


REPUBLIC OF SOUTH AFRICA



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

Case Number: 18/14017

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

In the matter between:

**NZIMA PETRUS MADODA**

Plaintiff

and

**MEC FOR COMMUNITY SAFETY,  
GAUTENG**

Defendant

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**JUDGMENT**

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*Introduction*

- [1] This is an application for default judgment in an action in which the plaintiff, Mr Petrus Madoda Nzima, seeks damages arising from what is alleged to have been an unlawful assault, arrest and detention by members of the police officers acting within the sphere of the defendant's responsibility. The matter is unopposed as the defendant's defence has been struck out.
- [2] In the result, the matter comes before the Court on the basis that the plaintiff must nevertheless prove such facts and quantum as are necessary to justify the relief sought. Default judgment does not relieve a court of the obligation to scrutinise the evidence, particularly where the claim includes substantial patrimonial damages founded upon expert opinion and actuarial calculation.

*The facts*

- [3] The plaintiff's case, in summary, is that on 31 July 2015, while driving a taxi and transporting passengers from Orange Farm to Southgate Mall, he was stopped at or near a roadblock in the Klipriviersberg area, dragged from the taxi and assaulted by officers who viciously kicked the plaintiff to extent that they fractured his left proximal tibia. After this, the officers forced the plaintiff to crawl into a police car where he was left for most of the without any medical attention and was ultimately released without charge. Even then the officers did not secure medical attention for the plaintiff or call an ambulance and the plaintiff was compelled to call his boss who took him to hospital. If true, there can be no justification for this level of police brutality.
- [4] On admission to the hospital the plaintiff was found to have a left tibial plateau fracture requiring open reduction and internal fixation. It is the plaintiff's and that the sequelae of his injuries have materially impaired his ability to continue working as a taxi driver as he is unable to drive a manual vehicle as this requires his continuously pushing in the clutch for lengthy periods routinely demanded of taxi drivers, particularly where they do not own the taxis they are driving.

*The issues*

- [5] The issues which arise are, first, whether the admitted or uncontroverted facts establish liability for the assault and for the deprivation of liberty; second, what amount should be awarded for general damages arising from the bodily injury and its sequelae; third, what should be awarded for the impairment of dignity, freedom and bodily autonomy caused by the arrest and detention; fourth, whether the claim for past and future loss of earnings has been proved on a balance of probabilities; fifth, whether the plaintiff has proved future medical expenses; and finally, what order should be made as to costs.

#### *The evidence*

- [6] The plaintiff relies upon the hospital records, the J88 medical examination report, medico-legal reports from an orthopaedic surgeon, occupational therapist, industrial psychologist and actuary, his own affidavit and the heads of argument filed on his behalf. The hospital records and the medico-legal evidence are material because they provide objective support for the existence of a serious fracture and for the treatment that followed.

- [7] The plaintiff was admitted to Chris Hani Baragwanath Hospital on 31 July 2015 and discharged on 7 August 2015, during which period, internal fixation was performed to the left proximal tibia.

#### *Analysis of the evidence*

- [8] In the plaintiff's notice of intended legal proceedings, which preceded the action, notice was given that the plaintiff was assaulted, injured and detained in a police vehicle in circumstances in which the windows of the police vehicle were closed and he was not taken to a police station or brought before a court. Although such a notice is not itself proof of all facts alleged, it is consistent with the version later advanced by the plaintiff under oath.

- [9] On liability for assault, the starting point is the fundamental common-law and constitutional protection of bodily integrity. An intentional and unlawful application of force to another person is actionable under the *actio iniuriarum* and, where patrimonial loss flows from the physical injury, under the Aquilian action. In *Minister of Justice v Hofmeyr* the Appellate Division emphasised that bodily integrity protects not merely freedom from direct physical aggression, but the broader interest in *corpus* and personality.<sup>1</sup> The plaintiff's evidence that he was kicked with sufficient force to cause a

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<sup>1</sup> 1993 ZASCA 40; 1993(3) SA 131 A at 145 H-1

tibial plateau fracture is supported by the clinical records and is not contradicted by any admissible evidence from the defendant. The evidence that he was dragged from the taxi and then forced to crawl in front of all of his passengers and onlookers also constitutes a significant impairment of his dignity.

[10] However, the fact that the plaintiff's version is unopposed does not mean that every assertion must be accepted without evaluation. A court must still consider inherent probabilities, objective corroboration and the extent to which expert opinions rest upon proved facts. On the evidence before the Court, however, the fracture was clearly not trivial or an unexplained injury. The timing of the admission, the nature of the fracture, the need for internal fixation, as well as the plaintiff's subsequent complaints are sufficiently consistent with the pleaded assault to establish factual causation on a balance of probabilities.

