

SOUTH AFRICA / JUDGMENT

Jansen v Road Accident Fund (2266/2016) [2017] ZAGPPHC 696 (27 October 2017)

[2017] ZAGPPHC 696**COURT**

North Gauteng High Court, Pretoria

BEFORE

Cox

CASE / FILE NUMBER

2266/2016

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****CASE****NUMBER: 22664/2016****Not****reportable****Not****of interest to other judges****Revised.****27****October 2017****In****the matter between:****ADVOCATE SAYED N.O. W****JANSEN PLAINTIFF****And****ROAD ACCIDENT****FUND DEFENDANT**

JUDGMENT**JUDGMENT**

This is a claim for general damages following a motor vehicle accident on 5 February 2015 in which the Plaintiff who was aged 3 years and 9 months sustained certain injuries.

The matter of loss of earnings was postponed after a substantive application for such postponement was granted by this court.

The Defendant made an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, 56 of 1996 for the costs of the plaintiff's

future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by the boy in the motor vehicle collision, after such costs have been incurred and upon proof thereof.

It was then agreed between the parties that the court would proceed to hear arguments on general damages as the merits of the matter were conceded by the Defendant.

The plaintiff sustained the following injuries at the time of the accident: an injury to his head, left arm, lower back and a fracture

of the left femur.

The parties are in agreement that the head injury and the sequelae thereof would be the determining factor as far as the calculation of general damages in this matter are concerned.

The sequelae are to be determined from the various medical reports.

The plastic surgeon, Dr. Pienaar noted various scars on the head and body of the Plaintiff. These included one over the right temporal scalp which is 3cm x 3cm and is visible through the hair. Two areas of 1cm x 1cm with loss of hair that is also visible through the hair; an abrasion scar over his anterior chest and a hyper pigmented, irregular, unsightly and very visible abrasion scar which measures 2.5cm x 2cm. His uncontested view from a plastic surgery perspective is that these abrasions are not conducive to medical or surgical improvement and will therefore always be visible.

He concluded that the scarring is permanent and such that it will have a detrimental effect on his confidence and self-esteem to such an extent that it may affect his future interaction with ladies, the way he may dress and his hairstyle.

Counsel further agreed that the young boy has sustained a mild complicated traumatic brain injury during the accident and that his Glasgow Coma Scale was 13/15. The injury is the cause of what was described by Dr. Naidoo, a psychiatrist as neurocognitive disorder.

The report of the neurosurgeon, Dr. Moja shows that Master Jansen presents with headaches, forgetfulness, behavioral problems and pain of his left leg.

The headaches are recurring and are experienced 2-3 times per week. He forgets simple tasks at home and is often aggressive and short tempered. He also suffers from nightmares.

Dr. Moja classified the injury to the brain as a moderate to severe diffuse traumatic brain injury.

Dr. Jonker is a psychologist and during her consultation with master Jansen found symptoms suggestive of Attention Deficit Syndrome.

According to the grandmother of the child he did not present with those prior to the accident.

She confirms the behavioral problems which Dr. Moja referred to.

Dr. Jonker added in her report that the youngster has been experiencing neuro psychiatric difficulties and that the young boy reported to her that he experienced increased levels of anxiety when standing or walking next to the road, avoidance of playing near streets and hyper vigilant when having to walk next to or crossing roads.

All of the above were not present prior to the accident.

She further referred to a phenomenon which is referred to as "sleepier effects" and stated in her report that it may lead to him not reaching his milestones in line with his peers.

It appears from the report of Ms. September, the occupational therapist that the school readiness skills of the boy is delayed because of injuries which he sustained in the accident.

The quantum of the general damages stands to be determined based on the foregoing.

Counsel for the Plaintiff argued that an amount of R 800 000 would be suitable in the circumstances whereas counsel for the Defendant

argued that an order for payment of an amount between R 600 000 and R 800 000 should be made.

In Road Accident Fund v Marunga 2003

(5) SA 164 (SCA) [also reported at [2003] JOL 10803 (SCA) - Ed] at paragraph [23] the Court said:

"This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement,

permanent disability and loss of amenities of life arises a trial Court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party...

Each case depends on its own peculiar circumstances.

The plaintiff now has to be compensated adequately and fairly.

General damages should not be determined without referring to case law.

In Mofokeng v Road Accident Fund (2009/11101) [2014] ZAGPJHC (1July 2014) an amount of R 700 000 equating to R 1150 000 today was awarded.

In Hall v Road Accident Fund [2013] JO L 30456 (GSJ) an amount of R700 000 was awarded for general damages to a middle aged cyclist.

Counsel for the plaintiff referred the court to the matter of Mngomezulu v RAF (2010/04643) 2010 ZAGPJHC wherein an amount of R 600 000 was granted to the Plaintiff. It equates to R800 000 today. The sequelae of the injuries sustained by the plaintiff in that matter was however more serious than in the current matter.

I have considered all the experts' reports, submissions by both counsel and relevant case law in order to come to a fair and just decision.

Based on the foregoing general damages in the amount of R 700 000 is granted to the Plaintiff with costs.

The draft order is made an order of court.

