

SOUTH AFRICA / JUDGMENT

Nokotema v Road Accident Fund (5975/2023) [2025] ZAFSHC 150 (21 May 2025) [2025] ZAFSHC 150

COURT

Free State High Court, Bloemfontein

BEFORE

Deane AJ

CASE / FILE NUMBER

5975/2023

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IN THE HIGH COURT OF

SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not

reportable

Case

no: 5975/2023

In

the matter between:	TSIETSI PAULOS NOKOTEMA PLAINTIFF and THE ROAD ACCIDENT FUND DEFENDANT Neutral citation: Nokotema v RAF (5975/2023) [2025]
Coram:	Deane AJ Heard: 21 May 2025
Delivered:	This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 15h15 on 29 May 2025.
Summary:	Whilst a court must be mindful of the principle that the process of comparison should not amount to a rigid examination of prior awards to determine compensation, nor should it unduly constrain the court's discretion in such matters, it remains a useful tool in contextualising the present claim. In casu, a more moderate quantum for general damages would be appropriate, reflecting the nature of the plaintiff's impairments. ORDER 1 The defendant shall pay damages to the plaintiff in the sum of R725 205.45 (seven hundred and twenty-five thousand two hundred five and forty-five cents); with regard to loss of earnings In regard to past loss of earnings: R52 690.45 In regard to future loss of earnings: R 672 515

Total:

R 725 205.45

2

The defendant shall pay damages to the plaintiff in the sum of R 700 000 (seven hundred thousand rand) for general damages.

3

Should the payment as aforesaid not be made within 180 days from the date of this order, the defendant shall be liable for

payment of interest on the amount of R 1425 205,45 (one million four hundred and twenty-five thousand two hundred and five

rand forty-five cents) with interest at the rate of 10,5% per annum from the day following the lapse of a period of 180 days from the date of the granting of this order.

4

The payment referred to in paragraph 2, supra and the costs referred to in paragraph 5 infra, shall be into the trust account of

the plaintiff's attorney being Mavuya Attorneys Inc with account number 6249-6861-769 held at First National Bank on behalf of Tsietsi

Paulos Nokotema, a major male with identity number 7[...].

5

The defendant shall provide an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 19 of 2005 (as amended), for the cost of future accommodation of plaintiff in a hospital or nursing

home, or treatment of or rendering of a service

or supplying of goods to him arising out of the injuries sustained by him in the

motor vehicle collision on 5 March 2022, after such costs have been incurred and upon proof thereof.

6

The defendant shall within 14 days of receipt of this order, register the matter on the RNYP list.

7

The defendant shall pay the plaintiff's costs of suit, as taxed or agreed, on a scale between party and party including the

costs of the counsel on scale B subject to the discretion of the taxing master such costs shall include the reasonable qualifying fees

of the following expert witnesses:

- (a)
Dr M P Sadiki (Neurosurgeon);
- (b)
Ms L Delport (Occupational Therapist);
- (c)
Mr G Sibiya (Clinical Psychologist)
- (d)
Ms S Van Jaarsveld (Industrial Psychologist);
- (e)
J Sauer (Actuary).

JUDGMENT

Deane AJ

- [1] The plaintiff instituted legal proceedings against the defendant, seeking damages for injuries sustained when struck by a motor vehicle on 5 March 2022, near Reddersburg in the Free State. At the time of the accident, the plaintiff was a pedestrian. The plaintiff was admitted to hospital on 6 March 2022 and discharged on 12 March 2022.
- [2] The plaintiff was born on 19 April 1979 and, at the time of the accident, was one month shy of his 43rd birthday. He was therefore 42 years old when the accident occurred, and his highest level of education was grade 8.
- [3] When the matter came before me, I was advised by both counsels for the parties that the Road Accident Fund (the RAF) has conceded the merits of the claim and has agreed to compensate him 100% of his proven damages. Furthermore, the parties as at the date of trial agreed to postpone the issue relating to the earnings capacity. Parties further agreed that the respective counsels will make legal submissions in respect of general damages with the aid of relevant case law for the purpose of determination of the appropriate award. Therefore, the only issue before me was to determine the extent of the general damages that the plaintiff is entitled to. The representatives also agreed to submit heads of arguments post oral

submissions.