[11] The unlawful detention claim stands on a related but distinct footing. Once a deprivation of liberty is proved, the defendant bears the burden of justifying it. That principle has been repeatedly affirmed by the Supreme Court of Appeal in wrongful arrest and detention cases.<sup>2</sup> The plaintiff's evidence is that he was confined in a vehicle from approximately 07h30 until about 16h30, was not charged, was not taken to a police station, and was released without being brought before a court. No lawful basis has been advanced for that deprivation of liberty. The detention was accordingly unlawful.

[12] The assessment of damages for unlawful arrest and detention is not an arithmetical exercise. It is an award of *solatium*, informed by the duration and circumstances of the detention, the indignity suffered, the conduct of the officials, the plaintiff's personal circumstances, and comparable awards, while avoiding both excessive generosity and trivialisation of the right to liberty. In *Minister of Safety and Security v Tyulu*, the Supreme Court of Appeal cautioned that damages must be commensurate with the injury inflicted and must reflect the seriousness with which arbitrary deprivation of liberty is viewed in our law.<sup>3</sup> In *Minister of Safety and Security v Seymour* the Court warned that previous awards are guides, not tariffs.<sup>4</sup>

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<sup>2</sup> *Mbokazi v Minister of Police and Another* (81278/15) [2020] ZAGPPHC 286 (10 June 2020)

<sup>3</sup> *Minister of Safety and Security v Tyulu* (327/2008) [2009] ZASCA 55; 2009 (5) SA 85 (SCA) ; 2009 (2) SACR 282 (SCA) ; [2009] 4 All SA 38 (SCA) (27 May 2009)

<sup>4</sup> *Minister of Safety and Security v Seymour* (295/05) [2006] ZASCA 71; [2007] 1 All SA 558 (SCA); 2006 (6) SA 320 (SCA) (30 May 2006)

- [13] The plaintiff's detention lasted approximately nine hours. In ordinary circumstances, that period might attract a moderate award. The aggravating features here are, however, substantial. The detention followed immediately upon an assault which, on the accepted evidence, caused a serious fracture. This means that the plaintiff would have been in acute pain; despite this he was confined in a vehicle rather than properly processed at a police station and without being afforded any medical attention. The plaintiff was exposed to humiliation as a working taxi driver stopped in the presence of passengers. More importantly, the plaintiff was not charged or brought before any judicial authority. These features distinguish the case from a bare unlawful arrest of short duration in tolerable conditions.
- [14] The plaintiff's counsel referred me to the awards a number of cases involving short periods of detention including *De Klerk v Minister of Police*,<sup>5</sup> *Lehoke v Minister of Police*<sup>6</sup> and *Van der Nest NO v Minister of Police*.<sup>7</sup> These authorities are useful in illustrating the range of awards, but the present case involves the conjunction of detention, public humiliation and untreated physical injury. These additional factors serve to exacerbate the amount of damages.
- [15] I am satisfied that an award of R120 000 for unlawful arrest and detention is fair and proportionate. The R200 000 contended for by the plaintiff would risk treating the nine-hour detention as comparable to substantially longer custodial detention, while an award in the range of the lowest comparators would understate the aggravating circumstances. The award of R120 000 recognises the gravity of the deprivation, the indignity of confinement in a vehicle, the absence of any lawful justification, and the plaintiff's pain and suffering during the detention.
- [16] Turning to general damages for bodily injury, the orthopaedic evidence records a left proximal tibial plateau fracture, the application of a plaster back slab, open reduction and internal fixation, internal plates and screws *in situ*, residual depression of the lateral tibial plateau, pain, stiffness, swelling, the use of a walking stick, and post-traumatic osteoarthritis of the left knee. The plaintiff was hospitalised for about a week and continues to complain of pain aggravated by cold weather and activity.
- [17] Awards for general damages in personal injury matters are intended to compensate for pain, suffering, loss of amenities of life, disfigurement where present, disability and the

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<sup>5</sup> *De Klerk v Minister of Police* (329/17) [2018] ZASCA 45

<sup>6</sup> *Lehoke v Minister of Police* full Bench of the North West Division (CIV APP MG 27/2023 [2024] ZANWHC 277

<sup>7</sup> *Van der Nest NO v Minister of Police* (2025 ZASCA) 42

broad human consequences of injury. They must be fair to both parties and must take into account comparable cases without being enslaved by them.<sup>5</sup> The plaintiff relies on cases involving leg fractures and police violence, including *Mbokazi v Minister of Police and another*,<sup>8</sup> *Kubayi v Road Accident Fund*<sup>9</sup> and *Morris v Road Accident Fund*.<sup>10</sup> Those cases demonstrate that serious lower-limb fractures with lasting sequelae may justify substantial awards, but each case remains fact-sensitive.

