

SOUTH AFRICA / JUDGMENT

Bogosi v Road Accident Fund (RAF4/2015) [2018] ZANWHC 6 (17 May 2018) [2018] ZANWHC 6

COURT

North West High Court, Mafikeng

BEFORE

D I Matlapeng

CASE / FILE NUMBER

RAF4/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE NO: RAF4/2015

In

the matter between:

GEORGE
TIKA
BOGOSI
PLAINTIFF
and
ROAD
ACCIDENT FUND
DEFENDANT

JUDGMENT

MATLAPENG AJ

- [1] The plaintiff through a Curator ad Litem, instituted an action against the defendant for damages suffered as a result of personal injuries arising out of a motor vehicle collision that occurred on 23 March 2013. The merits have been settled on the basis that the plaintiff is entitled to 70% of his proven or agreed damages. Certain heads of damages have been agreed upon and this matter concerns only the general damages.

- [2] The claim for past and future loss of earning capacity has been settled in the amount of R973 921-80. The parties have agreed that the defendant will issue an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to the plaintiff subject to normal conditions in respect of future medical expenses.
- [3] There was no oral testimony adduced on behalf of the plaintiff, as the parties had agreed that they will rely on medical reports whose contents were admitted by the defendant.
- [4] It is common cause that the plaintiff suffered head injuries arising out of the collision. He was attended to and seen by several medical specialists who compiled medico-legal reports, chief of which were Dr J. J. Du Plessis, a neurosurgeon and Ms A. Rossouw, and occupational therapist.
- [5] According to Dr Du Plessis's report, the plaintiff suffered the following injury: the diffuse brain injury. In discussing the injury Dr Du Plessis states that a Glasgow Coma Scale of 12/15 was noted by ambulance personnel which deteriorated to 9/15 within an hour after the accident. He states that according to the hospital records, the plaintiff was still confused when discharged from the hospital which was approximately five weeks after the accident. This would indicate that the duration of post-traumatic amnesia is a more than a month.
- [6] He further states that the duration of the post-traumatic amnesia is a more sensitive indicator of the severity of brain injury than the Glasgow Coma Scale. Based on hospital records, information from the plaintiff's aunt as well as impressions gained during examination, he came to a conclusion that the plaintiff sustained a severe diffuse axonal brain injury with significant long term neurocognitive, neurophysical and neuropsychiatric sequelae. He further opines that no further improvement of the plaintiff's condition is expected in future.
- [7] With regard to the focal neurological deficit, the recent MR scan of the plaintiff's brain showed signs of focal damage to the left frontal and left temporal lobes of the brain. The frontal lobe damage explains his aggression. The focal damage to his brain has further aggravated the sequelae of the diffuse brain injury which makes this a very severe brain injury.
- [8] In relation the sequelae, Dr Du Plessis noted that he has suffered a significant intellectual impairment due to the brain injury. He is unable to function independently, his balance and fine coordination have been slightly affected and his interpersonal relationships are poor.
- [9] Ms Rossouw notes the following in relation to plaintiff's cognitive abilities: a severe cognitive outfalls in memory,
- concentration, attention, abstract reasoning and processing.

[10] She states that he has a reduced physical and cognitive endurance and needs constant supervision at home and in the community. He sometimes becomes confused and wanders around. Ms Rossouw in the main arrived at the same conclusion as Dr Du Plessis regarding the plaintiff's cognitive abilities. She however states that his physical performance has not been greatly affected.

[11] There were no experts' reports to be considered from the defendant's side.

[12] Mr Swart, for the plaintiff submitted that if regard is had to the nature of injuries sustained, an amount of R1 300 000-00 is sufficient compensation. He referred to several decisions where similar injuries were similarly compensated which decisions I will consider at a later stage.

[13] Mr Montshiwa, for the defendant, without referring to any authority submitted that an amount of R950 000-00 is sufficient

compensation for the injuries suffered. He seems to support his submission on the fact that according to the occupational therapist, the plaintiff still retains the residual to perform certain physical tasks. I disagree. The question arising in this matter relates to general damages. The fact that the plaintiff still retains the ability to perform certain physical tasks, is irrelevant to the determination of general damages. It would have a bearing if the issue of future loss of earning capacity was being determined.

