

SOUTH AFRICA / JUDGMENT

Ngomane v Road Accident Fund (53010/12) [2017] ZAGPPHC 401 (26 May 2017) [2017] ZAGPPHC 401

COURT

North Gauteng High Court, Pretoria

BEFORE

Mali

CASE / FILE NUMBER

53010/12

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REPUBLIC

OF SOUTHAFRICA

IN

THE HIGH COURT OF SOUTHAFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 53010/12

Not

reportable

Not

of interest to other judges

25/5/2017

In

the matter between:

CITI

NGOMANE PLAINTIFF

and

ROAD

ACCIDENT

FUND DEFENDANT

JUDGMENT

MALI J,

- [1] The plaintiff is a 30 year old adult male. He sued the defendant, the Road Accident Fund, for damages resulting from the injuries the plaintiff sustained in a motor vehicle accident that occurred on 21 April 2011.
- [2] The plaintiffs claim is in respect of general damages. The parties had settled the merits of the matter and the claim for loss of income. The defendant further agreed to furnish the plaintiff with an undertaking in respect of future medical expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (section 17(4)(a)).
- [3] The parties agreed that no oral evidence was to be led, and that issues in dispute were to be determined by the court solely on the evidence contained in various expert reports filed by the plaintiff. The defendant did not file any medico-legal reports.
- [4] The plaintiff was a passenger in the back seat of a motor vehicle when the accident occurred. The driver lost control of the motor vehicle and collided with a tree. The plaintiff was injured and taken by the ambulance to Tlntswalo Hospital where he was examined, admitted and treated for three weeks for his injuries. He was later transferred to Rob Ferreira Hospital where he was admitted for nine days and then transferred back to Tintswalo Hospital. Upon his discharge from Tlntswalo he attended Rob Ferreira for his follow up treatment.
- [5] According to the report of Dr C Eldestein, Orthopaedic Surgeon the plaintiff who was 24 years old at the time of the accident "had severe fracture of right humerus and right radius and ulna. Since the accident he has been left with a dysfunctional left arm and scarring. He has a weak grip on the right side and he cannot lift and carry heavy things. He says he also has headaches at times."
- [6] Frane du Toit, Occupational Therapist reports as follows:

"LOSS OF AMENITIES

Now after the accident, he has a dysfunctional right arm with limited grip strength. Due to the radial nerve injury his active wrist extension and active MP extension is impaired. He has limited extension and flexion of his right elbow and no forearm pronation. Fortunately Mr Ngomane is left-handed dominant and uses his right hand for support while performing functional hand function tasks. However, he cannot lift heavy weights with his right hand..... Mr Ngomane has major loss of amenities due to his dysfunctional right arm. He will need to make adjustments for the rest of his life to accommodate these limitations"

- [7] Ronel Nel, Clinical Psychologist at page 76 of her report concludes as follows:

"He reportedly continues to suffer from post-traumatic headaches, as well as impaired functionality of his right arm. The nature and extent of his physical injuries are, however, deferred

to the relevant specialists.... Mr Ngomane strongly expressed his perception of disability as a result of the accident, which rendered him incapable of ever working again. He stated that he particularly avoids working out of fear of re-injuring his right arm..

[8] As a guide towards an appropriate assessment of general damages I was referred by counsel to comparable cases. Mr Mathabathe, for the defendant, having conceded the nature of the injuries and the sequelae thereof, expressed the view that anything in the order of between R300 000.00 and R350 000.00 would be reasonable whereas Ms Maritz, for the plaintiff submitted that an award of between R500 000.00 and R550 000.00 would be appropriate.

[9] Counsel for the plaintiff referred to the *Mohlaba v Road Accident Fund*[1] where the plaintiff was awarded an amount of R540 000.00 which is R610 000 .00 at present value. The plaintiff suffered serious injuries which had a permanent effect on his life, in particular his future earning capacity. The injuries can be summarized as follows:

"the plaintiff sustained a right proximal radius and ulna fracture. A bony anklosis has formed between the proximal radius and ulna. On clinical examination the plaintiff has no pro-and supination of his forearm and his forearm remains in a fixed position 20 degrees pronation. The loss of the forearm pro- and supination of the plaintiff's dominant hand will prevent him from working as a motorcycle mechanic. He has suffered a significant loss of working capacity. He has suffered an injury to his right ulna nerve resulting in loss of sensation in his small and ring fingers and some loss of his intrinsic hand function".

It was also reported that the plaintiff suffered depression as a result of the accident.

[10] Counsel for the defendant referred to *Vukubi v Road Accident Fund*[2] wherein the plaintiff was awarded an amount of R300 000.00 currently translating to R645 000.00. The plaintiff had a debridement procedure performed on his knee. The knee was reduced and immobilised by means of a wire. The ruptured patella tendon was reinforced for mobility. These procedures were performed under general anaesthetic. On 14 September 1999 the plaintiff was discharged still using crutches. During the follow up visits to hospital the plaintiff complained of pain and discomfort in his right knee especially when he engages in physical activities. In Dr P A Olivier's opinion the plaintiff would experience more pain in the future due to osteoarthritis in the knee joint as well as degenerative changes in the medial compartment. Though conservative treatment might be appropriate for some period, there may be a necessity for a total knee replacement in about 20 years time after the accident. Dr P A Olivier estimates about an 80% chance that this will be necessary in future and 60% chance that a revision procedure may be necessary after the knee replacement.

[11] The fracture on the right side humerus was treated by means of a slab. It mobilised fairly well and movements in the right arm were regained and the fracture healed solidly. The fractures of the radius and ulna were treated, under general anaesthetic, by means of an open reduction with a plate and screws.

