



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Not Reportable
Case No: 6678/2023**

In the matter between:

NADEEN LILIAN ECHARD

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Coram: MTHIMUNYE, AJ

Date heard: 19 August 2026

Date delivered: 11 September 2026

Summary: *Motor vehicle accident - severe injuries sustained -General damages.*

ORDER

In addition to the order dated 20 August 2026 wherein judgment was reserved in respect of general damages the following order is made:

1. The Defendant is ordered to pay to the plaintiff the sum of R1200 000.00(One million two hundred thousand rand) in respect of general damages.
2. Should payment as aforesaid not be made within 180 days from the date of this order, the Defendant shall be liable for payment of interest on the amount calculated at the prescribed rate per annum from 14 days from the granting of this order, to date of payment.
3. The issue of cost has already been adjudicated upon in a previous order dated 20 August 2026.

JUDGMENT

Mthimunye, AJ

Introduction

[1] The merits of this matter have been settled, with the Defendant accepting 100% liability for the Plaintiff's proven and agreeable damages. The loss of earnings compound component and the Plaintiff's claim for future medical expenses have also been settled between the parties. The sole issue remaining for determination is the quantum of general damages. The Plaintiff seeks an award of R1200 000.00 in respect of general damages while the Defendant contends that an award of R800 000.00 would be fair and reasonable.

[2] The claim as per the particulars of claim started with:

Past hospital and relatable medical expenses	Direct Claim
Future hospital and medical expenses	Undertaking
Past loss of income	R244 600.00
Future loss of income	R627 600.00

General Damages

R1300 00.00

[3] On 20 August 2026, this court ordered, inter alia and accepted as per agreement between the parties an undertaking in terms of section (17)(4)(a) of the Road Accident Fund Act 56 of 1996 tendered by the Defendant.

[4] The parties subsequently addressed the court on what they deemed to be fair and reasonable in respect of the applicable contingencies regarding the plaintiff's past and future loss of earnings. The parties afterwards indicated that they were satisfied with the agreed upon contingencies and that they deemed an amount of R812 306.18 (Eight Hundred and Twelve Thousand Three Hundred and Six Rands and Eighteen Cents) as fair and reasonable compensation for the plaintiff's past and future loss of earnings. Accordingly, after having read the papers filed on record and having heard the arguments by the legal representatives of both parties, the above-mentioned amount was made an order of court.

[5] Judgment in respect of General Damages was subsequently reserved. I now turn to deal with the remaining issue of determining the general damages.

[6] At the commencement of the trial, Plaintiff brought an application as contemplated in Rule 38(2) of the Uniform Rules of court ("the rules") seeking that the evidence of a various medical experts be presented by way of affidavit. This application was not opposed by the Defendant and consequently granted by this court. The following experts appointed by the Plaintiff were:

(a) Orthopedic Surgeon, Dr Anton H van der Bout ("Dr van der Bout"), with medico legal report is dated 20 August 2022 and addendum report dated 7 March 2024

(b) Occupational Therapist, Maretha Labuschagne (“Ms. Labuschagne”) with medico legal report dated 31 January 2023

(c) Neuropsychologist, Dr Sharon Truter (“Dr Truter”) with medico legal report dated 10 May 2023

(d) Plastic and reconstructive surgeon, Dr Keith Cronwright, with medico legal report dated 2 May 2024.

[7] The medico legal report of psychiatrist Dr Tarryn Sutherland (“Dr Sutherland”) dated 10 September 2023 was admitted to by the Defendant who had no objection to this court taking cognizance of it, although it was obtained at a late stage by the Plaintiff.

