

SOUTH AFRICA / JUDGMENT

M.M.B v MEC for Department of Public Works, Roads and Transport, North West (Reasons) (1831/2017) [2025] ZANWHC 40 (20 February 2025) [2025] ZANWHC 40

COURT

North West High Court, Mafikeng

BEFORE

JT Djaje

CASE / FILE NUMBER

1831/2017

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

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 1831/2017

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional Magistrates: YES/NO

In the matter between:

M[...] M[...] B[...]

PLAINTIFF

AND

MEC FOR DEPARTMENT OF PUBLIC WORKS,

ROADS AND TRANSPORT, NORTH WEST

DEFENDANT

REASONS

FOR JUDGMENT

DJAJE DJP

- [1] This plaintiff instituted action against the defendant for damages suffered as a result of injuries sustained in a motor vehicle accident on 3 November 2014. The accident occurred when the motor vehicle of the plaintiff hit a pothole, she lost control, and it overturned. The defendant was found to be liable for 100% of the plaintiff's proven or agreed damages. The only issue to be determined was quantum on 11 September 2024. The heads of damages claimed by the plaintiff are past medical expenses, future medical expenses, loss of earnings and general damages.
- [2] On the date of hearing only the plaintiff had filed expert reports and none were filed by the defendant. There was an application in terms of Rule 38(2) of the Uniform Rules of Court for the evidence of the experts to be dealt with on affidavits. The application was not opposed by the defendant and after careful consideration the application was granted. The plaintiff submitted comprehensive heads of argument and there were no heads prepared on behalf of the defendant. The only submission made on behalf of the defendant was that the reports were common cause and could not be disputed in anyway. As a result, no version was tendered on behalf of the defendant in respect of quantum. After the consideration of the reports for the plaintiff and submissions made the following order was made an order of court:

"1. THAT: The medico-legal reports and affidavits as referred to in the Rule 38(2) application are adduced into evidence.

2. THAT: The Defendant shall pay the total sum of R26 691 626.40 (Twenty Six Million and Six Hundred and Ninety One Thousand and Six Hundred and Twenty - Six Rands and Forty Cents) to the Plaintiff's attorneys, Adams & Adams, in settlement of the Plaintiff's claim, which amount is calculated as follows:
3. THAT: The aforesaid total amount shall be payable by direct transfer into the trust account of Adams & Adams attorneys, the details of which are as follows:
4. THAT: The capital amount referred to in paragraph 2 above shall not bear interest unless the Defendant fails to effect payment thereof within 14 (FOURTEEN) calendar days of the date of this Order, in which event the capital amount will bear interest at 11.75% per annum calculated from and including the 15 (FIFTEENTH) calendar day after the date of this Order to and including the date of payment thereof.
5. THAT: The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include the following (subject to the Taxing Masters Discretion): -

5.1 Costs of Senior Counsel on the High Court Scale (Scale C) inclusive of Counsel's reservation for trial on 11 SEPTEMBER 2024, consultation with the Plaintiff, and fee for drafting the heads of argument;

5.2 Costs of Junior Counsel on the High Court Scale (Scale B) inclusive of Counsel's reservation for trial on 11 SEPTEMBER 2024 and consultation with the Plaintiff;

5.3 The reasonable taxable costs of obtaining medico-legal and related reports (and addenda thereto) from the following experts that were employed by the plaintiff:

5.3.1 Marco du Plooy — Orthotic & Prosthetic Expert

5.3.2 Barbara Donaldson — Industrial psychologist

5.3.3 Dion Rademeyer/R Rich — Access & Mobility Expert

5.3.4 Dr Close — Orthopaedic Surgeon

5.3.5 Carole Pretorius — Occupational Therapist

5.3.6 Karin Havenga — Clinical Psychologist

5.3.7 Dr D Kirsten — Pulmonologist

5.3.8 Dr Heleen Bierman — Nephrologist

5.3.9 Dr I Van Heerden — Urologist

5.3.10 Dr Daniel Surridge — Gastroenterologist

5.3.11 Dr JPM Pienaar — Plastic Surgeon

5.3.12 Stacy Aires — Physiotherapist

5.3.13 Len Eybers - Architect

5.3.14 Sieg Sirmon — Quantity Surveyor

5.3.15 Greg mittaker — Actuary

5.4 The reasonable taxable preparation, qualification, reservation attendance and travelling fees, if any, for 11 SEPTEMBER 2024 of experts referred to above (if applicable);

