

SOUTH AFRICA / JUDGMENT

Monchonyane v Road Accident Fund (RAF69/15) [2017] ZANWHC 99 (30 November 2017) [2017] ZANWHC 99

COURT

North West High Court, Mafikeng

BEFORE

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CASE / FILE NUMBER

RAF69/15

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE NO: RAF 69/15

In

the matter between: MOSIMANEGAPE
 RICHARD MONCHONYANE
 Plaintiff
 And
 ROAD
 ACCIDENT FUND
 Defendant

JUDGMENT

DJAJE J

[1] The Plaintiff is claiming damages from the Defendant as a result of a motor vehicle accident that took place on 16 May 2010. Merits have been settled 70/30 in favour of the Plaintiff. The issues of loss of earnings, past and future have been finalised. Future medical expenses were tendered by way of section 17(4) (a) undertaking as provided for in the Road Accident Fund Act. The only issue outstanding is that of general damages.

[2] The Plaintiff was twenty five years at the time of the accident. He was a pedestrian and got struck by a motor vehicle. As a result of the accident he sustained the following injuries:

2.1 Head injury with concussion and loss of consciousness (glasgow scale 3/15);

2.2 Fracture of the left femur;

2.3 Soft tissue injury thorax;

2.4 Laceration occipital region.

[3] Various experts for both the Plaintiff and the Defendant submitted reports on the injuries of the Plaintiff and the effects thereof on his well-being. The Orthopaedic surgeon, Dr Heymans noted that the left shoulder movements were impaired with abduction and external rotation limited to shoulder height. Flexion of the left elbow was possible from 90 to 130 degrees. Further that dorsiflexion of the left wrist was limited to 20 degrees and palmar flexion was limited to 30 degrees. He noted flexion contractures of the wrist and fingers and flexion contractures in relation to both hips, flexion of the knees was limited on both sides and bilateral equinus positions of both feet were noted.

[4] According to the Occupational therapist for the Plaintiff, J Van der Westhuizen the Plaintiff was unable to stand independently, his sitting posture was unbalanced and his gait impaired. He displayed limitations with regards to activities including limited

concentration and memory abilities. On the other hand the Defendant's Occupational therapist, Success Moagi, noted that the Plaintiff had poor self-esteem and his visual perceptual skills were below the required norm. She agreed that the Plaintiff was permanently disabled.

- [5] Dr L van der Merwe, the Ophthalmologist noted that the Plaintiff had a normal left side ophthalmological system whereas on the right there was a right sided hypertropia and exotropia with poor visual acuity. He further noted that the Plaintiff needs to be monitored by an ophthalmologist on a yearly basis and that with respect to his ophthalmological assessment his whole person impairment was 25%.
- [6] The report of the Neurosurgeon, Dr Percy Miller indicated that the Plaintiff had a severe head injury. The glasgow score was 3/15 and remained low for a prolonged period, which gives an indication of the severity of the head injury. The other problems experienced by the Plaintiff were polytrauma, a large abrasion over the chest, fractured femur and left sided hemiparesis. It was noted that excluding the physical disabilities that are present the Plaintiff would require a care giver if not for 24 hours then for a larger part of the day to supervise his life and ensure that he survives as he is fully immobile and can do nothing without assistance.
- [7] The Plaintiff testified during trial and all that he could say was that he stays with his mother who is his care giver in Bodibe.

Further that he knows the year of the accident but does not remember anything else about the accident. At the time of testifying the Plaintiff was on a wheelchair and had to be pushed to the witness stand.