Cause of Action

[8] The Plaintiff testified and no experts were called as the defendant admitted the expert reports to be true and correct at the beginning of the trial. To summarize the cause of action as pleaded; on 14 August 2021, the Plaintiff was travelling as a passenger and at or near Spine Road and Merrydale Avenue, Mitchell’s Plain when the insured driver of vehicle “B” collided with their vehicle “A”,

[9] According to the particulars of claim, her injuries include a haematoma of the face on the right side, a left tib/fib fracture, and emotional shock. Further the sequelae of her injuries are that she was hospitalized and received medical treatment. She will have to attend hospital and receive medical treatment in the future. She suffered past loss of income and will in future suffer loss of income.

She also experienced pain and suffering, shock, discomfort and a loss of amenities of life and will in future experience pain and suffering, discomfort as well as loss of amenities of life.

The Applicable Legal Principles

[10] In civil cases, the burden of proof lies with the party asserting a claim. Where an opposing party fails to provide any countervailing evidence to that of the opposing party, the opposing party's evidence becomes conclusive. This is the situation in causa. The Defendant did not lead any rebutting evidence to the Plaintiff's expert reports, thus the evidence by the experts is conclusive.

[11] In *Coopers (South Africa) (Pty) Ltd v Deutscher Gesellschaft Fur Schadlings- bekampfung MBH*¹ it is stated at para 371 that:

“[A]n expert's opinion represents their reasoned conclusion based on certain facts or data, which are either common cause, or established by their own evidence or that of some other competent witness. Except possibly where it is not controverted, an experts' bald statement of their opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert”

[12] As foreshadowed above, a court after a proper consideration of the experts' opinions, ultimately determines the final decision as to the weight to be attached to the expert's evidence. Furthermore, that the expert witnesses' function is merely to assist the court with objective opinions within their area of expertise.

¹ 1976 (3) SA 352 (A)

The expert evidence

[13] **Dr van der Bout (Orthopedic surgeon)** ²reports that the Plaintiff sustained a heamatoma on the right side of the face. However, the x-rays showed no fractures. Further that the Plaintiff also sustained a left tib/fib fracture, which was reduced and put in a plaster of paris (POP) that she was required to wear for approximately 3 months. This POP was only renewed once. Further that as a result of this malunion fracture the Plaintiff has been left with a shortening in tibial length.

[14] He further reports that as a result of the accident, the Plaintiff suffered from emotional shock and has not received counselling or medication. Following her discharged from Mitchell's Plain Hospital, she returned multiple times for follow -up examinations. The Plaintiff was thereafter referred to Groote Schuur Hospital as a result of the malunion of the left leg. On 18 February 2022the doctors at Groote Schuur elected not to do an osteotomy of the mal-united tibia but instead decided the Plaintiff should receive additional physiotherapy along with pain medication.

[15] On 22 August 2022, during consultation, the Plaintiff reported the following complaints; that she suffers from occasional headaches with dizziness, insomnia, and experiences flashbacks and nightmares. That she experiences anxiety when in traffic as she fears another accident will happen. He also reported that during his examination of the Plaintiff he found that she walked with 1 crutch, with an antalgic and short-legged gait. He opined that the left leg is clearly shorter than the right leg and that the Plaintiff experiences axial pain in the fracture area. In addition, the left knee of the Plaintiff's has

² Court bundle p. 19-42

more fluid than usual and on touching a crepitation of the patella-femoral joint could be felt. He concludes that according to the patella-femoral test the plaintiff tested positive for damage of the joint.

[16] Dr van den Bout further reported that after assessing the x-rays by Dr Morton and Partners and the accompanying report by Dr EJ Previous, he found that the Plaintiff's left lower leg showed a mal-united mid to distal fracture of the tibia with varus angulation. Thus, he recommended that the Plaintiff receive operative osteotomy to the left tibia with internal fixation and an arthroscopy with debridement of the left knee. He opined that the Plaintiff would always have a painful and weaker left lower leg as a result of the accident which has changed her life considerably to the extent that it makes her an unequal competitor in the open labor market.