- [4] Furthermore, at the commencement of the trial, the defendant did not object to the handing in of the plaintiff's expert reports, and in terms of rule 38(2) of the Uniform Rules of Court, the plaintiff's expert reports were admitted into evidence.
- [5] The plaintiff seeks an award of R1 600 000 for general damages. Notably, throughout oral submissions, counsel for the plaintiff

consistently maintained that they were claiming R1 600 000. However, this is contradicted by the heads of argument submitted

post-hearing, which reflect a revised amount of R1 800 000. This inconsistency is significant, as, even the case law cited during oral submissions, was presented in relation to the originally stated amount. Given this discrepancy, the court finds the post-hearing adjustment impermissible and will disregard the revised amount. The court will assess whether the originally submitted figure of R1 600 000 is appropriate in the specific circumstances of this case.

- [6] In support of the award prayed for, the legal representative submits that, as a result of the accident, the plaintiff suffered the following: severe traumatic brain injury, a laceration above the right eyebrow and crush injury.
- [7] The plaintiff, by relying on the expert reports of Dr TO Sadiki, a neurosurgeon, and Gillian Sibiya a clinical psychologist, submits

that the sequelae of the injuries include the following:

- (a) He has developed mood swings.
- (b) He cannot carry heavy objects.
- (c) He is having constant headaches.
- (d) He is forgetful.
- (e) He is struggling at work.

Medico-legal evidence

- [8] I will limit the consideration of the expert reports only to their findings and opinions as may be relevant for the determination of general damages, and not to reproduce their reports.

RAF form

- [9] The RAF 4 form Indicates that the plaintiff suffers from severe long term mental or severe long term behavioural disturbance or disorder.

Dr TO Sadiki (Neurosurgeon)

- [10] His findings were that the plaintiff suffered from severe traumatic injury evidenced by both subjective (chronic symptoms; headache and memory impairment) and objective evidence (5/15 GCS, pre-resuscitation and 9/15 GCS post resuscitation, loss of consciousness and imaging findings: including cerebral contusion, subdural haematoma and diffuse cerebral oedema).
- [11] In his report, the neurosurgeon indicates that the post-accident sequelae regarding neurocognitive and neuropsychological impairment sees the plaintiff suffering from memory problems and poor concentration. He also suffers from post-traumatic headaches associated with dizziness and blurry vision and that the plaintiff suffers from emotional lability and short temperedness. The neurosurgeon also reported signs of Post-Traumatic Stress Disorder (PTSD). The plaintiff has no grossly disfiguring scars.

Mr G Sibiya (Clinical psychologist)

[12] The clinical psychologist indicated that the plaintiff's overall performance on the assessments revealed fluctuating

neurocognitive functioning in the domains of attention and concentration, memory and learning, processing speed as well as concept formation and reasoning skills. His performance was mostly consistent with his level of education but not consistent with these

estimated premorbid cognitive functioning.

[13] The clinical psychologist further indicated that the findings of the assessment seemed to be consistent with the findings of the

neurosurgeon in that the plaintiff suffers from severe long-term mental or severe long-term behavioural disturbance of disorder.

Occupational therapist

[14] Occupational therapist reports indicate that the client experienced pain and suffering for some time after the accident and to date he experiences difficulty with regard to performing certain tasks due to discomfort and cognitive challenges. The occupational therapist further indicated that the plaintiff is currently mostly independent in the performance of tasks, but he needs to perform some tasks in an adapted manner specifically with regard to heavier tasks.

Summary of evidence and applicable law – general damages

[15] The assessment of general damages is guided by past cases but must consider the unique circumstances of each case. In *Minister of Safety and Security v Seymour*,^[1] the Court emphasised that prior awards serve only as a reference and not as a strict standard.

