

SOUTH AFRICA / JUDGMENT

Mgwena v Road Accident Fund (Reasons) (81594/2014) [2025] ZAGPPHC 388 (29 April 2025) [2025] ZAGPPHC 388

COURT

North Gauteng High Court, Pretoria

BEFORE

M.P. Motha

CASE / FILE NUMBER

81594/2014

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 81594/2014

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

DATE: 29 April 2025

SIGNATURE

In the matter between:

EVEL MGWENA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

REASONS FOR ORDER

MOTHA, J

Introduction

- [1] As a result of a motor vehicle accident on 8 February 2014, the plaintiff sustained facial abrasions. On 27 May 2014, she lodged a claim against the Road Accident Fund. Having obtained leave to proceed by way of default judgment, her counsel submitted that for her scarring an amount of R730 000.00 for general damages was reasonable. After hearing counsel's submissions, the court granted an order awarding general damages in the sum of R350 000.00. Dissatisfied with the order, the plaintiff seeks reasons of the order handed down on 28 February 2025.

Background

- [2] Following the accident, the plaintiff was taken to Mapulaneng Hospital, where she was admitted at 21h50 and discharged on the same day (8 February 2014). From the hospital records — which noted a Glasgow Coma Scale (GCS) of 15/15 — the Court ascertained that the recorded injuries were as follows:
- a. Multiple abrasions around the left eye with a deep laceration measuring approximately 2cm;
 - b. An abrasion on the right side of the face;
 - c. Abrasions on the right tibia; and
 - d. Abrasions on both arms.
- [3] The hospital records further note that the plaintiff “denies headache, no dizziness”. It is perhaps noteworthy that, on 15 February 2014, the plaintiff was admitted for severe hypertension, which appears to be unrelated to the motor vehicle accident.
- [4] In the particulars of claim, it is recorded that the plaintiff sustained the following injuries:
- a. Multiple injuries to the head;
 - b. Injuries to the face;
 - c. Injuries affecting the upper portion of the right eye;
 - d. Injuries to both the left and right arms;
 - e. Injuries to the back; and
 - f. Injuries to both the left and right leg.

Medico-Legal Reports and Issues

- [5] For the purpose of compiling medico-legal reports, the plaintiff was examined by the following professionals: an orthopaedic surgeon, a plastic surgeon, a neurologist, an educational psychologist, a physician, an occupational therapist, an industrial psychologist, and an actuary.

Orthopaedic Surgeon

- [6] Dr Vic Oelofse examined the plaintiff on 25 January 2018 and recorded that she sustained the following injuries:

“- Multiple abrasions on the right side of the face

- Abrasions around the left eye with a 2 cm deep laceration”.[1]

- [7] In the medico-legal report, Dr Oelofse noted that the plaintiff was admitted and discharged on the same day. Following the cleaning and dressing of all abrasions, analgesics and anti-inflammatory medications were prescribed. The doctor diagnosed the plaintiff with the following:

“- Contusion of the back muscles

- Inconspicuous scar at the left eye.”[2]

- [8] No x-ray investigation was requested. Dr Oelofse concluded by stating that “[t]he orthopaedic injury does not meet the requirements for a serious injury under the Narrative Test”.

Plastic and Reconstruction Surgeon

- [9] Dr Pienaar examined the plaintiff on 16 April 2018, approximately seven years ago. He recorded that the plaintiff sustained the following injuries:

- a. Laceration on the forehead;
- b. Laceration to the left eyebrow;
- c. Laceration of the left upper eyelid;
- d. Abrasion to the left side of the chest;
- e. Injury to the back;
- f. Abrasion to the left elbow; and
- g. Abrasions to both knees.

[10] Contrary to what is written in the hospital records and recorded by the orthopedic surgeon, Dr. Pienaar noted that the plaintiff stayed for one day at Mapulaneng Hospital. He recorded that the plaintiff had a Whole Person Impairment (WPI) of 15% and opined that she qualified for general damages in terms of the Narrative Test due to serious permanent disfigurement. He expressed the view that the facial scars would

likely subject the plaintiff to social rejection, stigmatisation and inappropriate remarks from her peers. According to his assessment,

the scarring had interfered with her normal emotional and psychological development and well-being. He further noted that the scars rendered the plaintiff shy, withdrawn, self-conscious, and adversely affected her sense of femininity, including her interpersonal relationships with men.[3]

[11] Dr Pienaar anticipated a 30% improvement in appearance should the plaintiff undergo scar revision surgery on her left eyebrow.

