

SOUTH AFRICA / JUDGMENT

Radebe v Road Accident Fund (14645/17) [2019] ZAGPPHC 475 (8 August 2019)

[2019] ZAGPPHC 475**COURT**

North Gauteng High Court, Pretoria

BEFORE

M J Teffo

CASE / FILE NUMBER

14645/17

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Policy**REPUBLIC OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****(1)****REPORTABLE:**

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

CASE

NO: 14645/17

8/8/2019

In

the matter between: ROSELYN
RADEBE
Plaintiff
and
THE
ROAD ACCIDENT
FUND
Defendant

JUDGMENT

TEFFO, J:

Introduction

- [1] On 20 August 2014 the plaintiff, an adult female, who was 26 years old at the time, was involved in an accident. She was a passenger in the motor vehicle. She seeks compensation from the defendant for damages suffered by her as a result of the injuries she sustained in the collision.
- [2] The merits in this matter have been settled and the defendant is liable to pay 100% of the plaintiff's agreed or proven damages. The defendant has agreed to furnish the plaintiff with an undertaking in terms of section 17(4) of Act 56 of 1996 for her future medical expenses. The claim for loss of earnings has been postponed for later determination. This court has to determine the amount of the plaintiff's claim for general damages.
- [3] The parties have decided not to lead viva voce evidence, but to present their cases on the basis of their respective experts' medico-legal reports which have been admitted as evidence. The parties' experts have not filed any joint minutes.

Background

- [4] According to the hospital records read together with the RAF 4 form, the plaintiff sustained a soft tissue Injury to the right leg and lower back. She was transported by ambulance to Jubilee hospital. The initial resuscitation was done. She was given medication for the right leg pain and discharged on the same day. She started experiencing lower back ache. She consulted a general practitioner, Dr Mathulwe, the next day. She was given pain medication. Or Mathulwe referred the plaintiff to a physiotherapist for rehabilitation from January 2015. She consulted with Dr Khan, the plaintiff's orthopaedic

surgeon, in May 2016. X-rays were taken and an MRI scan was done. On 17 May 2016 she was admitted at Louis Pasteur hospital where she was treated with NSAIDS. The MRI scan showed disc changes at L5/ S1. She continued receiving physiotherapy.

The injuries

- [5] Dr Khan, the plaintiff's orthopaedic surgeon, found that the plaintiff sustained a lumbar disc prolapse with severe lower back pain. He opined that no future surgical intervention was anticipated. The pain was more likely due to lumbar disc injury and degeneration at L5/S1.
- [6] According to Dr Mosadi, the plaintiff's neurosurgeon, the plaintiff suffered a grade 2 concussion as a subset of a mild head injury which is evidenced by no history of loss of consciousness and chronic headache. The above Injury could result in the plaintiff suffering prolonged neurocognitive impairments. She is suffering from post-concussion headaches.
- [7] Dr Mokhuane, the plaintiff's psychiatrist, opined that the plaintiff presents with somatoform pain disorder, depression and post-traumatic stress disorder.
- [8] N Mqhayi, the plaintiff's clinical psychologist's assessment confirmed the post-traumatic stress disorder, depression and anxiety symptoms that are severe in nature.
- [9] The defendant's orthopaedic surgeon, Dr Sibanyoni, found x-rays of the left knee and lumbar spine to be normal, the plaintiff's orthopaedic prognosis to be good and no future surgery was foreseen. According to him and the MRI scan done by Dr Khan, the plaintiff does not present with any impairments from the injuries she sustained.
- [10] Dr Chula, the defendant's neurosurgeon, found that the plaintiff sustained a mild head injury and a soft tissue injury to the lower back which resulted in anxiety, memory impairment and post-traumatic stress. The injuries have been there for four years after the accident without any further deterioration. She has reached maximum medical improvement and has 3% future risk of seizures as a result of the head injury in comparison to the general population.

Pain and suffering

- [11] According to Dr Khan, the plaintiff's orthopaedic surgeon, the plaintiff suffered from severe lower back pain at the time of the injury. Acute pain was treated with NSAIDs. It never got better and changed to chronic form. She is still suffering from an agonizing lower back. She is unable to walk, sit or put shoes on. The pain is most likely due to the lumbar disc injury and degeneration at L5/S1 but there are no radiological signs. The pain radiates to the plaintiff's legs and the right leg is more affected than the left leg. Dr Khan could not find any other cause for the back pain.
- [12] Dr Khan is of the view that future medical treatment may improve the pain the plaintiff is experiencing.
- [13] It was reported to Dr Khan that the plaintiff used to play netball and football before the accident. She is unable to enjoy any of the sports after the accident. Her mobility has been seriously affected. She feels cramps and weakness in both lower limbs. She is unable to sit or stand for more than 10 minutes. She is unable to perform household chores now due to the pain in her lower back. She is unable to fulfil other activities of daily living.