[16] I further deem it necessary to reproduce the following paragraphs in the judgment of Navsa JA In the matter of *Road Accident Fund v Marunga*^[2] that sums up the principles in the assessment of claims for general damages and earlier authorities on the issue:

‘This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. This Court will interfere where there is a striking disparity between what the trial court awarded and what this Court considers ought to have been awarded: See *Protea Insurance Company v Lamb* 1971 (1) SA 530 (A) at 535A-B and the other cases cited there.

At 5358 and following of the Protea case Potgieter JA considered what regard should be given to awards in previously decided cases. After considering the dicta in several decisions of this Court the learned judge of appeal stated that there was no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. He pointed out that it would be difficult to find a case on all fours with the one being heard but nevertheless concluded that awards in decided cases might be of some use and guidance.

In the Protea case, above, this Court in determining the measure of damages considered all relevant factors and circumstances and derived assistance from the “general pattern of previous awards”.

The following case (with synopsis) which was included in the list of cases to which the trial Court was referred for purposes of comparison, demonstrates the difficulty and (paradoxically) the usefulness of considering awards in previously decided cases:

Wright v Multilateral Vehicle Accident Fund a 1997 decision of the Natal Provincial Division - Corbett and Honey Vol 4 E3-31- The plaintiff, a 28-year-old woman, sustained an open comminuted fracture of the right femur with complete division of the quadriceps muscle and loss of substantial quantity of bone which extended into the knee joint. There was an initial surgical procedure to repair the quadriceps mechanism and to apply an external fixator - plaintiff hospitalized for two weeks and discharged on crutches. Readmitted two weeks later for treatment of infection. Later readmitted for a period of one week for further treatment for infection. At the same time the external fixator was removed and replaced with a pin. Traction applied at home for four weeks. The fracture failed to unite, and the plaintiff was again hospitalized for a few weeks during which an open reduction was carried out for an internal fixation. The plaintiff wore a leg brace with a hinge for several weeks and left with a limitation of flexion in her right knee, bad scarring of the right leg, a shortening of the leg by 32 cm requiring raisers in footwear. She experienced weakness of the leg, residual pain and recurring infections and abscesses, which would in future probably require antibiotic therapy and surgical drainage. Removal of the pin was expected. Plaintiff experienced a great deal of pain, particularly during episodes of infection. She had been an outdoors person but was now permanently unable to run or play sport, kneel or squat. She experienced difficulty in negotiating stairs- awarded R65 000-00 as general damages [value in 2001 (at time of trial in the present case)

- RB 1 000-00].

In the Wright case (Corbett and Honey Vol 4 E3-36) Broome DJP stated:

“I consider that when having regard to previous awards one must recognize 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.'

[17] In the matter of *De Jongh v Du Pisanie NO (Du Pisanie)*, [3] Brand JA dealt with issues such as fairness in the context of previously decided cases of similar facts. The comparison is not a mechanical process because the court must still exercise its discretion. They only serve as broad guidelines to indicate a pattern

of previous awards based on the facts of each case. Indeed, on fairness of the award, Brand JA also cited, with approval, the following passage from the judgment of Holmes J in the matter of *Pitt v Economic Insurance Co. Ltd*, [4] where he stated the following;

'The courts 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 out largesse from the horn of plenty at the defendant's expense.'

[18] The approach and process of comparison of previous awards was described as follows in the matter of *Protea Insurance Co. Ltd v Lamb*, [5]:

'It should be emphasized, however, that this process of comparison does not take the form of meticulous examination of awards made in other cases in order to fix the amount of compensation, nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters.

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 upon this basis by reference to 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.'

[19] Counsel for the plaintiff referred me to several judgments on the correct approach to determine general damages. In practice, this head of damages, is incapable of precise assessment. This fact is mirrored in the several case laws relied upon herein. The trite principle is that each case must be decided on its own peculiar circumstances, and within the discretion of the court. Comparable past awards serve as a mere guide only. For example, the plaintiff's counsel, for its submissions, relied, quite correctly so in respect of the principles, on cases such as *Dragsund v Barker*, where Selke J said: [6]

'In estimating the damages for pain, suffering, shock and permanent incapacity (including plaintiff's injuries and impairment of movement), I have to try to take into account a host of considerations comprising many nebulous possibilities, and including also my own estimate of the plaintiff's prospects of life and continued good health. The result must necessarily represent something very like a rather badly informed guess.'