COX

ACTING JUDGE OF THE HIGH COURT: PRETORIA

GAUTENG DIVISION, PRETORIA

Case No: 2266412016

On 26 October 2017, before the Honourable Justice Cox AJ

ADVOCATE S. SAYED N.O

(CURATOR AD LITEM OF W. JANSEN) PLAINTIFF

ROAD ACCIDENT FUND DEFENDANT

DRAFT ORDER

Having heard Counsel

IT IS ORDERED THAT:

1. Merits are settled 100% in favour of the Plaintiff.
2. The Defendant pay the Plaintiff an amount of R700-000 (Seven Hundred Thousand Rand) in full and final settlement of the Plaintiff's claim for General Damages, payable on the 28th of November 2017 into the Plaintiff's attorneys of record trust account with the following details:

Account Holder : Ehlers Attorneys

Bank Name : FNB

Branch Code : 261550

Account Number : [...]

3. The Defendant will not be liable for interest on the above mentioned amount, save in the event of failing to pay on the due date, in which event the Defendant will be liable to pay interest on the outstanding amount at a rate of 10.25% per annum.
4. The Defendant is ordered to furnish the Plaintiff with an undertaking, in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, for the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 5 February 2015.
5. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court scale, subject to the discretion of the Taxing Master, which costs will include, but will not be limited to the following:

5.1 The reasonable taxed fees for consultation with the experts mentioned below, together with delivery of expert bundles including travelling and time spent travelling to deliver such bundles, preparation for trial, qualifying and reservation fees (if any and on proof thereof), including the costs (fees and disbursements) of all consultations (inclusive of telephonic consultations) with Counsel and/or Plaintiffs attorney and the costs (fees and disbursements) of all consultations between the Plaintiffs and Defendant's experts, as well as costs of the reports, addendum reports, joint minutes and addendum joint minutes and full day fees for court attendance (if at Court) of the following experts:

- 5.1.1. Dr P Engelbrecht - Orthopaedic Surgeon;
- 5.1.2. Dr. Moja - Neurosurgeon;
- 5.1.3. I Jonker - Neuropsychologist;
- 5.1.4. Dr. Smuts - Neurologist;
- 5.1.5. Prof J Seabi - Educational Psychologist;
- 5.1.6. Dr. M Naidoo - Psychologist;
- 5.1.7. Dr. Pienaar - Plastic Surgeon;
- 5.1.8. M Sissison - Clinical Psychologist;
- 5.1.9. N September - Occupational Therapist;
- 5.1.10. Jacobson IP's - Industrial Psychologist;
- 5.1.11. Dr. Fredericks - Disability and Impairment Assessor;

5.1.12.- G Jacobson -Actuary.

5.2 The costs for accommodation and transportation of the injured as well as a family member, with JT Transportation Services or any alternative transport provider, to the medical legal examination(s) arranged by Plaintiff.

5.3 The costs for accommodation and transport with JT Transportation Services or any alternative transport provider, for the injured as well as a family member, to attend Court.

5.4 The costs of an inspection in loco by the Plaintiffs attorney.

5.5 The costs of appointing an assessor to investigate merits.

5.6 The costs for the Plaintiffs attorney travelling to and spending time travelling to pre-trial conferences and attendance at pre-trial conferences by the Plaintiffs attorney.

5.7 The costs for preparation of Plaintiffs bundles of documents for trial purposes, as well as the travelling costs and time spent to deliver these bundles.

5.8 The costs for preparation of Plaintiffs bundles of documents for experts, as well as the travelling costs and time spent to deliver these bundles.

5.9 The costs and fees of the curator ad /item , including but not limited to any consultations deemed necessary, including but not limited to consultations with trustees, the Masters office, the Plaintiffs attorney , family members of the injured, medical experts and any other experts deemed necessary, as well as the drawing of reports and day fees.

5.10 The costs for preparation of Plaintiffs bundles of documents for the curator ad litem, as well as the travelling costs and time spent to deliver these bundles.

5.11 The costs of Adv. Jaco Barn, counsel appearing for trial, including but not limited to the following:

5.11.1 Preparation for Trial;

5.11.2 Consultations with Plaintiffs Attorney in respect of Preparation for Trial;

5.11.3 Consultations with Plaintiff and or family members in respect of Preparation for Trial;

5.11.4 Drafting of opposing papers;

5.11.5 Day fee for 26 October 2017.

6. Should payment of taxed costs not be effected timeously, Plaintiff will be entitled to recover interest at the rate of 10.25% on the taxed or agreed costs from date of allocator to date of payment.

7. The Plaintiffs attorneys of record; Ehlers Attorneys, shall attend to the creation of an inter vivos trust in order to protect the awarded funds for the exclusive benefit of the injured, in accordance with the recommendation of the curator ad litem regarding the investment and management of the funds on behalf of the injured.
8. The Plaintiffs attorneys: Ehlers Attorneys, must keep the monies received as set out in clause 2 of this order in their trust account and will only be allowed to pay such monies over to the trustees of the trust to be created in terms of clause 7 of this order, once the Master of the High Court has issued the trustees with the necessary letters of authority;
- 9.1 The Plaintiffs abovementioned attorneys are however, authorized to pay the attorney and client fees and expenses of the Plaintiff from the above- mentioned funds held in trust;
- 9.2 The Plaintiffs abovementioned attorneys are further authorized to pay from the abovementioned funds held in trust, the costs to set security to the Master of the High Court by the trustees of the trust to be created, which costs in turn must be refunded by the Defendant to the Plaintiff.
10. The Defendant is ordered to pay the costs in respect of the creation and future administration of the said trust to be formed in order to manage and administer the compensation payable to the Plaintiff as referred to in paragraph 2 of this order, which costs will include the fees of the trustees.
11. The remainder of the heads of damages is postponed sine die.

Counsel for the Plaintiff: Adv Jaco Barn 082 828 2388

Counsel for the Defendant: Adv H v Zyl

BY ORDER

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