

SOUTH AFRICA / JUDGMENT

Morake v Road Accident Fund (52700/15) [2017] ZAGPPHC 761 (6 November 2017)

[2017] ZAGPPHC 761

COURT

North Gauteng High Court, Pretoria

BEFORE

Tlhapi

CASE / FILE NUMBER

52700/15

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IN THE HIGH COURT OF
SOUTH AFRICA

(GAUTENG DIVISION,
PRETORIA)

CASE

NUMBER: 52700/15

DATE:

6/11/2017

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

S

J MORAKE

PLAINTIFF

And

ROAD

ACCIDENT

FUND DEFENDANT

JUDGMENT

TLHAPI J

INTRODUCTION

[1] The parties appeared before me to argue the one issue that remained in dispute being that of General Damages. The plaintiff calls for an award of R3,000, 000.00 (3 million rand) and the defendant for an award between R1 ,8 000, 00.00 and R2,200, 000.00.

[2] I was informed that the defendant had admitted liability and had agreed to be liable for 100% of the plaintiff's proven or agreed

damages, and had also undertaken to provide an undertaking in terms of Section 17(4)(a) for further medical expenses. The calculation of past hospital and medical expenses was to be postponed sine die.

[3] Mr Morake was 64 years old when he was involved in a motor collision on 10 February 2014. He was a truck driver, and was married with three adult children, two are employed and one is not. He lived in Gauteng but has since his disability, moved to his other home in Rustenburg where he is being taken care of by his sister and youngest son. His wife is still employed and retains the Gauteng residence. He enjoyed good health pre-accident; he enjoyed exercising and walking. He also enjoyed doing gardening. He now leads a monotonous life in a wheelchair or has to sleep

[4] He sustained the following injuries

(i) A C5/C7 fracture coupled with a dislocation to his spine at C6/C7 and a fracture of C7

(ii) a laceration to his head (iii) Abrasions to his right shoulder (iv) contusions to his right hand and lungs (v) pulmonary contusions (vi) head trauma with degloving injuries over the occipital skull (vii) loss of right front tooth.

[5] He was treated at the Millpark hospital. He was referred to ICU on admission where he was sedated, put on mechanical ventilation and a tracheostomy was done. After being stabilized, an open reduction and internal fixation of the neck and cervical fusion was done. After he was weaned off the mechanical ventilation, the tracheostomy tube and neck fixation were removed. He was rendered a quadriplegic and is permanently on the wheelchair. He was transferred to the Netcare Rehabilitation Hospital in Auckland Park where he stayed for eight months.

[6] Injuries and Sequelae Treated:

6.1 Urologist: Dr F Van Wyk

Since the accident he has had suprapubic indwelling catheter with a leg bag. Once a year he has to go in for consultation and ultrasound of his kidneys and biochemistry for his blood for kidney function. He is at risk of developing bladder and kidney stones and has a 50% chance of developing severe kidney and bladder infection. He suffers of erectile dysfunction. He is incontinent of urine and faeces.

6.2 Neurologist: Dr J du Plessis

A Glasgow Coma Scale Score of 14/15 was recorded on admission. He has cognitive difficulties and this could be due to depression, the sequelae of secondary brain injury or metabolic problems. It is a well recognised fact that prolonged stay in ICU results in permanent cognitive sequelae especially in the elderly. He gets neck pain and pain in both shoulders on a daily basis and takes painkillers once a week. He gets involuntary spasms in his lower limbs. He suffered pressure sores to his sacrum and occiput and provision must be made for future management. On further examination he looked chronically ill, was slow to respond when spoken to and makes no eye contact. He could be depressed among other symptoms. He is orientated to the day of the week but not the date.

He is unable to recall or name any of simple items that were mentioned 5 minutes before.

6.3 Orthopaedic Surgeon: Dr D A Birrell

The plaintiff's bowel movements are stimulated by depositors every second day, he is generally cool and sweaty to touch and has no ability to shiver due to neurological injury. He has shallow respiration. He had severe pulmonary complications in the beginning and there is a strong chance he will eventually succumb to a chest infection. He risks the following complications: chest infection, osteoporotic fractures, joint contractures.

6.4 Occupational Therapist: Dr W Van Der Walt.

He is dependent on his wife and son. They have to turn him, bath him, groom him, feed him and relieve him of pressure as he has regular blackouts. His spinal cord injury is a catastrophic injury with far reaching physical, social and psychological consequences and he will develop negative emotions in respect of the injury. The injury has rendered him unemployable.

6.5 Industrial Psychologist: Dr Schreuder

He was an excellent worker pre-morbid, although he would have had to retire at 65 years of age. The injury has rendered him unemployable.

6.6 Actuarial Calculation

A total loss of income was calculated at R350,901,50

6.7 General Damages

Mr Maritz for the plaintiff argued that the court had to consider what constituted a fair and Just award in view of the above considerations. He relied on a comparison of awards given by the court, and he differentiated between plaintiffs who became paraplegic, tetraplegic and quadriplegic without stating their conditions which are mentioned in the Heads of argument, the following cases were considered:

(i) In *Bonesse v RAF* 2014(7A3) QOD ZAECPEHC a 13 years old paraplegic was awarded an amount of R2,500,000,00 (inflation adjusted to current 2017 value of R 2,952,000,00)

(ii) *Jacko v RAF* 2016 (7A2) QOD (i)(WCC) a 32 years old tetraplegic was awarded in 2016 an amount of R2,000,000,00 (inflation adjusted to current 2017 value of R 2, 120,000,00)

(iii) *Delpont NO obo Helen van Rooyen v RAF* 2003(5) QOO A4-l(T) a 36 years old remarried mother of two who was given life expectancy of 22 years during which she would be totally dependant on others who was awarded an amount which is inflation adjusted to current 2017 value of R2,689,000,00

(iv) *Marine and Trade Insurance CO Ltd v Gatz* 1979(3) QOO 1(A) a 32 years old quadriplegic who was awarded in 1979 an amount of R900,000,00 (inflation adjusted to current 2017 value of R2.827,000,00). In this instance the court having considered her pre-accident capability.

[7] On behalf of the defendant several cases were referred to being awards relating to paraplegic plaintiffs In *M J J Webb v RAF* (2203114) 2016 ZAGPPHC the plaintiff who was awarded general damages of R 1,500, 000,00, no inflation adjusted figure was provided

[8] No evidence was led on the part of both parties and reliance is based purely on expert reports. The injuries sustained were not in dispute. and due to the state of health of the plaintiff, though present in court, he did not testify. This however should not be the disadvantage the determination of the award. What is helpful is to consider the opinion regarding the quality of life he engaged pre morbid, that he continued to work till the age of 64 when the accident occurred. Although his employer was of the view that he was to retire at the age of 65, the lifestyle he led and activities were such that in my view he could have been productive even after 65 years. His condition post-morbid has rendered him totally dependant on others for his day to day existence and his condition will definitely deteriorate further as stated 1n medical reports.

[9] An award for general damages in this instances should be fair and Just while the above case serve as guidance, I am of the view that an award of general damages in the amount of R2,500,000.00 is equitable.

[10] In the result the following order is given:

[10.1] The defendant is to pay to the plaintiff the amount of R2,500,000.00 for general damages.

TLHAPI V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON:

01 NOVEMBER 2017

JUDGMENT

RESERVED ON:

01 NOVEMBER 2017

ATTORNEYS FOR THE PLAINTIFF: MARAIS BASSON ING

ATTORNEYS FOR THE DEFENDANT: IQBAL MAHOMED ATT.

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Prepared on 25 October 2026 · Esheria