronic pain in the right lower limb because of the wound and fixed equinus deformity. He will need fusion of the ankle in a functional range, followed by a bio kineticist. His right lower limb will not function like before the incident.

Occupation and future employment.

Because of the weakness of his right limb, the plaintiff will have difficulties with jobs that require walking, standing, and lifting objects. He may not be able to compete fairly for a job on the open market.

[12] Prof. D. Pantanowits (Vascular Surgeon)

The expert assessed the plaintiff on 31 January 2022 and made a follow-up on the 01 September 2025.

Examination:

- No palpable dorsalis pedis and posterior tibial pulses R foot
- This indicates that the blood flow through the graft is nil: the graft is thrombosed.
- He walks with a severe limp, and he cannot run.
- He has constant pain right leg for which he takes analgesics frequently.
- He has marked flexion deformity R foot due to the contracture of the gastrocnemius muscle, the foot flexors (flexor digitorum), and the big toe flexors (flexor hallucis). This is permanent and is called a Volkmann's ischemic contracture (right foot). The right foot is in equinus permanently.
- His foot is still viable due to the collateral circulation. If he develops peripheral vascular disease that occludes the collateral, he may need an above-knee amputation in the future.

[13] **Dr. V. Medipa (Plastic & Reconstructive Surgeon)**

The expert assessed the plaintiff on 23 February 2021 and reassessed him on 29 August 2025 and stated the following:

Discussion:

Permanent disfigurement:

Plaintiff has permanent scarring resulting from this unfortunate incident.

Surgical injuries can result in sustained and severe functional, pathological, and psychological problems. The functional aspect of the plaintiff's injuries has been attended to during his admission, as well as the ongoing rehabilitation due to his foot drop in the right ankle/foot.

The pathological aspect of a chronic large scar can become a lifelong problem in terms of developing a skin cancer within the scar (Marjolin's ulcer). The psychological aspect of permanent surgical scarring is a major burden on any patient. The emotions surrounding the incident are being reminded of on a daily basis.

Pain and suffering:

Plaintiff had severe pain from the time of injury until six months post-surgery for final management. He would have had moderate to severe pain for about six months after this. The scars have been sensitive since the incident, especially the large scar on the medial aspect of the right lower limb.

Loss of amenities of life:

There has been a significant loss of amenities of life resulting from the scarring

Disability:

There is a disability from the right foot drop sustained in this incident.

Future Management:

From a plastic surgery point of view, scar management can improve the appearance and or texture of the existing scars; however, a scar will always be visible. The various modalities that are used are categorized by surgical and non-surgical options or as a combination of both.

The costs for the below can vary depending on the modalities chosen as well as the length of management.

Plaintiff will need to be assessed again and counselled adequately before any procedure is performed.

[14] Linda Maye (Clinical Psychologist)

The expert assessed the plaintiff on 23 November 2020 and made a follow-up on 28 August 2025 and stated the following:

Given the information obtained during this assessment, it can be concluded that the plaintiff's psychological vulnerability may have been exacerbated by the injuries sustained as a result of the accident under review and its aftermath. The presence of these difficulties will probably continue to render him

susceptible to the development of additional psychological and psychiatric difficulties.

Plaintiff's unemployment, stagnant occupational and psychological functioning, and permanent disability with unsightly scarring impacting his choice of clothing, self-esteem, and physical abilities, financial dependency on other seem to maintain his psychological disturbance and presenting psychological profile.

Based on subjective accounts, collateral information, and the clinical presentation from the assessment administered and expert reports, the plaintiff has been adversely impacted as a result of the incident occurrence and its aftermath.

He currently still experiences physical pain and challenges, cognitive difficulties, post-traumatic stress disorder (PTSD), major depressive disorder (MDD), dysthymia, Anxiety symptoms, and substance misuse disorder.

These disturbances are likely to be as a result of the severe stress response and psychological distress, with ethology being a result of the incident.