General Surgeon

[12] Dr Greeff examined the plaintiff on 10 January 2018. He recorded that she suffered from very high blood pressure and complained of backaches and headaches, particularly during cold weather. He concluded by stating that “[f]rom a surgical perspective, the scar on her eyebrow is acceptable and I do not think any surgical intervention would be necessary here”. [4]

Neurologists

[13] The plaintiff was seen by Dr Pillay on 5 December 2016 and by Dr Rosman on 19 November 2024. Dr. Pillay observed that the plaintiff sustained facial laceration and soft tissue injuries. Dr Pillay further noted that during the plaintiff’s admission, she had no neurological complaints. Upon the examination, Dr Pillay recorded that while the plaintiff complained of headaches, she had no cognitive complaints, nor did she report any changes in mood, personality, or behaviour since the accident. She mentioned

that the headaches were relieved by medication.

[14] Dr Rosman stated that he did not get the impression of any neuropsychological issues. Having observed that no mention was made of headaches, Dr. Rosman cited the medico-legal report of Dr L Hartley, a specialist physician, wherein the following is written:

“The claimant’s hypertension is not considered a complication or result of the previous injuries”.[5]

[15] Dr Rosman opined that it was not anticipated that the head injury sustained by the plaintiff would result in any significant long-term

neurophysical or neuropsychological problems, except for headaches. However, he cautioned that “[c]onsidering the hypertension, with evidence of damage to the kidneys as a result of the hypertension,

the possibility of this being a cause for the headaches cannot be ignored.”[6]

[16] Taking all factors into consideration, Dr Rosman concluded that a reasonable apportionment would attribute 50% of the plaintiff’s neurological symptoms to the accident, and foresaw no future neurological problems.

Discussion and Counsel's Submissions

[17] The Court called the plaintiff to observe her in person. Apart from the scar on her temple, no other scars were visible to the Court, as any scars on her head were concealed by her hair. When counsel requested the plaintiff to indicate any scars on her hands, she was unable to recall which arm bore scars; counsel directed her that it should be on the right arm. The plaintiff responded in Xitsonga by saying “kuvalekile” meaning “it is closed” or “disappeared”. Her counsel was reluctant to concede that the scars were invisible, remarking “I can see a small cut, but it is not very visible”. Later, when

counsel mentioned that the plastic surgeon had noted scars on her left chest, the plaintiff denied having any such scars and responded

in Xitsonga with “ayikona”. Subsequently, the Court was directed to note the abrasion on both knees.

[18] Counsel submitted that certain hypertension issues pre-dated the accident. I do not believe that the severe high blood pressure, from which she is struggling, can be linked to the accident. He further submitted that the plaintiff sometimes suffers from headaches. Following a brief adjournment, counsel reconsidered his

submission and reminded the Court that at the time of the accident – eleven years ago – the plaintiff experienced acute pain and social rejection. While acknowledging that the plaintiff has since recovered well, he argued that an award of R730 000.00 was excessive and suggested an amount of R650 000.00. I formed the impression that counsel was wedded to a predetermined figure

regardless of the injuries.

Applicable Law

[19] It is trite that when dealing with general damages “...the trial Judge has a large discretion to award what he in the circumstances considers to be a fair and adequate compensation to the injured party for the sequelae of his injuries.”[7] It has been said ad nauseam that in assessing an award for general damages, the court has a broad discretion to award what it considers to be fair and adequate

compensation. The court will generally be guided by the awards made in comparable previous cases and will also be alive to the tendency for awards to be higher in recent years than were the case previously.[8] In considering previous awards, it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. It would, however, be inappropriate to escalate such awards by a slavish application of the consumer price index.[9]

[20] When examining comparable cases, the court must not be parrotlike in following them but must be mindful of the fact that the cases serve as a guide. This much was stated in *Protea Assurance*: [10]

“Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration”.

[21] In *Minister of Safety and Security v Seymour*, [11] the court held:

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that.”

[22] Whilst a conservative approach to awarding general damages would be unfair, courts have been cautioned against a cornucopia of awards. The award must be commensurate with injuries sustained. Hence, in *Pitt v Economic Insurance Co. Ltd*, [12] the court said:

“I have only to add that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour our largesse from the horn of plenty at the defendant's expense.”

