

SOUTH AFRICA / JUDGMENT

Hlalele v Minister of Police (3648/2020)

[2023] ZAFSHC 361 (6 September 2023)

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COURT

Free State High Court, Bloemfontein

BEFORE

M S Thamae

CASE / FILE NUMBER

3648/2020

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case no: 3648/2020

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between: TEBOHO COLLEN HLALELE PLAINTIFF and THE MINISTER OF POLICE
DEFENDANT

HEARD ON: 05 SEPTEMBER 2023

DELIVERED ON: 06 SEPTEMBER 2023

- [1] The Plaintiff instituted action against the defendant for damages due to injuries sustained following a wrongful assault on the Plaintiff by the members of the Defendant on 1 January 2020. Merits in this matter had already been settled and argument was only in relation to quantum.
- [2] Various expert reports were provided. Before argument, the parties provided and argued from a joint minute, which they provided shortly before arguments commenced. I was informed that the parties have agreed concerning future medical expenses. Although Industrial Psychology experts agreed on future loss of income, there were divergent views regarding pre morbid and post morbid income due to various factors considered by the experts. The parties could therefore not agree on the amount to be awarded in this regard. This aspects were thus argued and a determination of a fair and reasonable award left for the court to decide and so was the issue concerning the award for general damages.

brief background of facts

- [3] From the joint minute the following set of background facts is provided to set a back drop of my considerations. The plaintiff was attending a New Year's Eve party when he was assaulted by members of the SAPS in the Bohlolong, Bethlehem area. He was shot through the stomach, the bullet exited through his back. Following the incident, he was hospitalised at Phekolong Hospital in Bethlehem. On arrival there he was immediately transferred to Dihlabeng Regional Hospital (DRH) due to the severe nature of his injuries. Upon arrival at DRH a laparotomy was performed by a certain Dr. Sadie on the morning of 1 January 2020. Around 7th January on ward the plaintiff developed signs of sepsis, on 12 January 2020 the bowel content was extruding through the bullet wound on the back, which led to a further laparotomy, which was performed by Dr. Vermaak.
- [4] He was discharged from hospital on the 5th June 2020. At the post discharge follow-up visit, no clinical problems were recorded. According to Dr Vermaak, who is a specialist surgeon remarked that because of extensive previous surgery, long term the patient had got a high risk of future abdominal obstructions caused by Intestinal adhesions that can occur at any time after surgery and therefore this is a life long problem that can be encountered at any time by the Plaintiff. He went on to show that this is a life long burden that the Plaintiff can experience and that he most likely will need a re-laparotomy and surgery. The future medical expenses in the amount of R423 552. 15 has been agreed upon by the parties.

Future Loss of income

- [5] The plaintiff was 18 years old and doing grade 10 in school. He could not finish the grade 10 due to the injuries. The parties have agreed that there is no past loss of earnings. Joint minutes of the occupational therapists, Industrial Psychologists and actuarial calculations have been provided to the Court. The Industrial Psychologists employed by the parties differ to a certain extent on their postulations when determining Plaintiff's future career path.
- [6] For the Plaintiff a brief summary of the suggestions by the Industrial Psychologist is that:
1. Complete schooling in December 2020 (age 19) with Grade 8 qualification. Thereafter, unemployed for 4 years, thereafter, R26,000 per year (based on the Lower Quantile unskilled – 2023 terms) increasing at a linear rate over the next 7 years until R47,000.00 per year (MED unskilled 2023 terms) thereafter, increasing with inflation only until retirement, assumed to be age 65.
- [7] For the Defendant the appointed Industrial Psychologist suggested:
- Complete recommended treatment by January 2025; thereafter, unemployed for 4 years, thereafter, R26,00.00 per year (LQ unskilled – 2023 terms) increasing at a linear rate over the next 7 years until R47,000 per year (MED unskilled – 2023 terms) Thereafter, increasing with inflation only until retirement, assumed be at age 65.
- [8] Two scenarios were presented by the actuarial calculations

Scenario 1:

Scenario 1: SVJ Past Income (R) Future Income (R) Total Income (R) Pre - morbid income Post-morbid income 42 498 1 569 740 1 612 238 Loss of Income 42 498 1 569 740 1 612 238

- [9] In terms of scenario 1, SVJ is of the opinion that the Plaintiff must be compensated for his future loss of income based on what he could have earned, as an unskilled worker in the non-corporate sector. On behalf of the Plaintiff it is suggested that the reasonable approach would be to use the median of the two postulations when considering future loss of income (pre- morbid), and then use scenario 2 in determining the post morbid future loss of income (lower quartile as suggested)

Scenario 2:

Scenario 2: LB Past Income Future Income (R) Total Income (R) Pre - morbid income Post-morbid income 1 047 933 880 494 1 047 933 880 494 Loss of Income R167 439 R167 439

- [10] The opinion of LB is that the Plaintiff should be compensated for future loss of earnings, based on the difference between postulated pre and post incident earning capacity. It is submitted on behalf of the defendant that scenario 2 should be used when determining the basis upon which the court should consider when determining the future loss of earnings.
- [11] The result of the plaintiff argument after applying contingencies is R587 189.65. The result of defendant's argument after applying contingencies is R382 380.41 I agree that the approach suggested by the Plaintiff is would result in a fair and reasonable award in the circumstances.

