

SOUTH AFRICA / JUDGMENT

Maroti v Road Accident Fund (314/15) [2017] ZANWHC 119 (26 May 2017)

[2017] ZANWHC 119

COURT

North West High Court, Mafikeng

BEFORE

GUTTA

CASE / FILE NUMBER

314/15

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“IN THE HIGH COURT OF SOUTH AFRICA”

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: 314/15

REPORTABLE

In the matter between:-

TAMISINYANA EDWARD MAROTI

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

GUTTA J.

A.

INTRODUCTION

- [1] Plaintiff instituted an action for damages arising from a motor vehicle collision which occurred on the 7 August 2011 when a motor vehicle with registration number B832 ANU driven by one, Keamogetse Otukile collided with a cow.

- [2] Plaintiff was a passenger in the motor vehicle. As a result of the collision, plaintiff sustained injuries. Plaintiff claimed future medical expenses, past and future loss of income, loss of amenities and pain and suffering.
- [3] On the 21 February 2017, Hendricks J granted an order by agreement on the merits wherein defendant conceded merits 100% in favour of the plaintiff and quantum was postponed.
- [4] Although the matter before me was for general damages and loss of income, the parties agreed to postpone the issue of past and future loss of income and to proceed only on general damages. Plaintiff applied for an amendment of the quantum claimed for general damages to an amount of R1 800 000.00 rands (One Million Eight Hundred Thousand) which application was granted.

B. GENERAL DAMAGES

- [5] Counsel for plaintiff and defendant at the onset of the proceedings informed the court that the parties will rely on the experts reports that have been discovered and will not be calling witnesses. It was further agreed that the injuries and sequelae to the injuries were common cause and that the parties will rely on case authority to support their submissions for general damages.
- [6] Plaintiff was a front seat passenger and his head hit the dash board when the vehicle he was travelling in hit a cow. He has no memory of what happened thereafter. He was taken to Zeerust hospital and then transferred to Mafikeng hospital where he was in high care or ICU and when he was stabilised he was referred to Baragwanath hospital. At Baragwanath hospital there were no beds available and he was transferred to Lesley Williams Pinacle hospital in Carltonville and from there to Krugersdorp Private hospital for the repair of his CSF leak and craniotomy. He stayed in hospitals for a period of 2 to 3 months. Plaintiff lost his first wife in the accident and has subsequently remarried.
- [7] Plaintiff sustained the following injuries:
- 7.1 Base Skull fracture – left orbit fracture, the cranium, contusion of the left frontal lobe pneumocranium, multifocal brain haemorrhage and cerebro spinal fluid leakage.
- 7.2 Deep laceration on the forehead, epistaxis and racoon eyes.
- 7.3 Soft tissue injury of the left shoulder.
- [8] Prior to his accident plaintiff was working on the mines. After his discharge from hospital he returned to work on the mines but due to epileptic convulsions, headaches and poor memory he was declared unfit to work.
- [9] His current complaints according to plaintiff's experts, Dr. Gopal the specialist neurosurgeon and Mr Mudau the occupational therapists are:

9.1 As a result of the severe injuries to the face and head, plaintiff suffered pain acutely for a least a month.

9.2 Severe headaches that can last from 24 to 48 hours which he gets two to three times a week for which he requires constant medication.

9.3 Loss of smell which has also affected his taste.

9.4 Epileptic convulsions for which he takes medication daily.

9.5 Water leakage from his nose.

9.6 Deteriorating memory. His communication is poor and he forgets instructions, names and places. He cannot travel or drive alone. He is forgetful when performing self-care home management and life skill activities.

9.7 A surgical scar on his head behind his hair line and a scar over his left orbit. The scars are visible.

9.8 Psychological effects from severe trauma, prolong stay in hospital and loss of his job.

9.9 Dizziness when standing for a prolonged.

9.10 Pain in his neck and right arm.

9.11 Fatigue in the right arm

9.12 He walks slowly

9.13 He becomes irritable and argumentative.

9.14 His general enjoyment and quality of life has been adversely affected.

[10] According to defendant's expert, Dr Mazwi, the neurosurgeon, plaintiff's mental and physical impairment includes, forgetfulness, his left vision is reduced, he has a loss of smell and suffers from anxiety. Under pain and suffering, he said plaintiff suffers from headaches and epilepsy and under loss of amenities of life he opined that plaintiff's activities of daily living and mental function have been minimally affected and his life expectancy has not been affected. His combined whole person impairment is 36%.

[11] Defendant's occupational therapist, Adelaide Phasha, noted:

11.1 Under the heading inconvenience and suffering, she noted the following:

11.2.1 Initial/subsequent inconvenience and suffering included the need for transportation to Mafikeng and Leslie Williams Hospital as well as unknown hospitals in Johannesburg and Krugersdorp.