- [14] According to Dr Khan's prognosis, the plaintiff should get better by proper future non-operative and surgical treatment. Physiotherapy should improve her condition. In the long term, the plaintiff's back will remain painful and will develop spondylosis
- [15] According to Dr Sibanyoni, the defendant's orthopaedic surgeon, the plaintiff suffered acute pain as a result of the accident. Her pain subsided over a period of two weeks. She only consulted the general practitioner, Dr Mathulwe, two years after the accident. She currently complains of lower back and left knee pain which injuries, do not interfere with her daily living. Dr Sibanyoni's view is that the plaintiff should be able to participate in sporting activities relevant to her age. She has not lost any amenities and hobbies as a result of the accident.
- [16] The plaintiff's neurosurgeon, Dr Mosadi, is of the view that the plaintiff has suffered acute pains for a week after the accident. She has suffered chronic pains to date. Normal amenities of life were lost during the period of hospitalization. It is not clear from the records what was the period of her hospitalization. The plaintiff was only at Jubilee hospital for a day. The period she was at Louis Pasteur hospital is not clear.
- [17] Dr Chula, the defendant's neurosurgeon confirmed that the plaintiff suffered acute pain which was managed and she currently has chronic pain. His view is that her life expectancy has not been affected by the injuries sustained.
- [18] Ms T H Komape, the plaintiff's physiotherapist's opinion is that physiotherapy and rehabilitation is likely to improve lumbo-pelvic signs of dyskinesia and associated symptoms. Physiotherapy and rehabilitation alone may have limited effect in improving lumbosacral radiculopathy. According to the physiotherapist who has been treating the plaintiff, Mr Isaac Shongwe, the plaintiff has been under his management and care for the past three years. She has prolapsed discs between Jurnbar vertebrae number four and five and between lumbar vertebrae number five and the first sacrum spine. She wears a lumbar brace to support her spine on a full time basis. She attends monthly physical therapy sessions and has been showing a slow but progressive improvement. The severity of her pain symptoms prevents her from being employed since she cannot stand or sit for long periods of time. He recommended continued physical therapy treatments to assist the plaintiff's healing process. The physiotherapist is of the view that if the recommendation is not adhered to, the plaintiff will risk future injury and possible disablement.

The Law

- [19] It has repeatedly been 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.[1] In *Protea Insurance Company v Lamb*[2], Potgieter JA considered what regard should be given to awards in previously decided cases. After considering the dicta in several decisions, Potgieter JA stated that there is no hard and fast rule of general application requiring a trial court or 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

Application of the law to the facts

- [20] I have Considered earlier awards and I do not intend to cite all of them. The parties' respective counsel have referred me to cases they considered to be comparable to this case In Ramolobeng v Lowveld Bus Services (Pty) Ltd and Another,[3] the plaintiff who was 34 years old at the time, was awarded R550 000,00 general damages in 2015 (current day value: R644 000,00). The injuries suffered were more severe. The plaintiff was initially treated conservatively , analgesics physiotherapy and rest. Much later he underwent spinal surgery - an artificial disc was inserted at the levels L3/L4. He was hospitalised for roughly six months in total. The plaintiff in the current matter, was discharged on the same day of the accident after being transported to Jubilee hospital after the accident Only pain medication was given to her. She consulted Dr Khan more than year after the accident. Both parties' orthopaedic surgeons agree that no future surgical intervention was anticipated. The sequelae of some of the plaintiff's injuries were comparable to those suffered by the plaintiff in the Ramolobeng matter although more severe.
- [21] In Oosthuizen v Road Accident Fund,[4] a 24 year old male at the time of the accident, was awarded R550 000,00 general damages in 2016 (current day value R615 000,00) The injuries suffered were also more severe compared to those of the plaintiff in the current matter.
- [22] In Lawson v RAF[5], a 22 year old medical practitioner was awarded R300 000,00 for general damages (current day value: R455 000,00). These injuries are also distinguishable to those suffered by the plaintiff in the present matter.
- [23] Other cases referred to were Rheeder v RAF[6], Battle v RAF[7] Nhatumbo v RAF[8] where general damages awarded were in the range of between current day values of R165 000, 00 and R264 000, 00. Although the sequelae of some injuries were comparable to those of the plaintiff in the current matter, I am of the view that the injuries suffered in these two matters are less severe to those suffered by the plaintiff.
- [24] The plaintiffs counsel has proposed that an amount of R650 000,00 will fairly compensate her general damages while the defendant's counsel has proposed an amount of R3000 000,00. I have considered the injuries sustained by the plaintiff as a result of the collision, the fact that both parties' orthopaedic surgeons agree that no future surgical intervention has been anticipated and the fact that the plaintiff is still experiencing chronic pain on her left knee and lower back. She has been referred to a physiotherapist for rehabilitation since January 2015. The physiotherapist, who has been treating the plaintiff for three years after the accident. is of the view is that the severity of her pain symptoms prevents her from being employed since she cannot stand or sit for a long period of time. He has recommended continued physical therapy treatments to assist the plaintiffs healing process. He indicated that physiotherapy and rehabilitation may have limited effect in improving lumbosacral radiculopathy, The fact that the plaintiff's condition will improve through

physiotherapy and rehabilitation and that she will benefit from occupational therapy and biokinetics for pain management, does not mean that she will be pain free. According to Dr Khan! the plaintiff's orthopaedic surgeon. in the long term the pli3intiff's back will remain painful and will develop spondylosis.