[18] There is no evidence that the plaintiff suffered a complete loss of mobility. There is, however, objective evidence of a significant intra-articular knee injury, operative treatment, persistent pain, probable degenerative consequences and a future likelihood of further surgical intervention to remove the screws required for the fixation. The plaintiff suffered a serious fracture affecting his mobility and employability as his employment depended on his ability to drive a taxi.

[19] The Court is of the view that an award of R450 000 for general damages arising from the assault and orthopaedic injury is appropriate. This amount gives due weight to the plaintiff's pain, hospitalisation, surgical treatment, ongoing impairment and future risk, while recognising that the comparable awards cited by the plaintiff include injuries and circumstances that are not identical and should not be converted into a tariff.

[20] The next issue to consider is the plaintiff's claim for future medical expenses. The orthopaedic surgeon recommends provision for removal of internal fixation and possible knee replacement, with associated conservative treatment, including follow-up consultations, pain control, radiological investigations and physiotherapy. The plaintiff's counsel recommends that an amount of R201 331.39 be provided to cover the cost of removing the screws and a possible knee replacement. The defendant filed no contrary expert report. In circumstances where the medical recommendations of the orthopaedic surgeon is not contradicted and is supported by objective orthopaedic pathology, the court finds that the plaintiff has established a need for provision to be made for future medical expenses.

[21] The court will thus allow future medical expenses in the amount of R201 331.39, subject to the ordinary qualification that the award is made on the evidence presently before the Court and is not a finding that every anticipated procedure is inevitable. It is sufficient

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<sup>8</sup> *Mbokazi v Minister of Police and Another* (81278/15) [2020]

<sup>9</sup> *Kubayi v RAF* (715/2021) [2024] ZAGPPH 696

<sup>10</sup> *Morris v RAF* (99303/15) [2018] ZAGPPHC 486

that the future treatment is reasonably probable and that the amount claimed is supported by expert opinion.

- [22] The more difficult question for the court to decide concerns the plaintiff's claim for past and future loss of earnings. The plaintiff was born in 1964 and was approximately 51 years old at the time of the incident. He only attained a Grade 7 level of education. The evidence advanced on his behalf is that he had worked as a taxi driver for many years and earned the paltry salary of approximately R700 per week, or R2 800 per month, before the incident. This is a serious indictment on the taxi industry and the level of exploitation.
- [23] That being said, the Court cannot ignore that the industrial psychologist proceeds from the premise that the plaintiff would probably have continued as a taxi driver or in comparable work until ordinary retirement age, and that the injury rendered him effectively unable to compete in the open labour market. This Court approaches industrial psychologists' reports with caution as all too often that are based upon premises so divorced from reality that justifies their rejection. In this case the industrial psychologist paid little heed to the plaintiff's limited education and the fact that he would soon be approaching retirement age.
- [24] The Court approaches the actuarial calculations with the same scepticism. An actuarial calculation is only as sound as the assumptions upon which it rests. In *Southern Insurance Association Ltd v Bailey NO*<sup>11</sup> Nicholas JA explained that a court may either make a rounded estimate or be guided by actuarial computation, but must ultimately exercise a judicial discretion. In *Road Accident Fund v Guedes*,<sup>12</sup> the Supreme Court of Appeal reaffirmed that actuarial calculations are useful where founded on reliable assumptions, but cannot replace judicial assessment.<sup>7</sup>
- [25] The premise of the industrial psychologist requires critical scrutiny. The plaintiff's age, low level of formal education, absence of formal proof of earnings, the physical demands of taxi driving, the informal character of the taxi industry, and the ordinary uncertainties of continued employment all matter. So too does the fact that the plaintiff was already in the latter portion of his working life when injured. It is not realistic to assume a secure, uninterrupted earnings trajectory to age 65 without meaningful contingency deductions.

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<sup>11</sup> 1984 (1) SA 98 (A)

<sup>12</sup> *Road Accident Fund v Guedes* (611/04) [2006] ZASCA 19; 2006 (5) SA 583 (SCA) (20 March 2006)

The informal taxi sector is vulnerable to fluctuations in route access, vehicle availability, health, regulatory circumstances and market demand.