11.2.2 Surgical procedures was performed to his head.

11.2.3 He suffered discomfort associated with the use of crutches for 2 months.

11.2.4 He continues to suffer the inconvenience of going to Gaborone Hospital in Botswana for his epilepsy treatment.

11.2 Under occupational therapy, she noted that plaintiff suffers from neuropsychological, neurobehavioral and neuro cognitive difficulties.

11.3 Under loss of amenities of life, she opined inter alia that plaintiff has the physical capacity to carry out activities of daily living. He suffers from general body fatigue when engaging in strenuous tasks.

[12] Defendant's clinical psychologist, Samuel F Mputhi and Linda Maiye opined that plaintiff suffered a traumatic brain injury which has resulted in long-term neurocognitive deficit that appear to be within moderate degree of severity. They postulate the moderate residual neuro cognitive deficits constitute a modest improvement in the functioning and capacity of plaintiff since the accident.

[13] It is generally accepted that the plaintiffs' claims for damages in respect of bodily injuries are quantified based upon comparable cases. The trial court has a wide discretion in considering all the facts and circumstances of the case in awarding what is considered to be fair and adequate compensation to the injured party. Our courts have acknowledged the existence of a tendency for awards to be higher than they were in the past. This is a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than in most other countries. See: Christiaan de Jongh v Pieter Johannes du Pisanie N.O[1].

[14] When considering the injuries sustained it is preferable not to consider each injury in isolation but to consider all the injuries sustained cumulatively.

C. AUTHORITIES

[15] Unfortunately the authorities relied upon by counsel for the plaintiff are distinguishable from the injuries sustained by the plaintiff in casu, for example in:

15.1 In *Bhekisisa Simon Dlamini v RAF* unreported, Gauteng Division, Pretoria case number 59188/13, Judgment delivered 3 September 2015, the patient sustained a diffuse traumatic brain injury. He suffered irreversible brain damage which rendered him unsafe to himself and others and a curator was thus recommended.

15.2 Also in *Seme v RAF* 2008 (5A4) QOD33 (D), the patient was permanently disabled, immobile and totally dependent on his family for his well being and had no reasonable prospects of being gainfully employed.

15.3 Again in *Megalane NO v The Road Accident Fund 2006 (5A4) QOD 10 (W)*, the patient sustained a severe brain injury with diffuse and focal brain damage in the form of a subdural haematoma resulting in cognitive impairment, poor verbal and visual memory, poor concentration and distractibility impaired executive function causing inappropriate behaviour, speech difficulties severe spasticity of all four limbs and left facial paralysis and aphasia. He was confined to a wheelchair.

[16] Similarly some of the cases referred to by counsel for the defendant are distinguishable and many of the cases cited are old authorities and do not reflect the changes referred to in paragraph 13 supra. Further the defendant's counsel made submissions regarding general damages under two heads, namely head injury and epilepsy

which is not ideal as stated supra, as the injuries should be considered cumulatively. The cases relied upon by the defendants include the following:

Head Injury

16.1 *Fries v Road Accident Fund, 2002 (5) QOD B4 – 88 (C)*. This case is distinguishable from plaintiff's injuries as the injury to the head was mild to moderate where as plaintiff sustained a severe head injury.

16.2 *Harcourt NO v RAF 2000 (5) QOD B4 – 29*, NCD patient suffered a head injury, convulsion with resultant diffuse closed brain injury (frontal lobe) resulting in multifocal axonal degeneration, sequelae included cognitive defects such as reduced motivation and drive. Disassociation between intent and action, inability to self-regulate and select inappropriate conduct, frontal lobe amnesia and inability to concentrate for extended periods. Resultant inability to resume previous occupation. Loss of wife and unborn child in the same accident, multiple fractured ribs, pneumothorax laceration and bruises. The court awarded R95 000.00 for general damages and equivalent in 2017 is R244 055.00.

16.3 In *Khomo v SA Mutual Fire and General Insurance CO Ltd 1971 (2QOD) QOD 171 (D)*. Patient sustained a skull fracture with brain injury and fractured clavicle and facial injuries. A craniotomy and angiography was performed. Also partial paralysis of the lower left side, wasting of hand and slight weakness of foot. The court awarded R3500.00 general damages. Equivalent for 2017 is R223 000.00.

16.4 In *Bridgman NO (obo Ivan Janklaas) v Road Accident Fund 2002 (5) QOD B4 98 (CAF)*. Patient sustained a head injury consisting inter alia of extradural haematoma and intra-cranial contusional haemorrhage leading to brain damage in the frontal lobe. Patient was confused and given to inappropriate laughter and conversation and bed wetting and post traumatic amnesia. Problem included, chronic insomnia, confusion, agitation and irritability, hallucinations delusions, aggression and odd behaviour. Admitted to a psychiatric hospital. Sequelae included memory impairment slow mind and lethargic motor function, violence and aggression and severe cognitive deficits and marked

change in personality from extrovert, competitive and lively to passive, lethargic and aggression character. Court awarded R90 000.00

for general damages, 2017 equivalent is R229 600.00.

