

SOUTH AFRICA / JUDGMENT

Schutte v Road Accident Fund (2159/2022) [2023] ZAFSHC 391 (12 October 2023) [2023] ZAFSHC 391

COURT

Free State High Court, Bloemfontein

BEFORE

Mthimunye, AJ

CASE / FILE NUMBER

2159/2022

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

Case no: 2159/2022

In the matter between: JEANETTE JACOBA PETRONELLA SCHUTTE Plaintiff and ROAD
ACCIDENT FUND Defendant

CORAM:

MTHIMUNYE, AJ

HEARD ON: 01 AUGUST 2023

DELIVERED ON: 12 OCTOBER 2023

- [1] In this claim for damages against the Road Accident Fund arising from a motor vehicle accident which occurred on 05 August 2020, merits were conceded one hundred percent in favour of the Plaintiff as she was a passenger. Prior to the commencement of the trial, the parties settled loss of earnings for R60 421.90 (Sixty Thousand Rand, Four Hundred and Twenty-One Rands, Ninety Cents). They agreed that the claim for past medical expenses be separated in terms of Section 34(4) and postponed. What was brought before this court to determine was the claim for general damages for pain and suffering, loss of amenities of life and disability. The Plaintiff claimed R800 000.00 (Eight Hundred Thousand Rand) for general

damages and during argument, Counsel for the Plaintiff argued that a reasonable offer should be between R550 000.00 and R600 000.00. It was submitted, on the other hand, by Counsel for the defendant that an amount of R450 000.00 was reasonable compensation on this case. This is what this court is called upon to determine.

- [2] The Plaintiff, a 68-year-old was injured in a motor vehicle accident on 05 August 2020. She sustained a head injury, open wound on the right side of the head, open fracture on the left elbow, neck and back injury, lacerations on the back of the head, abrasions on the chin, ligament injuries to the left elbow, scarring to the left elbow and chronic pain syndrome. For purposes of general damages, it is noteworthy to state that the Plaintiff has a pre – accident medical history of hypertension, back surgery, tonsillectomy, appendectomy and caesarean section.
- [3] The expert medico-legal reports of the Plaintiff were, by agreement between the parties, admitted into evidence in terms of Rule 38(2) of the Uniform Rules of Court. Dr L F Oelofse, the Orthopaedic Surgeon's report highlighted recurring headaches, episodes of dizziness, forgetfulness, neck and back pain accompanied by muscle spasms, numbness in hands and pins and needles in her right leg and left elbow pain as the sequelae to the injuries sustained by the Plaintiff. Dr N P Metuse, the Plastic and Reconstructive Surgeon highlighted a scar on the left forearm. It was submitted that the scars have healed, even though one is hypo pigmented, there are no keloids or hypertrophic scarring present. Although there is functional impairment, it was admitted that such cannot be attributed to the scars as scars do not cause contractures. Even though the scar has healed the Plaintiff is not able to fully extend her arm. The scarring is visible and permanent as it is to amenable to surgical treatment. The other expert reports related to the loss of earnings and capacity to work which in my view are not relevant for purposes of general damages as the loss of earnings claim was settled.
- [4] It was submitted that the Plaintiff has three jobs i.e. she is an Administrator for her church, doing part-time ironing for her daughter for payment and runs a children's aftercare facility. She finds the movement of the hands difficult and will need an elbow replacement and a neck fusion which are high risk operations. She has sustained serious and permanent disfigurement and long-term impairment or loss of bodily function. Counsel for the Defendant argued that this is as a result of age and pre-existing back injury and a previous medical history not related to the accident. Counsel for the Plaintiff stated that although the Plaintiff had this history, in terms of the expert reports 70% of the neck and back pain can be attributed to the accident hence the 30/70% apportionment in favour of the plaintiff.
- [5] The objective of an award for general damages is to compensate a claimant for the pain, suffering, and loss of amenities of life to which they suffered as a result of injuries sustained in a motor vehicle accident. The determination thereof is largely a matter of the court's discretion but the court can seek guidance in previous awards made in comparable cases. Past awards in comparable cases afford a useful guide in determination of general damages. The comparison is not meant to be a meticulous examination and should never interfere

with the court's discretion - Protea Assurance v Lamb 1971

- (1) SA 530 (A) at 535H-536A). To serve as a proper basis for comparison, previous awards should be updated to present day values.