- [26] On the other hand, it would be equally unrealistic to ignore the plaintiff's demonstrated work history and the fact that a serious knee injury would materially reduce the prospects of a person with limited education and largely driving-based experience. A taxi driver must be able to sit for extended periods, operate pedals reliably, climb in and out of a vehicle, respond to traffic conditions and work long hours. Persistent knee pain, stiffness, swelling and the need for future surgery would plainly impair that capacity.
- [27] The actuarial calculation concludes that a total loss of earnings of R572 921 after applying contingencies of five per cent for past loss and fifteen per cent for future loss is apposite. Those contingencies are, in my view, too light on the uninjured scenario and insufficiently responsive to the uncertainties in the injured scenario. A five per cent past contingency may be conventional in stable formal employment, but the plaintiff's income was modest, informal and not supported by payslips, bank statements or employer records in the material presently before the Court. A fifteen per cent future contingency likewise underestimates the uncertainties inherent in projecting earnings for an older worker in informal transport industry.
- [28] This notwithstanding, the plaintiff has nevertheless proved a real diminution of earning capacity. The correct approach is not to reject the actuarial calculation altogether but to moderate it to reflect realistic contingencies and evidential limitations. The court considers that the fair result is to allow seventy per cent of the actuarially calculated amount. This recognises the seriousness of the injury and the likelihood that the plaintiff's earning capacity has been materially impaired, while discounting the calculation for the uncertainties in the industrial psychologist's assumptions and the limited proof of pre-incident earnings.
- [29] Seventy per cent of R572 921 produces an amount of R401 044.70. I would award that amount for past and future loss of earnings. This is a judicially moderated figure rather than a mechanical recalculation, and it reflects the Court's assessment that the plaintiff has proved the existence of loss but not the full extent of the actuarial claim on the assumptions advanced.
- [30] The amounts to be awarded are therefore:
- a. R450 000 for general damages arising from the assault and bodily injury;

- b. R120 000 for unlawful arrest and detention;
- c. R201 331.39 for future medical expenses; and
- d. R401 044.70 for past and future loss of earnings.

[31] The total award is thus R1 172 376.09.

### *Costs*

[32] As to costs, the dilatory conduct of the defendant resulted in its defence being struck out. This is far to prevalent a scenario involving government departments. It means that the vast majority of claims against the State go undefended, many of which ought properly to have been defended; it means that all too many matters whilst defended, ultimately end up undefended either because the State's defence is struck out for flagrant non-compliance with Court orders or because not steps are taken whatsoever to challenge the merits or to have the claimant's examined and counter-veiling expert reports placed before the Court.

[33] This constitutes a flagrant disregard of the duties of Government departments and the State Attorney to perform the duties entrusted to them and to safeguard taxpayer's money. It is after all out of taxpayer's money that these awards are met, to the detriment of service delivery, so often stated not to have been performed due to the lack of money.

[34] This has to end.

[35] This Court would like to see a concerted effort made by Government Departments to defend the claims made against them and not to ignore them with gay abandon as it is taxpayers and not their money that is paying these undefended claims. Quite frankly it is a disgrace that a claim like the present proceeded undefended because the Defendant ignored a Court Order without any regard at all to the consequences.

[36] It is entirely inappropriate for the Courts to have to scrutinise the evidence on an undefended basis with no assistance at all from the relevant Government Departments or the State Attorney engaged to represent them.

[37] That being said, little purpose is served in awarding attorney and client costs against the defendant as it is the taxpayer who will ultimately foot this bill. I feel that the time is now approaching for Ministers and Directors General to foot the bills of undefended claims *de boniis propriis*; perhaps only then will these officials ensure that the Departments they

control preserve the funds allocated to them by the fiscus; funds that come from the taxpayers of this country.


[38] The matter required the briefing of numerous experts and the briefing of counsel to argue the matter on an undefended basis; he did a sterling job and the authorities he relied upon were of enormous value to the court.

[39] In the result, the ordinary rule that costs follow the result should apply. The appropriate order is costs on the party and party scale at scale B, including the reasonable qualifying fees of the experts whose reports were necessary for the proof of quantum in the matter before the Court.

*Order*

[28] The following order is made:

1. The defendant is liable to compensate the plaintiff for damages arising from the assault, unlawful arrest and detention of the plaintiff on 31 July 2015.
2. The defendant shall pay the plaintiff the sum of R1 172 376.09, made up as follows:
  - 2.1 R450 000.00 for general damages arising from the assault and bodily injury;
  - 2.2 R120 000.00 for general damages arising from unlawful arrest and detention;
  - 2.3 R201 331.39 for future medical expenses;
  - 2.4 R401 044.70 for past and future loss of earnings.
3. Interest shall run on the aforesaid amount at the prescribed legal rate from 14 days after the date of this order to date of payment.
4. The defendant shall pay the plaintiff's costs of suit on Scale B, including the reasonable qualifying fees, if any, of the orthopaedic surgeon, occupational therapist, industrial psychologist and actuary.

  
**WENTZEL-THOMPSON J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

Appearances:

For the Plaintiff: Adv M Tonyela

No appearance for the defendant

Date of the hearing: 16 March 2026

Date of the judgment: 26 May 2026