[20] These principles still hold good in present times, but not the quantum of general damages awarded in that case. I have had due

regard to the other case law referred to in the present matter.

[21] Counsel for the respondent contends that the plaintiff's injuries are not of such severity as to justify the amount claimed in respect of general damages. However, counsel for the respondent did not propose an alternative quantum, stating that there are no directly comparable case precedents addressing these specific injuries in isolation. Accordingly, the determination of an appropriate award is left to the discretion of this court.

Analysis

of the submissions regarding comparable awards

[22] The plaintiffs' counsel submits that the case of *Anthony v Road Accident Fund (Anthony)*,^[7] is directly relevant to the case herein. In the *Anthony* case the plaintiff therein was, a 22-year-old female law student and whose sequelae of injuries suffered included multiple fractures to the skull and facial bones, disfiguring lacerations, lost teeth, a split palate, and a moderate concussive brain injury. Additionally, the plaintiff in *Anthony* required significant medical intervention, including craniofacial reconstruction, prosthetic dental implants, and extensive post-traumatic care. The psychological impact of those injuries was also profound, leading to post-traumatic stress disorder, social withdrawal, and substantial discomfort in daily life. Given the extent of both the physical and neurological trauma, the plaintiff in *Anthony* was awarded a substantial sum in general damages.

[23] While mindful of the principle that the process of comparison should not amount to a rigid examination of prior awards to determine

compensation, nor should it unduly constrain the Court's discretion in such matters, it remains a useful tool in contextualising the present claim.

[24] In assessing the plaintiff's condition in casu, it is noted that he suffers from post-concussion headaches, with a high probability of recovery (80%). While there is a 17% risk of post-traumatic epilepsy, this remains a potential complication rather than an established condition. Furthermore, his mobility impairment was temporary, requiring crutches for one month, after which he was able to resume somewhat normal movement. His post-accident management was non-invasive, consisting of neuro-observation, pain management, prophylactic anticonvulsants, and physiotherapy, with follow-ups at the orthopaedic clinic. The plaintiff is currently managing his pain by taking Brufen, twice per day and there was no need for extensive surgeries or facial reconstruction and dental implants.

[25] The *Anthony* plaintiff, by contrast, suffered multiple fractures to the skull and facial bones, disfiguring lacerations, and a split palate, requiring prosthetic implants and corrective surgeries. The injuries led to extensive scarring, cognitive dysfunction, mood disturbances, and permanent discomfort, significantly affecting daily life, self-esteem, and social

engagement. Additionally, the Anthony plaintiff underwent high-risk surgical interventions, including craniofacial procedures, dental restoration, and orbital reconstruction—all requiring prolonged hospitalisation and rehabilitation.

[26] Given these distinctions, the plaintiff in the present matter does not warrant a damages award equivalent to Anthony, as his injuries, while impactful, do not exhibit the same degree of permanence, disfigurement, or invasive medical interventions.

Instead, a more moderate quantum for general damages would be appropriate, reflecting the nature of the plaintiff's impairments.

[27] In determining the quantum of the plaintiff's general damages, I have considered the cases to which counsel referred me. I do not propose to discuss those cases as they provide very little assistance other than to enable the awards made in them to be considered for general comparative purposes.

[28] It is rarely, if ever, possible to identify a case where the injuries and their sequelae are identical to those under consideration. This inherent difficulty arises from the fact that individuals respond differently to what may, at first glance, appear to be similar

injuries. Importantly, it is not merely the multiplicity of injuries that is decisive, but rather the nature and extent of their sequelae.

[29] The principle of fairness and reasonableness dictates that an award for general damages must adequately reflect the complainant's

particular and actual hardship and suffering endured, rather than serve as an arbitrary figure disconnected from precedent.