[12] Mr Mathabate also referred to *Bouwer v A F Marais Construction (Pty) LTD*[3] the claimant had sustained fractures of the left radius and ulna and an open reduction was performed under a general anaesthetic and the fractures secured by plates and screws. There were other injuries sustained - a contusion injury to the left lower chest wall as well as a laceration. There was a complication that led

to a bone graft operation. Exercises to strengthen the bent arm caused further pains. The award for general damages was R2 500.00 currently translating to R108 000.00

[13] In *Road Accident Fund v Marunga*[4] at page 10 paragraph 27-28 the following is stated:

"In the *Wright* case (*Corbett and Honey Vol 4 EJ-36*) Broome DJP stated:

'I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past I believe this to be a natural reflection of the changes in society, the recognition of greater Individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries. The *Wright* case at E3-34 to E3-37 Is Instructive. The learned trial judge considered all the relevant circumstances and set out in detail the reasoning that motivated the award.'

[14] In the present case, although the plaintiffs sequelae is somewhat similar to the sequelae to the cases referred to by the plaintiff's

Counsel, the plaintiff does not suffer from depression or any emotional trauma The nature and extent of the plaintiffs pain and

suffering and loss of amenities of life In particular the bad scarring of his right hand arm are well documented in the various

medical reports. It is unequivocally accepted that the plaintiff will never enjoy life in the same manner as he did before the accident.

[15] Furthermore following the lead in the *Wright* case as per MBr.un9a above: the court cannot disregard that the original award in *Bouwer* was made conservatively and without taking into account global standards. *Bouwer* cannot be authority at the time of hearing of this matter irrespective of the defendant's contemplation on Inflation. I fully agree with the defendant that the closest comparable case is *Vukubi* although in casu the plaintiff was not admitted in high care. The award to be made will clearly reflect this consideration.

[16] I am mindful of the caution in *De Jong v Ou Pisanie N.O.*[5] at paragraph 60 wherein the court, after noting the tendency towards increased awards in respect of general damages in recent times, was readily perceptible and re-affirmed conservatism as one of the multiple factors to be taken into account in awarding damages. The court concluded that the principle remained that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour out largesse from the horn of plenty at the defendant's expense, as pointed out in *Pitt v Economic insurance Co Ltd*[6] On the issue of awarding quantum, a court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. It has been said that there is no hard and fast rule of general application requiring a court to consider past awards.

[17] It is generally accepted that it would be difficult to find a case on all fours with the present matter and that awards in deciding cases should be considered only as a guide of how other courts arrived at an award. See *Protea Insurance Company v Lamb*. [7] Having regard to the above an amount of R450 000.00 is found to be the appropriate award.

[18] In the result the draft order marked "X" is made an order of court.

N P MALI

JUDGE OF THE HIGH COURT

Counsel for the Plaintiff: Adv. S Maritz

Instructed by: FRANS SCHUTTE INC

Counsel for the Respondent: Adv. S Mathabate

Instructed by: TAU PHALANE INC

Date of Hearing: 22 May 2017

Date of Judgment: 26 May 2017

IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]

On this the 26th day of May 2017 before the Honourable Mali, J in Court 8A

Case no: 53010/2012

CITI NGOMANE Plaintiff

ROAD ACCIDENT FUND Defendant

DRAFT ORDER

BY AGREEMENT BETWEEN THE PARTIES THE COURT MAKES THE FOLLOWING ORDER

1. The Plaintiff is entitled to 100% of his proven/agreed damages;

2. The Defendant pays to the Plaintiff the amount of r923 568.00, NINE HUNDRED AND TWENTY THREE THOUSAND FIVE HUNDRED AND SIXTY EIGHT RAND ONLY

made up as follows:

2.1 R473 568.00 (Four hundred and seventy three thousand five hundred and sixty eight rand) in respect of loss of earnings;

2.2 R 450 000, FOUR HUNDRED AND FIFTY THOUSAND RAND in respect of general damages

by paying the above mentioned amount into the Plaintiff's Attorneys Trust Account with account number [...] at Standard Bank White River.

3. The Defendant will furnish to 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 him arising from injuries sustained by him in a collision which occurred on 21April 2011after the costs have been incurred;

4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject thereto that such costs shall include the following:

4.1 The costs of Plaintiff's counsel;

4.2 The costs of all medico-legal, actuarial, addendum and joint reports served by the Plaintiff, as well as such reports furnished to the Defendant or it's Attorney or In the Defendant s possession, including the costs of any investigations requested by the relevant expert;

4.3 The qualifying fees of the experts referred to in paragraph 4.2 above ;

4.4 The reasonable costs Incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico-legal examinations of both parties;

4.5 The costs of all necessary witnesses and or Plaintiff who attended Court.

BY THE COURT

REGISTRAR

FOR PLAINTIFF: SCHUTTE DE JONG NC (05417)

ADVOCATE SOPHIA MARITZ - (012) 942 - 2212

FOR DEFENDANT: TAU PHALANE INC

ADVOCATE S MATHABATHE- 079 966 3756

[1] (12010/2014) [2016] ZAGPPHC 12 (21 January 2016)

[2] (1709/04)(2007) ZAECHC 111 (18 October 2007)

[3] 1975 2 C&B 585 (SE)

[4]

[2003] 2 All SA 148 (SCA) (26 March 2003)

[5] 2005 (5) SA 547 (SCA)

[6] 1975 (3) SA 264 (N) at 267

[7] 1971 (1) SA 530 (A) at 535 H

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