[6] The Plaintiff referred to the case of Mohlaba v Road Accident Fund 2016 (7D4) QOD 1 (GNP) where the claimant suffered similar injuries and loss of sensation in his small and ring fingers and loss of some intrinsic hand functions. He suffered significant loss of working capacity and had depression. The original award was R540 000.00 which Counsel for the Plaintiff argued that the current value is R804 000.00. Other cases referred to by the Counsel for the Plaintiff, which he argued were comparable to this case were Twala v Road Accident Fund 2011 (6D\$) QOD 1 (GNP), where a 24-year-old unemployed male sustained a fracture of the left radius and ulna, head and shoulder injuries and a blow on the

right knee. He lost substantial power and rotational movement in the left arm. He was awarded R250 000.00, currently valued at R484 000.00. Counsel for the Plaintiff further referred to Nhantumbo v Road Accident Fund 2014 (7C5) QOD 12 (GSJ) where a 49 year old panel beater suffered soft tissue injuries on the lumbar and cervical spine and lacerations on the left hip. He was in pain and loss his ability to stand and bend for long, neither could he sit or walk for long. he was awarded a current value of R330 000.00. The Plaintiff further referred to Naude v Road Accident Fund 2013 (6C5) QOD 8 (GNP), where a 38-year-old female attorney suffered soft tissue injuries of the neck, back, shoulder, knee and hand and lacerations of the hand. She suffered residual symptoms in the neck and thoracic lumbar spine and was unable to walk long distances, sit upright or stand for long periods of time. She was awarded a current value of R330 000.00.

[7] Counsel for the Defendant referred this court to the case of Lee v RAF 2010 (LNQD) 17 GNP (check proper citations) the plaintiff suffered a neck, back and knee injuries, with a fractured elbow which caused a limited range of elbow movement. His back was tender and had muscle spasm and scarring as result of the elbow operation. His injuries were more severe than in this case and the court awarded a current value of R484 000.00. The Plaintiff further referred to Matthee v Minister of Transport 1975 (2) CNB 548 (3), where the plaintiff had a forearm fracture, wrist dislocation eye cut. Plates were inserted and later removed. She also developed arthritis and the court awarded an amount which can be valued in 2023 as R283 000.00. In De Jongh v Du Pisanie [2004] 565 (SCA), the Supreme Court of Appeal cited Holmes J in Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 (D) at 287E-F where Holmes J said: '(T)he Court must take care to see that its award is fair to both sides—it must give just consideration to the plaintiff,

but it must not pour out largesse from the horn of plenty at the defendant's expense.'

[8] In my view, the difference between the Mohlaba case which the Plaintiff sought to use as a benchmark for this one, is that Mohlaba was a 22-year-old mechanic and had no previous existing conditions whereas the Plaintiff in this case was 66 years old at the time of injury, had a pre-existing back injury. In Mohlaba case, no apportionment was applied whereas in this case, the Defendant has applied a 30% pre-accident and 70% accident related

apportionment in respect of the Plaintiff's neck and back pain. The other cases referred to by the Plaintiff's Counsel fell below what the Plaintiff is asking for in terms of general damages and again, all of them were in respect of younger claimants i.e. a 24-year-old unemployed male (*Twala v Road Accident Fund 2011 (6D\$) QOD 1 (GNP)*), a 48-year-old panel beater (*Nhantumbo v Road Accident Fund 2014 (7C5) QOD 12 (GSJ)*), and a 38-year-old female attorney (*Naude v Road Accident Fund 2013 (6C5) QOD 8 (GNP)*). The court awarded Twala R250 000, which Counsel for the Plaintiff submitted the current value is R484 000.00; Nhantumbo and Naude a current value of R330 000.00.

- [9] Guided by these decisions and taking into consideration the facts of this case and the age of the Plaintiff at the time of the accident, I am persuaded that Defendant's estimation was more than reasonable under the circumstances.

Consequently, I make the following order:

1. The Defendant is liable for payment to the Plaintiff in the amount of R400 000.00 (Four Hundred Thousand Rand) in respect of General Damages.
2. The amounts referred to above is payable within 180 (One Hundred and Eighty) days from the date of this order, into the Trust Account of the Plaintiff's Attorneys.
3. The Defendant shall pay the Plaintiff's taxed or agreed costs on the scale as between party and party until the date of this order.
4. Should the Defendant fail to pay the Plaintiff's party and party costs as taxed or agreed within 14 (fourteen) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at the prescribed rate 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;
5. 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 14 (fourteen) court days to make payment of the taxed costs;

D. P MTHIMUNYE, AJ

Appearances: For the Plaintiff Adv C G Jordaan Mabula Chambers, Pretoria Instructed by McIntyre & Van Der Post, Bloemfontein For the Respondent Ms P Banda State Attorney, Bloemfontein

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