

SOUTH AFRICA / JUDGMENT

Masilela v Road Accident Fund (83938/2017) [2024] ZAGPPHC 1255 (2 December 2024)

[2024] ZAGPPHC 1255

COURT

North Gauteng High Court, Pretoria

BEFORE

KM Mmuoe

CASE / FILE NUMBER

83938/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 83938/2017

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 2/12/2024

SIGNATURE

In the matter between:

SIMPHIWE RHODAH MASILELA

PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

Link: 417804

REASONS FOR ORDER MADE

MMUOE AJ:

Background

- [1] The matter came before me on the civil trial roll of 21 October 2024. I made the draft order marked “X” as amended an order of court. It is apposite to sketch a brief background to the matter.
- [2] In the original particulars of claim dated 27 November 2017, the plaintiff claimed an amount of R600 000 for damages from the defendant as a result of an accident that occurred on 9 February 2017. The total claim amount was made up of R5000 for past hospital expenses, R5000 for past medical expenses, R40 000 for estimated future medical expenses, R50 000 for past loss of income, R250 000 for estimated future loss of income and R250 000 for general damages.
- [3] The claim was defended, two special pleas filed and the matter proceeded as a defended action. On 2 July 2024, the plaintiff filed a notice of intention to amend the particulars of claim. The intended amendment would result in the total claim amount increasing to R1 950 000. The R1 950 000 was made up of R5000 for past hospital expenses, R5000 for past medical expenses, R40 000 for estimated future medical expenses, R500 000 for past loss of income, R700 000 for estimated future loss of income and R700 000 for general damages. There was no objection to the intended amendment and on 18 July 2024 the amendments were duly effected by the plaintiff.
- [4] At the commence of the trial on 21 October 2024, the plaintiff’s Counsel confirmed that there would be no need for the court to consider the issue of general damages as the claim would be postponed sine die. The only issues before the court were those of liability, loss of earnings, future medical expenses and costs. The plaintiff’s

Counsel handed up the plaintiff’s submissions/short heads of argument (“heads of argument”) and a draft order.

- [5] The submissions made by the plaintiff’s Counsel were consistent with the heads of argument. The plaintiff’s Counsel asked the court to disregard the portion in the heads of argument that dealt with the issue of general damages[1]. The remainder of the heads of argument remained relevant and were duly considered by the court in arriving at a decision.
- [6] During his address, the plaintiff’s Counsel submitted that in respect of liability, the defendant should be held 100% liable. In respect of loss of earnings, submissions were made by the plaintiff’s Counsel that an amount of R585 752 should be awarded to the plaintiff based on the average of the two scenarios postulated in the actuarial report. It was also submitted that an order should be granted that the future medical expenses should be covered by an undertaking from the defendant in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996. The plaintiff’s Counsel also submitted that costs should be awarded to the plaintiff on scale C.

Discussion

- [7] When the matter commenced, an application to adduce all evidence in terms of section 34(2) of the Civil Proceedings Evidence Act 25 of 1956 read with Rule 38(2) of the Uniform Rules of Court was made by the plaintiff. The application had been served on the defendant on 18 October 2024 and I was satisfied that it should be granted.
- [8] I considered all of the evidence, the pleadings and documents filed. I found that it was established that the plaintiff was involved in the accident as is described in the plaintiff's particulars of claim. It was also established that as a result of the aforesaid accident, the plaintiff sustained injuries including a hard blow to her face, bruises to her lower back and a fracture of the left rib. I was satisfied that the defendant was liable for 100% for the plaintiff's proven or agreed damages.
- [9] Having had regard to the facts, expert reports and affidavits, I was satisfied that the calculations by the actuarial expert, Mr Johan Potgieter were accurate. I could not fault the submission made by the plaintiff's Counsel that an average between the two scenarios postulated will result in fair and just compensation for the plaintiff in the amount of R585 752 in respect of loss of income.

Scale A costs

- [10] The plaintiff's Counsel's heads of argument deal with the reasons why costs should be awarded on scale C under the the section titled: "plaintiff's supplementary short heads of argument on costs scale- new rule 67A-effective from 12 April 2024 [2]." The crux of the argument is that the defendant should not be left out of pocket due to having instructed counsel who is of a "senior-junior status" and who has been in practice for over thirty years. An argument is also made that the awarding of costs on scale C is not punitive and that the plaintiff has a right to appoint counsel of their choice. Plaintiff's Counsel also argues that the defendant has ignored the basic rules together with principles and that the injuries sustained by the plaintiff are serious, thus justifying costs on scale C.
- [11] In Mashavha[3], Wilson J dealt extensively with the issue of scales of costs within the context of the new rule 67A, and in expressing the purpose of the rule said: "rule 67A addresses itself only to awards of costs as between party and party. Its purpose is to permit a court to exercise control over the maximum rate at which counsel's fees can be recovered under such an award." The monetary value of the relief sought by the plaintiff in this case was R585 752, which is at the lower end of the scale in terms of the monetary jurisdiction of this court. I have no doubt that a party is free to brief counsel of any seniority level they deem appropriate. In this instance a "senior-junior" counsel was briefed for the matter. If regard is to be had to the seniority of counsel within the context of the monetary value of the claim (R585 752) as well as the nature of relief sought generally, a scale C costs order is simply not justifiable. In paragraph [25] of Mashavha, in addressing the actual amounts that can be potentially recovered in terms of rule 67A, Wilson J expressed: "I emphasise that these figures are the maximum that can be recovered on these scales from the losing party for the winning party's

counsel's fees on the party and party scale. They do not represent what may actually be charged." It is the plaintiff's own election to brief counsel that was deemed appropriate for this matter and pay counsel his own actual fees charged. However, it does not follow that the court should be bound to award costs on a scale that is commensurate with counsel's own fees charged. Put differently, just because the plaintiff decided to brief counsel who is of higher level of seniority for a matter that did not have necessarily require that level of counsel, does not mean that the court must award costs equivalent or close to the costs actually charged by that counsel.