Dr Van den Bout's Addendum Report

[17] In his addendum report dated 7 March 2024, he confirms that the Plaintiff eventually underwent an osteotomy procedure on 14 November 2022 at Groote Schuur Hospital where an intra medullary locking nail fixation of the left tibia was performed. Despite Plaintiff being admitted for 3 days after the operation and complaining about her left knee, no operation was performed on the left knee.³

[18] He further lists the Plaintiff's complaints at the time of drafting the report which include discomfort and painful conditions in her leg during cold weather. In addition, she suffered pain during prolonged periods of walking and standing on her legs, when carrying heavy objects. She also limps during excessive physical activity. The Plaintiff also endures discomfort when mobilizing after

³ Court bundle p 117-133

prolonged sitting and lying necessitating the use of painkillers. She is unable to squat or kneel as she did prior to the accident and has to climb stairs gradually, leading with her right leg. This results in her ankle becoming swollen at times. It is lamentable that the Plaintiff had to endure discomfort and a deprivation of comforts for 7 years while awaiting her left leg surgery.

[19] The evidence of **Ms. Labuschagne, an Occupational Therapist**, as detailed in her report is of significance and corroborated by both the Plaintiff during viva voce evidence in her trial and Dr Van den Bout. She used to play netball and was involved in netball coaching, however, the Plaintiff is no longer able to partake in these everyday activities due to the injuries she sustained in the accident. She confirms that the Plaintiff has limited walking ability and may rely on a sympathetic employer to provide her with necessary accommodation.

[20] **Dr Sharon Truter (Neuropsychologist)** reported that in her evaluation of the Plaintiff's mood affect, she observed that the Plaintiff exhibited signs of mood and depression. Although the Plaintiff was pessimistic of the future. The Plaintiff had a high score on negative impression which indicates that she attempted to portray herself in a negative manner. Her DEP (depression) scale strongly indicated a diagnosis of a major depressive episode and indicated feelings of hopelessness, discouragement and uselessness. The Plaintiff's profile on the PAI ("Personal Activity Intelligence") and clinical presentation suggests that the Plaintiff is suffering from a depressive episode with suicidal ideation and obsessive disordered thoughts related to the physical difficulties of her injuries and the trauma of the accident.

[21] Dr Truter further indicates that the traumatic nature of the accident, the long, painful orthopedic difficulties suffered by the plaintiff and the changes in her lifestyle as well as her sense of self, due to the injuries sustained, all

contribute to her current emotional state and are casually related to her current depressive episodes. She recommends that the Plaintiff be assessed by a Psychiatrist for treatment of her depression.⁴

[22] **Dr Cronwright, a Plastic and Reconstructive Surgeon**, observes that the Plaintiff exhibits multiple areas of hyperpigmented (darker tone) scarring resulting from the presumed insertion of IMN (“Intramedullary Nailing”) and associated injuries sustained. These are visible when wearing shorts and dresses. Further the right thigh was enlarged, which she opines is in all probability secondary to a post- traumatic lipoma (resolved heamatoma). This will be conspicuous and attract negative attention when the Plaintiff is wearing tight fitting pants or dresses.

The evidence of the plaintiff

[23] The Plaintiff was a competent, reliable and satisfactory witness. She extensively referred to the aforementioned medico legal reports. In summary she testified that in respect of the heamatoma to her face, remained visible 2 to 3 months following the accident and caused her much embarrassment. She also experienced headaches for which she prescribed analgesics. She confirmed the nature and scope of the treatment she received for the left tibia/fibula fracture, which included reduction and fitting of a Plaster of Paris cast, which she wore for approximately 3 months. That even after the POP was renewed, she still suffered with a mal union fracture and shortened tibia.

[24] She testified that she eventually had surgical intervention, performed at Groote Schuur Hospital on 14th November 2022. This resulted in her being able to ambulate with the use of crutches. She however was unable to walk long distances or move around in a mall without the use of a wheelchair. Further that

⁴ Court bundle; page 55-65

her leg remained painful every day, especially with prolonged standing and walking. This pain being exacerbated by weather changes. Further due to her left leg being weak she is unable to run and struggles to climb stairs. She is also unable to ambulate outside of her home without the support of one of her crutches.