[15] Plaintiff took the stand and told the court that on the 21 November 2011, as per his testimony, he was shot by members of the defendant while standing at an entrance to a tavern.

[16] He sustained injuries on the right thigh and lower leg and said he was hospitalized for two months but later conceded that the hospitalization period was approximately five weeks.

[17] He further testified that upon his release, he mobilised on crutches for three months, but currently he uses one crutch.

[18] In cross-examination, it was put to him that he says he was unable to walk, whereas he says he used crutches to walk. He responded that he could not walk without the aid of crutches, and he deemed himself incapable of walking.

[19] It was put to him by counsel that because he was able to lift his foot to the level of a table and further that he was not using crutches in court, he is healed. He responded that he was able to do that, but it was for a short distance. He further said his transport dropped him at the doorstep. He stated further that he was feeling pain after demonstrating in court.

[20] Plaintiff also showed his leg to the court, and the following observations were made:

- 20.1. Scars on the back right lower leg.
- 20.2. The scar extends approximately 3.5cm from the thigh to the lower leg.
- 20.3. Serious gastrocnemius muscle wasting.
- 20.4. He has a skin graft.

[21] In order to persuade the court to find in his favour, the plaintiff referred me to, amongst others, the following cases:

21.1. *Webb v Road Accident Fund*¹ A 20-year-old male suffered a L1 burst fracture with T12/L dislocation injuries, which left him paralyzed. He further suffered a displaced radius and ulna fracture. He was wheelchair bound with all the accompanying difficulties of paraplegia. He developed bedsores and suffered chronic back pain, and he self-catharises and experienced intermittent bladder infections. His paraplegia left him with a neurogenic bladder. He was awarded R 1 500 000 in 2021.

21.2. *Protea Assurance Co Ltd v Lamb*² where the plaintiff, aged 29 at the time, sustained injuries to his legs involving a closed fracture of the left femur and a compound fracture of the right tibia and fibula. He underwent various procedures during the following 4-5 years after the accident. He was awarded R20 000,00 for general damages after appeal; the converted 2016 value amounts to R1 222 000,00.

¹ 2016 (7A3) QOD 24 (GNP).

² 1970 (2E3) QOD 117 (A),

21.3. *Mthethwa v RAF*³ The leg was amputated above the knee. R 800 000,00 was awarded- Current value is R1 717 000,00.

21.4. *Mazibukwana v RAF*⁴ The amputation was executed below the knee. R 743 000 was awarded- Current value is R1 152 000.

21.5. *Majovo v RAF*⁵ The Plaintiff suffered a knee injury. R 600 000.00 was awarded – Current value is R 664 000,00.

21.6. *Tyabazeka v RAF*⁶. The Plaintiff sustained a knee injury. R 1 200 000,00 was awarded for general damages – Current value is R 1 503 000.00

21.7. *Hoffman v RAF*⁷ The Plaintiff sustained an ankle injury. R 700 000,00 was awarded for general damages- Current value is R 820 000,00.

[22] The defendant referred me, amongst others, to the following cases:-

22.1. *Van den Berg v Road Accident Fund*, the Court, in consideration of general damages, in 2023, held that “*In Vukubi v RAF*⁸ an adult male sustained an open fracture of the knee joint, a fracture of the humerus and a fracture of the radius and ulna. Osteoarthritis was foreseen in the knee joint with a future knee replacement and revision surgery as a probability. The fractures of the radius and ulna were treated by open reduction and internal fixation, and degenerative changes would cause future pain. An award of R400 000.00 was made in respect of general damages with a present monetary value of R740 000.00. Having regard to the matters referred to, as well as the matters of *Vukubi and Abrahams*

³ 2012 6 (6E2) QOD 15 (GSJ).

⁴ 2016 (7E2) QOD 6 (GNP).

⁵ 2023 (8E7) QOD 1 (FB).

⁶ (CA72/2022) 2023 ZAECKMHC 48.

⁷ 2023 (8J2) QOD 27 GNP.

⁸ 2007 (5J2) QOD 188 (E).