5.5 The reasonable taxable costs associated with preparing the Application in terms of Rule 38 and obtaining of the affidavits of the relevant experts and witness used in support thereof attached thereto, as well as the experts' charges pertaining to their time and attendances spent in inter alia the commissioning thereof;

5.6 The reasonable taxable travel and/or transportation costs (including toll and e-toll fees) incurred by the Plaintiff in attending medico-legal consultations with the Plaintiff's experts and attending court on the trial date;

6. THAT: The above costs will also be paid into the aforementioned trust account of Adams & Adams.

7. THAT: The following provisions will apply with regard to the determination of the aforementioned taxed or agreed costs:-

7.1 The Plaintiff shall serve the notice of taxation on the Defendant either by hand and/or electronically by email on either the claims handler and/or the State Attorney;

7.2 The Plaintiff shall allow the defendant 7 (SEVEN) court days to make payment of the taxed or agreed costs from date of settlement or taxation thereof, whichever date is the earlier, during which period the Plaintiff will not be entitled to execute a writ against the Defendant;

7.3 Should payment not be effected timeously, the Plaintiffs shall be entitled to recover interest at the rate of ad tempore morae on the taxed or agreed costs from date of allocatur to date of final payment.”

[2] The defendant has now filed a request for reason of the order of 11 September 2024.

[3] As stated above this matter was decided solely on the plaintiff’s reports filed and the comprehensive heads of argument. There are no reports by the defendant to dispute any of the findings and recommendations by the plaintiff’s experts. The following experts filed reports on behalf pf the plaintiff:

3.1 K Havenga – Clinical Psychologist

3.2 Dr Close – Orthopaedic Surgeon

3.3 Dr DL Kirsten – Pulmonologist

3.4 Dr IJ Van Heerden- Urologist

3.5 Dr JPM Pienaar – Plastic and Reconstructive Surgeon

3.6 M du Plooy – Orthotic and Prosthetic

3.7 Dr DJD Surridge – Gastroenterologist

3.8 S Aires – Physiotherapist

3.9 Dr H Bierman – Nephrologist

3.10 Dr Rademeyer – Access and Mobility Consultants

3.11 L Eybers – Architect

3.12 S Sirmon – Quantity Surveyor

3.13 B Donaldson – Industrial Psychologist

3.14 C Pretorius – Occupational Therapist

3.15 G Whittaker – Actuary

[4] The injuries sustained by the plaintiff as a result of the accident are as follows as succinctly dealt with in the plaintiff's heads of argument:

“13.1 A T3/T4 fracture with complete hemisection of the spinal cord with paraplegia.

13.2 A fracture/dislocation of the right hip (X-ray report indicated a left hip fracture dislocation).

13.3 Right shoulder fracture.

13.4 Right rib fractures with bilateral haemo-pneumothorax.

13.5 A fracture of the left femur.

13.6 A CT of the lumbar spine showed a burst fracture of T3/T4 with dorsal angulation complete transection of the spinal cord and loss of continuity of the spinal canal at this level.

13.7 An undisplaced fracture of the right transverse process of L5.

13.8 A posterior fracture dislocation of the left hip.

13.9 Multiple rib fracture on the right.

13.10 Fracture right scapula.

13.11 Fractured right clavicle.

13.12 A CT scan of the brain showed soft tissue swelling over the vertex.

13.13 A right kidney lower pole injury and posterior soft tissue hematoma.

13.14 Scattered small bone fragments seen in the posterior aspect of the joint space was also visible on the CT scan of the abdomen.