[25] She testified that sometimes she feels depressed and cries as she no longer has personal contact and interactions she craves from colleagues and patients as she is no longer employed. She used to love these interactions before the accident.

[26] She further corroborated the evidence of Dr Cronwright that she has multiple areas of hyperpigmented scarring secondary to inspection of IMN and the injury sustained. These will be visible when wearing shorts and skirts.⁵ She testified that it is embarrassing to her and as a result she no longer wants to wear shorts. She confirms the presence of an enlarged right thigh in comparison to the left, that it is visible when she wears a tight-fitting jeans and dresses, and described this hematoma as being painful. She further testified that the pain in her left knee is a physical hindrance, as it makes sounds, swells, locks and give way when she walks.

Discussion

[27] General damages represent a category of damages awarded by a court to compensate for non-patrimonial and non-financial loss suffered because of a wrongful act. The court is tasked with exercising its discretion, guided by awards made in comparable precedents. In considering previous awards, the court must also have regard to inflation and the cost of living. In addition, the

⁵ Court bundle, p111 3.4

court has to consider the submissions made by the parties and precedents provided by them as well as the evidence of the witnesses before court in order to come to a just and reasonable award.

[28] Upon reviewing the evidence in its totality, inasfar as general damages in this matter is concerned, it is clear that the Plaintiff suffered serious painful injuries, resulting in protracted treatment and ongoing discomfort. This discomfort accompanied by pain persists to this day. The Plaintiff has experienced significant deprivation of life's conveniences as she is unable to participate in netball and is excluded from returning to her previous employment as she can no longer stand for long periods of time, kneel or walk distances. This not only renders her unable to earn an income but also has the psychological consequences in that she no longer has personal contact and interactions she craves from colleagues and patients, something she loved. This clearly indicates that she is suffering emotionally and psychologically as she will never be able to be placed in the position, she was before the accident. Although she had pre-existing psychological issues, according to Dr Truter she has made good recovery from, and it was only recently exacerbated by the accident. Dr Truter further recommended that the Plaintiff be assessed by a Psychiatrist for treatment of her depression.

[29] The Plaintiff further has lifelong scarring on her left leg and thigh resulting in feeling embarrassed and uncomfortable when wearing dresses or shorts. It is clear that this physical scarring of her body as well as the enlargement to her hip affects her ability to enjoy her everyday activities, hobbies and normal pleasures of living. These scars are permanent and clearly disrupting the Plaintiff's social and physical routine.

Conclusion

[30] I have reviewed and considered the number of comparable cases provided by counsel and find that no two cases are the same. Each case has to be assessed on its own facts, injuries sustained and the sequelae or anticipated impact of the Plaintiff's future. Having evaluated the conspectus of evidence in this matter, I am of the firm opinion that the amount of R1200 000.00 (One Million Two Hundred Thousand Rands) represents a fair, just and equitable award in compensation for the injuries sustained by the plaintiff.

Costs

[31] The issue of costs has already been adjudicated upon in a previous order dated 20 August 2026.

Order

[32] In the result I make the following order:

In addition to the order dated 20 August 2026 wherein judgment was reserved in respect of general damages the following order is made:

1. The Defendant is ordered to pay to the plaintiff the sum of R1200 000.00 (One Million Two Hundred Thousand Rands) in respect of general damages.
2. Should payment as aforesaid not be made within 180 days from the date of this order, the Defendant shall be liable for payment of interest on the amount calculated at the prescribed rate per annum from 14 days from the date of the granting of this order, to date of payment.

3. The issue of cost has already been adjudicated upon in a previous order dated 20 August 2026.

S MTHIMUNYE
Acting Judge of the High Court

Representatives

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