Epilepsy

16.5 In *Protea Assurance Co. Ltd v Matinise* 1978 2QOD 693 (AD). The patient suffered from permanent post traumatic epilepsy and extreme change of personality. Loss employment

because of epileptic fits. Court awarded R9000. 00 for general damages. The equivalent for 2017 R313 000.00.

16.6 In *Mbele v Rondalia Versekerings Korporasie van Suid-Afrika Bpk* 1971 2QOD 167 (AD). The patient suffered post traumatic epilepsy and partial deafness. The court awarded R4000. 00 for general damages. The equivalent for 2017 is R255 00.00.

16.7 *Sibanyoni v Mutual and Federal Insurance Company Ltd* 1996 4 QOD B2 – 13(A) The patient sustained a head injury causing left sided weakness, isolated epileptic seizures and mild cognitive and intellectual impairment resulting in reduced performances at work. The court awarded R15 000.00 for general damages. Equivalent for 2017 is R59 000.00.

16.8 *Ncapayi NO v Santam Insurance Co Ltd* 1980 3QOD 183 (E) the patient sustained cerebral contusion leading to permanent epilepsy. Operations to skull and wire fracture of the left jaw. Life expectancy reduced and permanent severe headache. Unslightly scar and schooling ceased. The court awarded R9000.00 general damages. Equivalent in 2017 R219 000.00.

[17] The following cases also assisted the court in quantifying general damages as some of the injuries and sequelae are similar to the plaintiff's in casu.

17.1 *Nando v Road Accident Fund* 2015 JDR 1193 (GP). The patient sustained moderately severe to severe brain injury. He had base skull fracture, fracture of the left temporal bone, small contusions on the left parietal lobe, right frontal lobe and temporal lobe. Also abrasion of the left hip and elbow and an 8cm laceration of the left thigh. His complaints were poor memory and lower back pain. Because of the severity of the injury long term neuropsychological, neurobehavioral and cognitive problems could arise as well as a risk of developing epilepsy. His attention and concentration was slower and auditory was below average. His short term memory was severely compromised. He will not be able to work properly or independently. The court awarded R850 000 for general damages.

17.2 In *Raupert v Road Accident Fund* 2011 (6A4) QOD 52 (ECP), the patient sustained a “very significant head injury consisting of extensive fracturing of skull with bi-frontal lobe contusions involving the left frontal region with bi-frontal traumatic subarachnoid haemorrhage, generalised brain odema with some compression of the right lateral ventricle caused by a developing right intratemporal haematoma. It is probable that the head injury included diffuse axonal injury. A craniotomy was performed to drain right temporal lobe haematoma. She demonstrated the direct effects of the brain injury mainly in terms of executive difficulties which

prevented the effective use of her measured intellect, resulting in anxiety and depression with a marked reduction in self-confidence. Plaintiff experienced memory problems, especially short-term memory loss, severe headaches at times and lost her sense of smell and her sense of taste was limited. A very significant factor was plaintiff's awareness of what she had lost and the unrelenting mental anguish associated therewith. Plaintiff unlikely to achieve anything near her pre-morbid potential in the work place and likely to have problems in the interpersonal domain and perhaps in independent functioning".

The court awarded R750 000.00 for general damages. The equivalent for 2017 is R1 049 000.00.

17.3 In *Olivier v Road Accident Fund* 2013 (6A4) QOD 216 (GNP) the patient sustained a severe brain injury, injury to his neck vertebra and nerve damage in his left arm. He required a tracheotomy and ventilation and was hospitalised for four weeks. He developed epileptic seizures. He has loss of feeling in his right hand and the tip of his fingers are numb. He dribbles when addressing people. His epileptic attacks occur once or twice a week and he is on epileptic medication. He suffers from memory loss. He lost his sense of smell and experiences headaches suffers a lack of critical thinking. Court awarded R700 00.00 for general damages the equivalent for 2017 is R877 000.00.

[18] I have considered the aforementioned cases cited supra, together with the experts' report and the injuries and sequelae sustained by the plaintiff and I am of the view that an amount of R850 000.00 is a fair and reasonable award for general damages.

D. ORDER

[19] In the result,

19.1 The defendant is ordered to pay the plaintiff an amount of R850 000.00 for general damages.

19.2 The defendant is ordered to pay the costs of suit on a party and party basis on the High Court scale including the costs of plaintiffs' experts including the qualifying fees of the experts whose experts' notices were sent on the defendant.

N. GUTTA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 09 MAY 2017

DATE OF

JUDGMENT

: 26 MAY 2017

ADVOCATE FOR PLAINTIFF : ADV MAPHWANYA

ADVOCATE FOR DEFENDANT : ADV EDWARDS

ATTORNEYS FOR APPLICANT : M.E TLOU ATTORNEYS

ATTORNEYS FOR RESPONDENT : MAPONYA INC.

[1] (220/2003)

[2004] ZASCA 43 (25 May 2004)

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