[25] There is no evidence from the defendant to gainsay the plaintiff physiotherapist's opinion. The defendant's orthopaedic surgeon, Dr Sibanyoni, agrees that the plaintiff still complains of chronic pain on the lower back and left knee. I find his opinion that the pain will not interfere with plaintiff's daily living, she should be able to participate in sporting activities relevant to her age and that she has not lost any amenities and hobbies as a result of the accident, not to be realistic. It is not supported by any evidence.

[26] The neurosurgeons agree that the plaintiff has experienced and is currently still experiencing chronic pain.

[27] There are no reports to counter the reports of the plaintiff's psychiatrist and the clinical psychologist with regard to the sequelae of the injuries the plaintiff suffered. Dr Chula, the defendant's neurosurgeon, agrees that the mild head injury and the soft tissue

injury that the plaintiff sustained to the lower back, resulted in the sequelae that she is experiencing. The plaintiff's clinical psychologist, whose opinion has not been challenged, is of the view that the sequelae suffered by the plaintiff as a result of the injuries, are severe in nature

[28] In my view the fair and reasonable award to compensate the plaintiff's general damages is the sum of R450 000,00

[29] In the result I make an order in terms of the draft order marked "X".

M J TEFFO

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

For the plaintiff

Kotlolo Attorneys

Instructed by

L D Haskins

For the defendant

Tau Phalane Inc

Instructed by

RM Phiri

Heard on

5 March 2019

Handed down on

8 August 2019

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 05 MARCH 2019

BEFORE THE HONOURABLE JUSTICE TEFFO J

IN COURT4G

Case No.: 14645/17

RADEBE ROSELYN

Plaintiff

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

Having heard Counsel, the following order is made:

1.

1.1. The Defendant shall pay the sum of R450 000, 00 (FOURT HUNDRED AND FIFTY THOUSAND RAND) Plaintiff's attorneys, Kotlolo Attorneys Incorporated, in respect of the plaintiff's claim for general damages, which amount shall be payable by direct transfer into their trust account, details of which are at paragraph 7 below.

1.2. The issue of loss of earnings is postponed sine die.

2.

The Defendant is ordered to pay the Plaintiff's party and party costs on the High Court scale, which costs shall include, but not be limited to:

2.1. The costs of the preparation of 6 trial bundles as per the Gauteng High Court and as agreed upon in the Pre-Trial Minutes .

2.2. The reasonable taxable qualifying, reservation and preparation fees of the Plaintiff's expert witnesses, as well as the costs of all the reports and/or addendum reports and/or joint minutes of whom notice was given, or whose reports are in the possession of the Defendant and/or the Defendant's attorneys, including the costs of obtaining the reports of the expert witnesses served

on the Defendant or in its possession, including any special investigations 1 traveling fees incurred by and/or on behalf of the Plaintiff to obtain the reports concerned, and attendance of any expert witness's consultation(s) and/or investigation(s), if any.

2.3. The costs of counsel.

2.4. The reasonable costs of attorney and counsel for preparation and attendance at pre-trial, which includes reasonable travelling costs.

2.5. The costs of all subpoenaed individuals as well as the subpoena duces tecum costs, if any.

2.6. The reasonable costs for preparation for trial.

2.7. The reasonable costs of attendance at court for trial of the attorney.

2.8. The costs in respect of obtaining documents and lodging or the Plaintiff's claim; and

2.9 The costs to date of this order, which costs shall further include the reasonable costs and expenses of the Plaintiff's attorney, correspondent attorney and assessors (if any), which costs and shall also include all necessary travelling costs and/or expenses, if any, such costs further to include time spent and kilometers travelled concerning attendance to Court and preparation for trial.

3.

Should the Defendant fail to pay the Plaintiff's party & party costs as taxed or agreed with J 4 (fourteen) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at a rate of 10.00% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

4.

The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 4 above, serve the notice of taxation on the: Defendant's attorneys and shall allow the Defendant seven court days to make payment of the taxed costs.

5.

The taxed or agreed costs, as referred to above, shall be paid into the trust account of Account Holder: Kotlolo Attorneys, Bank Name: Absa Bank, Account Number: [...], Branch Code: 632005, Ref: DDK/K707/1 6/ M.

6.

There is a valid contingency fee agreement.

BY ORDER

REGISTRAR

On behalf of the Plaintiff:

Adv. LD Haskins

079 512 3754

On behalf of the Defendant: Adv RM PHIRI

079 186 0575

- [1] Road Accident Fund v Marunga (2003) 2 All SA 148 SCA
 - [2] 1971 (1) SA 530 (A) at 535A-B and the other cases cited there
 - [3] 2015 (FC5) QOD 29 GNP
 - [4] 2016 (FC4) QOD 5 GNP
 - [5] 2010 (6C4) QOD 1 ECP
 - [6] 2014 (FCS) QOD 1 GNP
 - [7] 2015 (FC3) QOD 1 wee
 - [8] 2014 (FC5) OOD 12 GSJ
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Prepared on 12 October 2026 · Esheria