13.15 An MRI of the thoracic spine showed collapse at T4, bone marrow oedema from T4 to T7, subluxation of T3/T4, dislocation of the right T4/T5 facet joints, fractures of the posterior elements of T4, posterior protrusion of T4 with a large bone fragment in the spinal canal, prominent central spinal stenosis on this level, marked pressure on the spinal cord T4 to T6, kyphosis at T3/T4.

13.16 Spinal injury.

13.17 A right hip displacement.

13.18 Lacerations on her head.

13.19 Loss of front teeth.

13.20 Also noted was the possibility of a right renal injury.

13.21 A left hydropneumothorax.

13.22 Bilateral basal effusions.

13.23 The plaintiff is feeling severely depressed and anxious.

13.24 Multiple abrasions and burns involving both legs, abdomen, and back.

13.25 She lost 4 teeth.

13.26 Laceration of the right supra-orbital area.

13.27 Plaintiff presents with the following scarring and disfigurement.

13.27.1 Above her right eyebrow, there is a 3cm x 1.5cm hypopigmented scar which is very visible and unsightly.

13.27.2 She has intercostal drain scars on her right of 6cm and 2cm and on the left of 2cm x 2cm that is hyperpigmented, visible and very unsightly.

13.27.3 On her stomach there are hyperpigmented abrasions scars of 5cm x 3cm and 6cm x 2.5cm.

13.27.4 Over her back there is an 18cm scar, 20cm and 10cm x 5cm as well as a 3cm x 2cm depressed scar. They are hyperpigmented, irregular, very visible and very unsightly.

13.27.5 On her left foot there is an 8cm x 5cm scar.

13.27.6 On her medial ankle on the left there is a 4cm scar.

13.27.7 She has a pressure sore scar on her sacrum as well as on her left hip. It measures 8cm by 6cm and on her left buttock, it measures 5cm by 2cm.

13.27.8 Over her right lower leg there is an 8cm x 4cm scar and a 20cm x 5cm scar on the left. They are hyper and hypopigmented. They are very visible and very unsightly.

13.27.9 On her left thigh there is a 20cm x 25cm burn scar that is hyper- and hypopigmented, extremely visible and very unsightly.

13.28 The plaintiff will not benefit from scar revision surgery due to the nature and extent of her scars. She will be left with a considerable amount of scarring and disfigurement for the rest of her life. She is at risk of developing further pressure sores in future, which could require surgery and reconstruction as well as wound care management and hospitalization.”

[5] The plaintiff is paraplegic and wheelchair bound. She uses an indwelling catheter as well as nappies and is completely dependent on her daughter for assistance. The only physical activity that she can do is gardening to a limited degree. According to the experts the plaintiff will require extensive future treatment of:

“15.1 The plaintiff will require the following surgical interventions in the future:

15.1.1 A right acromio-clavicular joint debridement. 10% chance at the cost of R80 000.00 and 8 weeks rehabilitation.

15.1.2 A 30% chance of further spinal surgery at the cost of R250 000.00 and 3 months of rehabilitation.

15.1.3 Excision of the myositis ossificans of the right hip at the cost R150 000.00 and 2 months rehabilitation. This will include a course of radiotherapy and non-steroid or anti-inflammatory drugs post-op.

15.1.4 A left total hip replacement at the cost of R250 000.00 and 3 months rehabilitation.

15.1.5 Removal of the fixation device from the left ankle at the cost of R50 000.00 and 1 month's rehabilitation.

15.1.6 A further R100 000.00 should be added for any future surgical intervention for pressure sores as and when they develop.

15.1.7 R200 000.00 should be added for future surgical treatment of osteopenic fractures.

15.1.8 A 5% chance of removal of spinal fixation at a cost of R50 000.00.

15.2 In addition, the plaintiff would require conservative treatment and R20 000.00 per annum should be provided for, for the remainder of the plaintiff's life. This will include doctors' consultations, antibiotics for urinary tract infections, skin care products, physiotherapy to address her spinal pain and for rehabilitation after undergoing any of the above surgeries, special wound dressings for the management of bedsores, and pain medication.