[23] Counsel referred to the matter of *Mashigo v RAF*, [13] in which the court undertook a comparative exercise and referred to the following cases:

- a. *Peter v Road Accident Fund*: [14] In this case, the plaintiff suffered major injuries including a fracture of the pelvis and acetabulum. Furthermore, he suffered two scalp lacerations and what was described as multiple deep abrasions to the right shoulder and upper arm and over the lumbar spine. This left him with some marked scarring on the right arm for which plastic surgery could achieve a 50% improvement. The R180 000.00 general damages translates to some R 565 000.00 in current terms.

- b. Heynecke v Visagie:[15] In this matter, the plaintiff was bitten by a dog in the area of the left cheek. The damage to nerve endings resulted in his inability to raise his left eyebrow and close his eyelids tightly. He was left with a persistent swelling in the injured area with resultant

irritation of the eye; excessive weeping; and a twitching of the left eye. Although the scarring had improved and could further be improved by plastic surgery, severe irregular scarring remained as a “serious cosmetic blemish”. The award of general damages of R2500.00 at the time, and it translates to R89 000.00 in present value.

- c. Kobeqo v Road Accident Fund:[16] In this case, a five-year-old girl was struck by a car resulting in a degloving of her right lower leg. She suffered a loss of right leg muscle bulk and she had extensive scarring about which she felt very sad and “ugly”. The amount of R350 000.00 for general damages was awarded.
- d. Minnie NO v Road Accident Fund:[17] The plaintiff suffered a degloving injury, coupled with a severe head injury which required repeated surgery and caused permanent and extensive disfigurement. The plaintiff was also left with neurocognitive deficits associated with poor memory and language

difficulties. The plaintiff was five years and 11 months old at the time of the motor accident. The large amount of R800 000.00

granted for general damages translates to R1 717 000.00 in current terms.

- e. Roberts NO v Northern Assurance Co Ltd 1964:[18] A schoolboy aged 15 described as having “a cheerful and charming personality” was involved in a debilitating accident that resulted in a severe brain injury. This led to a complete reversal of his personality, traumatic epilepsy, and rendered him a danger to himself and others—necessitating lifelong confinement in a mental institution. He also suffered gross facial and other disfigurement. The award for general damages of R30 000.00 at the time translates to some R3 608 000.00 in current terms.
- f. Van Rensburg v AA Mutual Insurance Company Ltd:[19] In this matter, the plaintiff suffered various fractures to his knees and left foot. She was crippled for life and was still on crutches after three years. Furthermore, she suffered various scarring which constituted a real degree of disfigurement, causing some self consciousness and possibly affecting her chances of remarriage. The general damages of R12 000.00 at the time

translates to R1 246 000.00 in the current value.

- g. In Damba v AA Mutual Insurance Association Ltd,[20] a boy aged 7 ½ years suffered fractures to both his femurs with resultant complications. He was left walking with a slight limp and had scarring on his right thigh. The general damages award of R8000.00 at the time translates to R285 000.00 in current terms.

- h. Noble v Road Accident Fund:[21] In this matter, scarring resulted from a combination of serious injuries, including head and brain trauma, fractures of the right

femur and tibia, and fractured patellae in both knees, all of which were accompanied by extensive associated scarring. Additional

scarring on the right thigh resulted from skin grafts taken to treat the right lower leg. The court awarded general damages in the amount of R600 000.00, which translates to approximately R1 226 000.00 in current terms.

- i. Nxumalo v SA Eagle Insurance Company Ltd and Others:[22] In this case, the scarring involved an extensive degloving injury of the right lower limb from foot to groin leaving the plaintiff with severe scars on the thigh and lower leg and permanent deformity and disability. The scarring to the lower leg involved 80% of the circumference with all skin and subcutaneous tissue having been lost and subsequently replaced by skin grafts but leaving particularly unsightly scarring which was hyper-pigmented and irregular. The amount of general damages of R 90 000.00 translates to R477 000.00 in current terms.

- j. Phiri and Another v Shield Insurance Company Ltd:[23] A four-year-old boy was struck by a bus, which tore all the muscles from one of his legs, resulting in significant scarring. In addition to orthopaedic interventions, subsequent skin graft operations left him with extensive scarring. Although the award for general damages was originally made in pounds, it was converted to R3 250.00 which translates to approximately R353 000.00 in current terms.

- k. Union and South West Africa Insurance Co Ltd v Humphrey:[24] A 15-year-old girl, injured while riding pillion on a motorcycle, sustained fractures to the tibia and metatarsals, along with severe scarring to her lower leg. In addition to orthopaedic interventions, she underwent further surgeries, including one for skin grafting. The scarring on her foot was described as a definite cosmetic blemish. The award for general damages of R8 500.00 at the time translates to approximately R374 000.00 in 2024.