- [12] I also disagree with the plaintiff's Counsel's submission that the defendant ignored basic rules and principles. There was no evidence of this before me to that effect and in any event, the conduct of the other defendant is not relevant for purposes of determining which scale applies. As further expressed by Wilson J at paragraph [19] of *Mashavha*: "There mere fact that punitive costs were sought by the successful party does not mean that a higher scale of counsel's costs ought to be awarded on the party and party scale." The plaintiff's Counsel at any rate also correctly conceded in the heads of argument, that the awarding of costs on scale C is not meant to be punitive.
- [13] The argument that the injuries are serious and therefore scale C costs should be awarded cannot be sustained. There was no evidence led at trial regarding the seriousness of the injuries. The seriousness of the injuries in this matter is an issue yet to be determined. The issue of general damages (which would only be adjudicated upon if the injuries are found to have been serious) was postponed sine die at the request of the plaintiff. Therefore, the seriousness of the injuries argument in respect of costs does not arise.
- [14] The plaintiff's Counsel did not advance argument on the importance of the relief nor in respect of the complexity of the matter. Having considered all the issues in the matter and arguments advanced, I found that there was no issue of importance in the relief granted. I also found that there were no complex issues that justified scale C costs to be granted. The matter that came before me at trial on 21 October 2024 was a run-of-the-mill Road Accident Fund case. The argument by the plaintiff's Counsel lasted a few minutes. The argument did not raise any complex issues and it was uncomplicated. I found there to be no justification to depart from the normal scale A.

The claim for general damages

- [15] In paragraph 6 of the draft order handed up by the plaintiff's Counsel, the plaintiff sought the following order:

"The claim for general damages is postponed sine die and may be referred to the HPCSA for determination of seriousness" (own emphasis.)

[16] I did not grant the emphasised portion of the prayer. It is important to note that the defendant has filed two special pleas. Both special pleas are to the effect that the plaintiff's claim for non-pecuniary loss is limited to serious injuries in terms of section 17(1A) of the Act. In the special pleas, the defendant raises the procedure to be followed in the assessment of serious injuries. According to the defendant, the jurisdiction for assessment of the serious injuries is within the ambit of the Appeal

Tribunal established in terms of the 2008 Regulations to the Act and not the court. The defendant also raises the special defence that the plaintiff has not followed the process for the submission of a Serious Injury Report in terms of the Regulations. These special pleas relate to the issue of general damages.

[17] There is no replication to the special pleas. The plaintiff's counsel was clear from the outset that the general damages claim would be postponed sine die. First, there was no evidence presented that justified the additional relief that the court should grant an order that the claim for general damages "may be referred to the HPCSA for determining the seriousness". Second, there was also no argument made by the plaintiff's Counsel to the effect that the order is justified. Third, I am alive to the fact that the defendant's special plea is still there and the defendant's defence has not been struck out. Fourth, the case pleaded by the plaintiff does not seek this additional relief of a referral to the HPCSA. To add to the reasons mentioned above, it is simply not for this court to say whether or not the claim for general damages may or may not be "referred to the HPCSA for determination of the seriousness".

[18] I also note that if wording in paragraph 6 of the draft order as proposed by the plaintiff's Counsel were to be adopted, it would in any event have created ambiguity. If the plaintiff deems it necessary to refer the matter "to the HPCSA for determination of seriousness", then the plaintiff is free to do so out of her own accord. It is not for this court to make any such pronouncements and no evidence was provided to justify this proposition.

[19] Accordingly, I was inclined to postpone the claim for general damages sine die.

Conclusion

[20] The amendments made to the draft order handed up by the plaintiff in respect of prayers one and two were made in accordance to what the plaintiff asked for. I did not find any justification for costs to be awarded on scale C for reasons stated above and therefore, I amended the draft order to reflect that costs are awarded on scale A. Lastly, I agreed with the plaintiff that the claim for general damages should be postponed sine die. I however did not find that there was justification for the additional wording that the claim for general damages may be referred to the HPCSA for determination of seriousness.

Order

[21] I therefore granted the draft order as amended with the following done in manuscript additions and amendments:

- a) Inserted the figure “100” in prayer 1.
- b) Inserted the amount of “R585 752” in prayer 2.
- c) Amended the scale of costs to reflect the award of costs on scale A in paragraph 4(a).
- d) Removed the words: “and may be referred to the HPCSA for determination of seriousness.”

Hand-down and date of reasons

[22] These reasons are handed down electronically by circulation to the parties or their legal representatives by email and by uploading the reasons onto Caselines. The date for hand down for the reasons is deemed to be 2 December 2024.

KM MMUOE

ACTING JUDGE OF THE HIGH COURT

PRETORIA

For the Plaintiff: Adv. G. Lubbe Instructed by: Frans Schutte & Matthews Phosa Attorneys For the Defendant: No appearance Instructed by: STATE ATTORNEY, PRETORIA

[1] Plaintiffs submissions/Short Heads of Argument from the end portion of page 16 to the beginning of page 45.

[2] Plaintiff’s Counsel’s Heads of argument pages 45-48

[3] Mashavha v Enaex Africa(Pty) Ltd Unreported judgment of the Gauteng Division of the High Court (2022/18404)[2024]ZAGPJHC 387(22 April 2024) –para 5

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2024/1255.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/masilela-v-road-unknown-topic-agpphc-2024>

Prepared on 14 October 2026 · Esheria