General damages

- [12] The Plaintiff has permanent scaring on his back and abdomen from the multiple surgeries. He will suffer long `term impairment, severe emotional and psychological trauma. Specifically, he is experiencing behavioral changes. Sleeping problems due to pain and discomfort. Bowel control problems. He experiences constant back ache. He cannot stand for extended periods; cannot run or jump; cannot sit for extended periods, cannot lift and carry heavy objects, has a weakened arm, experiences difficulties when climbing stairs, he suffers from flash backs and nightmares from the incident, he feels depressed and frustrated as he can no longer perform the same activities as prior to the accident. the comparable cases presented on behalf of the Plaintiff[1], Plaintiff has suggested an award of R800 000.00 as constituting a fair and reasonable amount. The defendant also relying on previous cases for comparison submitted that the amount of R300 000.00 constitutes a fair and reasonable compensation for general damages. Having looked at the comparable cases where the Plaintiff had to undergo Laparotomy[2].

After considering the evidence and after having heard and considered argument presented by the counsel for the parties, an order is granted in the following terms:

1. The defendant is to pay the plaintiff an amount of R1, 819 741.80 in respect of plaintiff's claim for damages;
2. The amount in 1 above is determined as follows:
 - 2.1 Future medical expenses in the amount of R423 552.15;
 - 2.2 General damages in the amount of R800 000.00;
 - 2.3 Future loss of income in the amount of R587 189.65.
3. Defendant is to pay the taxed or agreed costs of suit of the plaintiff's instructing and correspondent attorneys, which costs are to include, but not be limited to:
 - 3.1 The costs and qualifying fees of plaintiff's appointed experts:
Dr Vermaak (Specialist Surgeon);
Dr van Jaarsveld (Psychiatrist);
R van Bosch (Occupational therapist);
S van Jaarsveld (Industrial psychologist);
M Barnard (Actuary).
4. Defendant is ordered to pay the interest on the amount in 1 above at the applicable rate of interest a tempore morae, calculated from date of service of summons (13 October 2020) to date of final payment;

M S THAMAE, AJ.

On behalf of Plaintiff: Advocate JC Van Eeden Instructed by: JACOBS FOURIE ATTORNEYS
BLOEMFONTEIN On behalf of Defendant: Advocate D. DE KOCK Instructed by: OFFICE OF THE
STATE ATTORNEY, FREE STATE BLOEMFONTEIN

FREE STATE DIVISION: BLOEMFONTEIN

Case number: 3648/2020

5 & 6 September 2023 before the

Honourable Thamae AJ

In the action between: TEBOHO COLLEN HLALELE PLAINTIFF AND THE MINISTER OF POLICE
DEFENDANT

DRAFT ORDER

AFTER having considered the evidence and after having considered argument presented on
behalf of the counsel for the parties, an order is granted In the following terms:

1. The defendant is to pay the plaintiff an amount of R1, 819 741.80 in respect of plaintiff's claim for damages;
2. The amount in 1 above is determined as follows.
 - 2.1 Future medical expenses in the amount of R423 552.15;
 - 2.2 General damages in the amount of R 800 000.00
 - 2.3 Future loss of income in the amount of R 587 189.65
3. Defendant is to pay the taxed or agreed costs of suit of the plaintiff's instructing and correspondent attorneys, which costs are to include, but not be limited to:
 - 3.1 The costs and qualifying fees of plaintiff's appointed experts:
4. Defendant is ordered to pay the interest on the amount in 1 above at the applicable rate of interest a tempore morae, calculated from date of service of summons (13 October 2020) to date of final payment;

BY ORDER OF COURT

- [1] Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199; Hulley v Cox 1923 AD 234 at 246; Sigournay v Gillbanks 1960 (2) SA 552 (A) at 556 A-C; Capital Assurance Co Ltd v Richter 1963 (4) SA 901 (A) at 906A-G. Road Accident Fund v Murunga 2003 (5) SA 164 (SCA)
- [2] Mashinini v Member of the Executive Council of Health, Gauteng Province (1352/2017) [2021] ZAGPJHC 11 (25 January 2021); Tobi v Road Accident Fund (868/2010) [2013] ZAECGHC 94 (20 September 2013); Mantshira v Minister of Safety and Security and Another (4783/2011) [2016] ZAGPPHC 906 (12 October 2016); April v Minister of Safety and Security 2008 (5) J 2 (QOD) 197 (E); Matross v Minister of Police and another 1978 (2) H2, QOD 779 (E), Fortuin v Minister of Safety and Security (2728/02) [2007] ZAWCHC; Morake v Road Accident Fund (52700/15) [2017] ZAGPPHC 761 (6 November 2017)

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