[14] The court retains a wide discretion when it determines what to award as general damages. Whilst past awards are a useful tool to consider, the question of how much to award remains an inexact science. I have considered the following cases which the plaintiff's counsel referred me to:

14.1 Torres: R600 000-00 in 2010 current value (2018) R1 158 525-35, a 19 year old suffered severe diffuse brain injury resulted in significant neurocognitive, neuro-behavioural deficits associated with concentration, working memory impulse control and abstract reasoning, soft tissue injury to the neck, face and chin.

14.2 Zarrabi: R800 000-00 in 2006 current value (2018) R1 654 587-00, a 30 year old sustained a severe diffuse axonal brain injury with a severe neurophysical, neurocognitive and neuropsychiatric consequences, multiple facial lacerations, fractured nose, contusion of the chest with bilateral contusion of the lungs, rupture of the liver, contusion of the kidneys with haematuria, close fracture of the right humerus, open fracture of the right radius and ulna, deep laceration of the right elbow, fracture of the right patella, laceration of the left knee, and multiple contusions and abrasions on both legs.

14.3 Du Toit obo Mtshemla: R1 400 000-00 in 2015 current value

(2018) R1 667 591-97 sustained a severe closed head injury with cognitive change, linguistic change, behavioural and personality change, skull and facial fractures, injuries to the left optic nerve, a left clavicle fracture associated with brachial plexus injury and left femur fracture, degloving laceration of the face and traumatic amputation of left leg below the knee.

14.4 Clements: R950 000-00 in 2016 current value (2018) R1 131 580-27, sustained a severe diffuse axonal brain

injury with focal component stellate laceration on the scalp, small sub-arachnoid haemorrhage skull fracture.

[15] What can be seen from the common facts referred to in this judgment, the following is clear: The plaintiff was a young man of 20 years at the time of the collision. He has been rendered mentally enfeebled to an extent that any award made has to be protected. He wanders around and becomes confused. He needs constant supervision both inside and outside his home. His cognitive ability has been compromised and his future is bleak as compared to his pre-collision status. It is common cause that the plaintiff has suffered permanent brain injury. Medical opinion is that he will not improve from his current status.

[16] The current case is more in line with the Torres and Clements matter and the amount suggested by the defendant's counsel will not be adequate to compensate the plaintiff for the injuries suffered by his plaintiff. In *RAF v Marunga* [2003] 2 All SA 148 (SCA) the court recognised the tendency for awards to be higher than previously. The amount I consider adequate to compensate the

plaintiff is R1 200 000-00.

[17] In the circumstances, I make the following order:

1. The plaintiff succeeds in his claim for 70% of his damages;
2. The defendant is ordered: to pay to the plaintiff agreed past and future loss of earning capacity in the amount of R973 921-80;
3. To furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996;
4. To pay to the plaintiff an amount of R1 200 000-00 general damages;
5. The defendant is to pay the plaintiff's taxed costs or agreed costs on party and party High Court scale, including the following:

5.1 the costs of counsel;

5.2 the costs of :

5.2.1 obtaining expert medico-legal reports delivered in terms of Rule 36(9)(a) and (b);

3.75cm; line-height: 200%">5.2.2 preparation fees in the plaintiff's experts and the experts fees upon attending the hearing of this matter.

D I MATLAPENG

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION

APPEARANCES

DATE OF HEARING:

24 APRIL 2018

DATE OF JUDGMENT: 17 MAY 2018

COUNSEL FOR PLAINTIFF: ADV SWART

COUNSEL FOR DEFENDANT: ADV MONTSHIWA

ATTORNEYS FOR PLAINTIFF: VAN ROOYEN TLHAPI WESSELS INC.

(Instructed by OELOFSE ATTORNEYS)

ATTORNEYS FOR DEFENDANT: MAPONYA INCORPORATED

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Prepared on 11 October 2026 · Esheria