36 above, I am satisfied that an award of R850 000.00 for general damages is fair and just.

22.2. *De Meyer v Road Accident Fund*, where the Full Bench of this Division addressed the issue of general damages in relation to disfigurement. In that case, the court held that the plaintiff would possibly require surgery due to the disfigurement of the foot. The court awarded a sum of R325 000.00 for general damages. The Court further held in paragraphs 41 and 42 as follows: "It was argued for the appellant, having regard to the injuries suffered by him, that an appropriate award for general damages was R400 000.00. The Court was referred to various cases, including *Sabodien v RAF*, *Alla v RAF*, and *Van Dyk v RAF*. These cases relating to awards made in 2020, 2012, and 2003, respectively, range in present day value from R283 000.00 to R458 000.00.

22.3. *Protea Assurance Co Ltd v Lamb*⁹ where the plaintiff, aged 29 at the time, sustained injuries to his legs involving a closed fracture of the left femur and a compound fracture of the right tibia and fibula. He underwent various procedures during the following 4-5 years after the accident. He was awarded R20 000,00 for general damages after appeal; the converted 2016 value amounts to R1 222 000,00.

[23] COURT

In preparing this judgement, I also considered the following decisions:-

23.1 *Steyn v Road Accident Fund*¹⁰ plaintiff was struck by an eight-ton SAKAI Tandem Vibrating Steel Drum Roller. On that fateful day, the plaintiff sustained serious multiple fractures to his left lower leg as well as multiple fractures of his right foot and upper right forearm. The injuries sustained on his leg sadly resulted in an amputation above his knee. The accident left him wheelchair-bound, unable to do anything by himself without

⁹ 1970 (2E3) QOD 117 (A),

¹⁰ (1233/2023) [2024] ZAFSHC 241, para 1,

assistance. Plaintiff was awarded an amount of One Million Five Hundred Thousand (R1 500 000.00).

23.2 *R.S.M v Road Accident Fund*,¹¹ the appellant suffered bodily injuries, which included an above-knee amputation of her right leg. An amount of R900 000.00 was awarded to the plaintiff.

23.3 *Y.Z v Road Accident Fund*¹² a 21-year-old female, sustained a grade 3B compound fracture of the left tibia and fibula, resulting in a below-knee amputation, a mild concussive head injury, and multiple abrasions to the face, left thigh, and right knee. An award of Seven Hundred Thousand Rand was awarded to the plaintiff.

[24] It is a known fact that it is impossible to find two identical cases; comparable case law is usually a useful guide in awarding fair compensation. I am mindful of the fact that the plaintiff's leg is not amputated, but according to the Orthopaedic Surgeon, there is a high possibility of that happening. The Plastic and Reconstruction expert says there is a high possibility of skin cancer because of the chronic large scar.

[25] In light of these cases, I am of the view that an appropriate award to compensate the plaintiff is Nine Hundred and Fifty Thousand Rand (R950 000.00).

[26] Insofar as costs are concerned, I think the case merits the attention of two counsel on High Court Scale C because of the following reasons:-

26.1. This case involves the shooting of an innocent man by the police.

26.2. Nine experts were appointed.

¹¹ (A137/2018) [2023] ZAGPPHC 641,

¹² (22039/2015) [2018] ZAWCHC 154,

26.4. This case is clearly of great importance to the plaintiff, which cannot be doubted.

I consequently make the following orders:

1. The defendant is ordered to pay the plaintiff nine hundred and fifty thousand rand (R950 000.00) for general damages.
2. That the remaining heads of damages are postponed sine die.
3. The defendant is ordered to pay the plaintiff's costs, including costs occasioned by the employment of two counsel on High Court Scale C.
4. The defendant is ordered to pay the plaintiff interest at the applicable rate from thirty days after the date of judgment till the date of payment.



D.M KEKANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 13& 14 October 2025

Date of judgment: 09 December 2025

Appearance

On behalf of the Plaintiff

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Instructed by

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