- l. Julie v Winter:[25] In this case, hot tar was poured over the plaintiff's head, chest, shoulder, and arms during an assault, resulting in severe

burns. In addition to the intense shock suffered, the plaintiff required three skin grafts but was nevertheless left with extensive

scarring and damaged skin. The award of £400.00 (equivalent to R800.00 at the time) translates to approximately R115 000.00 in current terms.

- m. Nconywa v Cantor:[26] In this matter, a 12 year old girl sustained deep burns to her legs, covering approximately 15% of her total body surface area, after a tin containing a highly flammable substance was thrown into a fire and exploded. She was hospitalised for two months, during which she underwent four operations, including three successive skin graft procedures. Although she made a good recovery, the scars remained permanent. The

general damages awarded in the amount of R7 000.00 at the time translate to approximately R168 000.00 in current terms..

- n. Mofokeng v Fedgen Versekering Beperk:[27] A 17 year old male scholar sustained severe third-degree burns covering the entirety of his left cheek, neck, both shoulders,

and eyelids. His left ear was completely burnt off, necessitating several reconstructive procedures. He underwent six skin graft

operations and was left with permanent, repulsive disfigurement, including permanent hair loss over the affected areas. The amount

awarded for general damages was R40 000.00 at the time, which translates to approximately R275 000.00 in current terms.

- o. Oosthuizen v Homegas (Pty) Ltd:[28] A 46-year-old manager of a gas-selling business sustained severe burns to his face, scalp, both ears, both hands, the left side of his torso, upper back, and left arm due to the explosion of a gas cylinder. His initial life-threatening condition required intensive care treatment. The subsequent treatment, which was extremely painful, involved daily submersion in a bath to remove bandages underwater. He was left with gross permanent disfigurement, particularly to his left hand (which was left in a claw-like

position), his right hand, and ears. The amount awarded for general damages was R45,000.00 at the time, which translates to approximately

R465,000.00 in present terms.

- p. Graham v Administrator Transvaal:[29] The plaintiff, a patient in a provincial hospital for an aorta graft operation, suffered third-degree burns to his lower back and buttocks due to the negligent use of a heating apparatus. These burns required three successive skin graft operations. Subsequently, his condition progressed, leading to the amputation of one leg and a high likelihood of becoming bedridden. He was left with a permanent aesthetic defect. The amount of R9 000.00 awarded as general damages at the time translates to approximately R243 000.00 in present terms.

- q. Buys and Another v Lennox Residential Hotel:[30] In this matter, a newly married woman sustained burns to the lower part of her body after the hot water tap detached while she was in a hotel bath. Thirty-five percent of her body was left covered in second-degree burns. She was left with scars and areas of discolouration, some of which were visible, resulting in a marked change in her personality. She no longer wore dresses and refused to be seen in a bathing costume. The amount of general damages awarded, R6 000.00 at the time, translates to approximately R275 000.00 in present terms.

Analysis

and conclusion

[24] Recently, in the matter of *De Meyer v Road Accident Fund*,^[31] the Full Court of this Division addressed the issue of general damages in relation to disfigurement. In that case, the court held that the plaintiff would possibly require surgery due to the disfigurement of the foot. The court awarded a sum of R325 000.00 for general damages.

[25] In casu, eleven years have passed since the accident, and the plaintiff's scars are inconspicuous, save for the one on her temple. The medico-legal report of the plastic surgeon is almost seven years old. It is of little assistance to the Court, even the plaintiff contested the presence of a scar on the breast mentioned by the plastic surgeon. It is mind-boggling that counsel asked the Court to factor in the issue of hypertension. Having considered that she suffers from headaches and, as a female, she might have endured some shame when the scars on her face were still visible, I am of the view that the sum of R350 000.00 is appropriate under the circumstances.

Costs

[26] This matter is neither complex nor are the papers voluminous, and the amount involved is not substantial relative to the overall context. Counsel's request for scale C is unmeritorious. Moreover, counsel incorrectly perceives the test as being based on seniority; the correct approach to Rule 69 is as follows:

"The court must award the scale, based on complexity and the amount of the claim. A complex and voluminous matter will for instance be on scale C."^[32]

Similarly, to the issue of general damages, costs are within the discretion of the court. When dealing with costs and general damages, it is trite that a court exercises what is called: narrow discretion, sometimes called discretion in the true sense.