- [8] The argument on behalf of the Plaintiff in respect of general damages was that the injuries sustained by the Plaintiff are more severe when compared to the classic paraplegia sequelae. The Plaintiff's severity of the sequelae is considered to be more extensive with added complexity of neuro-cognitive fallout. It was submitted on behalf of the Plaintiff that he be regarded as suffering the inability to move similar to that of a quadriplegic but the difference is that quadriplegics still have normal brain function although not able to move on their own.
- [9] The submission was that the amount to be awarded should be two million rand (R 2 000 000-00). In support of the submission

counsel for the Plaintiff referred to three similar cases. In the case of *Geldenhuis vs SA Railway & Harbours* 1964 1 C&B 185 the award for general damages was R 1 745 000-00 for injuries of paralysis of waist downwards. In *Delpont NO v RAF* at page A4-1 in *Corbet f & Honey Vol (v)* the award of R2 432 000-00 was made for plaintiff with severe brain stem damage leaving her without the use of any limbs

except a very limited use of the left arm and hand with complete inability to speak. In a more recent matter of *Deavall Shaun Robert v RAF* Case No. 2011/66106 Gauteng Division in Pretoria on 28 May 2015 the award for general damages was R2 100 000-00 for plaintiff who sustained injuries to the spine and rendered paraplegic.

- [10] In contention the Defendant argued that the amount that should be awarded for general damages is R1 500 000-00. In support of this reference was made to the case of Gungu obo Noluthandu Gungu v RAF 2002 (5) QOD J2-31 (ECD) where an amount of R1 252 000-00 was awarded for serious head injury with hemiplegia. In Dorfling v Bazeley 1961 1 QOD 128 (E) an amount of R919 000-00 was awarded for brain injury with serious permanent damage.
- [11] In dealing with the determination of general damages it is trite that the court must have regard to previous comparable cases. However, a court has to exercise its discretion based on the facts of the case at hand. See: De Jongh v Du Pisanie 2004 5 QOD J2-103 (SCA).
- [12] In exercising my discretion I have to take into account the injuries sustained by the Plaintiff and the effects thereof in his daily life including his future.
- [13] The cases that I have been referred to above by both counsel for the Plaintiff and the Defendant are relevant in this matter and cannot be ignored. It is trite that each case must be decided on its own peculiar circumstances and within the discretion of the court.
- [14] In the case of Mnguni v Road Accident Fund 2006 6 QOD E2-1 (GSJ) the plaintiff was awarded R700 000-00 and in the 2017 Quantum year book by Robert Koch the amount is R1 373 000-00 for general damages after suffering a severe brain injury and his right lower leg amputated. He experienced headaches, pain in the neck, shoulder, knee and ankle and was ambulant with one crutch. In Van Zyl v Road Accident Fund 2012 (6A4) QOD 138 (WCC) the court awarded general damages of R850 000-00 which now updated is equivalent to R1 126 000-00 for severe head injury with multiple craniofacial impacts on a severe traumatic brain injury. The plaintiff a 19 year old male student also sustained serious orthopaedic injuries with bilateral severe tibia/fibula fractures and multiple abrasions and bruises. A vegetative state persisted for weeks and he underwent treatment and rehabilitation of seven months after the collision.
- [15] In determining quantum it is generally accepted that it would be difficult to find a case on all fours with the one being heard and that awards in decided cases should only be considered as a guide of how other courts arrived at an award. See Protea Insurance Company v Lamb 1971 (1) SA 530 (A).
- [16] In the current matter the extent of the Plaintiff's injuries are well documented in the various reports by experts and that they are serious and irreversible. I have considered the gravity, severity, extent and nature of the injuries sustained by the plaintiff. In addition, I have taken into account the far-reaching sequelae of such injuries. For example, the fact that he will be wheelchair bound and needing daily care to survive. Having regard to the above in my view an award of R1 700 000-00 would be fair compensation in relation to general damages.

Order

- [17] Consequently the following order is made:

1. The Defendant is ordered to pay the Plaintiff the following amount for general damages; R1 700 000-00 (one million seven hundred thousand rand).
2. The amount to be paid into the bank account of his attorneys namely CN Carey Attorneys, details below:

CN Carey Attorneys Trust Account

First National Bank Lichtenburg

Account No. : [...]

Branch Code : 240 139
3. The Defendant will not pay interest on the aforesaid if paid as set out above.
4. The Defendant is ordered to pay costs.

J T DJAJE

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 14 NOVEMBER 2017

DATE OF JUDGMENT

: 30 NOVEMBER 2017

COUNSEL FOR THE PLAINTIFF : ADV C. DE AGRELLA

COUNSEL FOR THE DEFENDANT: ADV N. FERRIS

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