15.3 Plaintiff requires provision for the evaluation by a pulmonologist at least every 6 months, in addition to the costs of the inhaled bronchodilators and steroids."

[6] The accident also affected the plaintiff cognitively and psychologically. She has possible impairment in long term memory. It was opined that she presented with marked underlying depression of a mild to moderate extent. She has lost self esteem and feels worthless.

Loss of earnings

[7] The plaintiff was employed as Professional Nurse at the time of the accident. She had been in the service for approximately 25 years. Since the accident she has not been employed and was medically boarded in 2016. She will not be able to return to work as she presents with a whole impairment of 77% according to the Orthopaedic Surgeon, Dr Close.

[8] The Occupational Therapist viewed the plaintiff as having significant occupational dysfunction and being vulnerable employee who would not be able to compete in the competitive labour market. Her condition is permanent, and her physical prowess will not be expected to improve over time.

- [9] The Industrial Psychologist in the report noted the plaintiff's qualifications as diploma in nursing, midwifery, additional specialization in general psychiatric and community care. Certificate in health assessment and treatment in 1998. She began her career as a nurse in 1994. In 1996 she moved to General De La Rey Hospital as a Professional Nurse and worked her way up to a Senior Professional Nurse and Chief Professional Nurse. Her plans were to work until retirement at the age of 65 years. At the time of the accident, she earned R25 847.25 per month with housing subsidy of R900.00 per month plus medical aid contributions and GPEF.
- [10] The general contingencies were applied of 5% on past loss, 10% on future income pre-morbid and 5% on post-morbid. This resulted in the net loss of R4 242 905.00. In my view considering the plaintiff's age at the time of the accident at a few months before the age of 50 years, her steady career and prospects of promotion, the contingencies were fair and appropriate.

Past Medical Expenses

- [11] The total amount of expenses incurred by the plaintiff based on the bundle provided by the plaintiff amounts to R128 453.92. There was no evidence to gainsay the evidence.

Future Medical Expenses

- [12] The different experts gave the estimated costs for future medical expenses that the plaintiff will incur resulting from treatment. This is the amount of R19 520 267.50. In the actuarial calculation a 5% contingency deduction was made.

General Damages

- [13] The amount determined for general damages was based on past awards in cases of a similar nature. The plaintiff in the heads of argument referred to various relevant case law. In *Bonesse v Road Accident Fund 2014 (7A3) QOD 1 (ECP)* an award of R4 145 000.00 in terms of 2024 escalations was made. In that case a 13-year-old girl was wheelchair bound with limited ability to manage bi-manual tasks and incontinent urine and bowel. She had Post traumatic dementia with severely compromised speech, vision, memory and executive function.
- [14] In an award for general damages the previous awards serve as a guide. In *Morake v Road Accident Fund (52700/150 [2017] ZAGPPHC 761 (2 November 2017))* the court awarded an amount of R 2 500 000.00 for a 64-year-old paraplegic.
- [15] In the current matter the amount of R2 800 000.00 was awarded as fair and reasonable under the circumstances.

[16] The basic rule in civil litigation in South Africa is that costs are in the discretion of the judicial officer. See *Ferreira v Levin*, *Vryenhoek v Powell* [1996] ZACC 27; 1996 (2) SA 621 (CC) at 624 with the general rule being that costs follow the event. That is, the successful party should be awarded his or her costs. See: *Pelser v Levy* 1905 TS 466 at 469. I see no reason why the defendant should not pay the costs of suit to include costs of two counsel.

J.T. DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE REQUEST FOR REASONS : 06 JANUARY 2025

DATE OF JUDGMENT

: 20 FEBRUARY 2025

COUNSEL FOR THE PLAINTIFF : ADV SG MARITZ

COUNSEL FOR THE RESPONDENT : ADV C ZWIEGELAAR

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/ZANWHC/2025/40.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mmb-v-mec-unknown-topic-anwhc-2025>

Prepared on 9 October 2026 · Esheria