Order

1. The application in terms of Rule 38(2) is granted.
2. The defendant is ordered to pay the plaintiff the amount of R350 000.00 (Three hundred and fifty thousand rands) in respect of general damages, by paying into the plaintiff's attorneys trust account with account number 0[...] at Standard Bank White River, within 180 days from the date hereof, during which period interest shall not be payable.
3. The defendant is ordered to capture the payment on the 'RNYP' list within 30 days of receipt of the Order.

4. The defendant will furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 to pay the costs of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to her arising from injuries sustained by her in a collision which occurred on 08 February 2014 after the costs have been incurred.
5. Should the defendant fail to make payment as set out in paragraph 2 above then, in this instance, the Defendant shall be liable for payment of interest, calculated from 15 days after the date hereof, at the tempore morae rate.
6. Save for the trust account banking details as set out in paragraph 2, the defendant shall make no further conditions for payment of the amount contained in paragraph 2.
7. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale to date, subject to the taxing master's inherent discretion, and such costs shall include the following:
 - a. The costs of plaintiff's counsel, including heads of argument, on scale B;
 - b. The costs of all medico-legal and addendum reports, joint and draft joint reports served on the defendant, including costs of any special medical investigations;
 - c. The qualifying fees of the experts referred to in paragraph (b) above (for the reading of the reports of the other experts including the attendance and costs of copies of providing such reports to the experts);
 - d. The reasonable costs incurred by and on behalf of the plaintiff, as well as the costs consequent to attending the medico-legal examinations.
8. Should the defendant fail to make payment of the taxed or agreed costs within 180 days, then the defendant will be liable for payment of interest on the taxed costs calculated 15 days from the date of the order.
9. Loss of earnings is postponed sine die.

M.P. MOTHA

JUDGE OF THE HIGH COURT

PRETORIA

Date of Hearing:

28 February 2025

Date of Judgment:

29 April 2025

APPEARANCES:

For the Plaintiff:

Adv G. Lubbe

Instructed by:

Schutte de Jong Attorneys

For the Defendant:

None

[1] Dr Oelofse's medico-legal report at paras 2 and 4.

[2] Id at para 4.

[3] Medico-legal report of Dr Pienaar at page 2 under the heading "Socially".

[4] Medico-legal report of Dr Greeff at para 7.

[5] Medio-legal report of Dr Hartley at para 4.1.

[6] Dr. Rosman's medico-legal report at para 8.6.

[7] Protea Assurance Co. Ltd v Lamb 1971

(1) SA 530 (A) ("Protea Assurance") at para 534H – 535A.

[8] See De Jongh v Du Pisanie NO

[2004] ZASCA 43 ; 2005 (5) SA 457 (SCA) at 457D-E.

[9] See AA Onderlinge Assuransie Assosiasie Bpk v Sodoms 1980 (3) SA 134 (A) and Ambrose v Road Accident Fund [2010] ZAECPHC 24 at para 48.

[10] Protea Assurance n 7 above at 536A-B.

[11]

[2006] ZASCA 71; 2006

(6) SA 320 (SCA) at para 17.

[12] 1957 (3) SA 284 (N) at 287E-F.

[13] [2018] ZAGPPHC 539 at paras 17.2-20.3.

[14] 2003 (5F3) QOD 9 (BHC).

[15] 1980 (3G4) QOD 102 (W).

[16] 2013 JDR 2270 (GNP).

[17] 2012 (6A4) QOD 82 (GSJ).

- [18] (1A4) QOD 573 (D).
- [19] 1969 (2E3) QOD 40 (E).
- [20] 1980 (3E3) QOD 251 (E).
- [21] 2011 (6J2) QOD 54 (GSJ).
- [22] 1995 (4G5) QOD 1 (N).
- [23] 1967 (1E6) QOD 780 (E).
- [24] 1979 (3E5) QOD 58 (A).
- [25] 1955(1D3) QOD 567 (C).
- [26] 1983 (3G2) QOD 475 (SE).
- [27] 1992 (4G2) QOD 11 (T).
- [28] 1989 (4G2) QOD 1 (O).
- [29] 1982 (3G2) QOD 336 (T).
- [30] 1978 (2G2) QOD 836 (C).
- [31]
- [2025] ZAGPPHC 307.
- [32] Pretoria Attorneys Association “Memorandum To Our Members – Important Amendments To High Court Rules Taking Effect Tomorrow 12 April 2024” 11 April 2024 at para 3.1.3.

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