[30] In line with the principles articulated in *Du Pisanie*, the exercise of comparison requires careful consideration of the plaintiff's personal circumstances before and after the

accident, the nature of the injuries, and their sequelae. These must then be weighed against prior judicial determinations. While past cases serve as useful guidelines, they do not create fixed benchmarks but rather establish a pattern of awards that provides insight into fair and reasonable compensation.

[31] I find that taking into account all of the above, I am in agreement with counsel for the respondent that the plaintiff's injuries are not of such severity as to justify the amount claimed in respect of general damages.

[32] Bearing in mind that an award of general damages is intended as a 'solatium', ie as compensation for the injured party's pain and suffering, and loss of amenities of life, I find that accordingly an amount of R700 000 (seven hundred thousand rands) would be just and appropriate in these circumstances. This amount reflects the plaintiff's specific condition while ensuring fairness in accordance with applicable legal principles. The court has accordingly exercised its discretion in assessing the plaintiff's individual condition to reach

an equitable outcome.

[33] Accordingly, I make the following order:

1 The defendant shall pay damages to the plaintiff in the sum of R725 205.45 (seven hundred and twenty-five thousand two hundred five and forty-five cents); with regard to loss of earnings

In regard to past loss of earnings: R52 690.45

In regard to future loss of earnings: R 672 515

2 The defendant shall pay damages to the plaintiff in the sum of R 700 000 (seven hundred thousand rand) for general damages.

3 Should the payment as aforesaid not be made within 180 days from the date of this order, the defendant shall be liable for payment of interest on the amount of R 1425 205,45 (one million four hundred and twenty-five thousand two hundred and five rands forty-five cents) with interest at the rate of 10,5% per annum from the day following the lapse of a period of 180 days from the date of the granting of this order.

4 The payment referred to in paragraph 2, supra and the costs referred to in paragraph 5 infra, shall be into the trust account of the plaintiff's attorney being Mavuya Attorneys Inc with account number 6249-6861-769 held at First National Bank on behalf of Tsietsi Paulos Nokotema, a major male with identity number 7[...].

5 The defendant shall provide an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 19 of 2005 (as amended), for the cost of future accommodation of plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision on 5 March 2022, after such costs have been incurred and upon proof thereof.

6 The defendant shall within 14 days of receipt of this order, register the matter on the RNYP list.

7 The defendant shall pay the plaintiff's costs of suit, as taxed or agreed, on a scale between party and party including the costs of the counsel on scale B subject to the discretion of the taxing master such costs shall include the reasonable qualifying fees of the following expert witnesses:

- (f) Dr M P Sadiki (Neurosurgeon);
- (g) Ms L Delport (Occupational Therapist);
- (h) Mr G Sibiya (Clinical Psychologist)
- (i) Ms S Van Jaarsveld (Industrial Psychologist);
- (j) J Sauer (Actuary).

DEANE AJ

Appearances

For the appellant: K Mohono

Instructed by: Mavuya Attorneys, Bloemfontein

For the respondent: A Ostermeter

Instructed by: State Attorney, Bloemfontein.

- [1] Minister of Safety and Security v Seymour [2006] ZASCA 71; [2007] 1 All SA 558 (SCA); 2006 (6) SA 320 (SCA).
- [2] Road Accident Fund v Marunga [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) para 23-28.
- [3] De Jongh v Du Pisanie [2004] ZASCA 43; 2004 (2) All SA 565 (SCA); 2005 (5) SA 457 (SCA) (Du Pisanie).
- [4] Pitt v Economic Insurance Co. Ltd 1957 (3) SA 284 (D) at 287E-F.
- [5] Protea Assurance Co. Ltd v Lamb 1971 (1) SA 530 (A) 535H-536B.
- [6] Dragsund v Barker 1950 (1E4) QOD 489 (D) at 489-450.
- [7] Anthony v Road Accident Fund [2017] ZAGPPHC 161.

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