

SOUTH AFRICA / JUDGMENT

Sehale v Road Accident Fund (8284/15) [2020] ZAGPPHC 375 (10 July 2020)

[2020] ZAGPPHC 375

COURT

North Gauteng High Court, Pretoria

BEFORE

CR Van Onselen

CASE / FILE NUMBER

8284/15

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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: 8284/15
In the matter

between: SEHALE
BONGANI BEAUTY
Plaintiff
and
ROAD
ACCIDENT FUND
Defendant

JUDGMENT

CORAM VAN ONSELEN AJ:

A.

INTRODUCTION:

- [1] The matter was enrolled for hearing on 7 July 2020. The matter stood down from 5 March 2020, presumably due to unavailability of a Court. The Defendant was not represented by attorneys due to recent events pertaining to the Service Level Agreement between the Defendant and its attorneys. There was also no appearance on behalf of the Defendant at the hearing.
- [2] At the outset of the virtual hearing counsel for the Plaintiff advised the Court that the issue of liability was previously resolved between the parties including the furnishing of an undertaking in terms of section 17(4)(a) of the Act[1] for future medical expenses. The Court was further advised that there was no claim for past hospital or medical expenses. The outstanding

issues for determination were the Plaintiff's claim for loss of earnings and non-pecuniary damages (commonly referred to as general damages).

- [3] Counsel also advised the Court that the Defendant was actively involved in negotiations prior to the hearing in an attempt to resolve the matter. The Court was further advised that the representative of the Defendant involved in the negotiations did not dispute the Plaintiffs entitlement to general damages but the amount thereof was contentious.
- [4] At the outset of the virtual hearing counsel advised that there was an issue pertaining to the claim for loss of earnings. In a nutshell, and with reference to the medico-legal reports filed and joint minutes obtained, there was a dispute relating to the post-morbid career path and remuneration the Plaintiff was postulated to earn. The relevant experts in the joint minutes had agreed on the pre- morbid career path and scenario. The educational psychologist engaged by Plaintiff opined post-morbidly a certificate or diploma scenario. The educational psychologist engaged by the Defendant went a step further and opined a possible degree scenario. Counsel advised that his instructions were to pursue the lower certificate scenario post-morbidly and that oral evidence of the experts would be necessary in this regard to explain why the diploma scenario should not be applicable. There were communication problems relating to the allocation of the matter to this Court on 7 July 2020. Unfortunately, neither counsel nor attorney for the Plaintiff were aware of the allocation and hence no virtual hearing was scheduled. They only became aware of the allocation on the morning of 8 July 2020. This, I was advised posed a logistical problem relating to the experts being available to testify. Further, it appeared during the debate with counsel that there would

probably be addendum reports required from the educational psychologist and industrial psychologist to give reasons why the Court should not entertain the diploma scenario post-morbidly. This was not clear from the reports or joint minutes filed. The Court was advised that the difference between a certificate and diploma scenario post-morbidly carried a significant monetary value once converted to calculations. Based on the aforementioned, counsel for the Plaintiff requested that the claim for loss of earnings be separated from the remaining heads of damage in terms of Rule 33(4) and be postponed sine die. The Court considered this request fair and reasonable under the circumstances and accordingly such an Order was granted. The Court adds for edification purposes, that the Plaintiff was fully prepared and ready to proceed but for logistical reasons and the fact that expert evidence virtually is not desirable. This Court would support any request on behalf of the Plaintiff for a preferent date for the hearing of the claim for loss of earnings which is to be postponed.

[5] The issue then for determination is the Plaintiff's claim for general damages. Counsel for Plaintiff advised that expert reports were filed on behalf of both parties and joint minutes were obtained from the concomitant experts. The Court was further advised that previously the parties recorded agreements that the reports for which there were no counterpart experts could be referred to during argument. The Court was provided with a hardcopy of the bundle of relevant documents and reports. These documents were

also properly uploaded onto the CaseLine system.

B. INJURIES SUSTAINED BY PLAINTIFF

[6] The Plaintiff was examined and evaluated by a battery of experts engaged by both parties. Reports were prepared and where applicable joint minutes obtained. The Court will refer to certain relevant portions of the reports to provide a synopsis of the injuries sustained by the Plaintiff and ongoing sequelae of such injuries.

[7] The Plaintiff was examined by an orthopaedic surgeon. The expert opines a head injury as well as a cervical spine C7 fracture. Plaintiff was treated for the orthopaedic injury and a hard neck collar was provided. A CT scan showed an anterior wedge compression fracture of C7.[2] Plaintiff does experience pain from the neck injury and has difficulty turning her neck to the sides. Radiological examinations

were reported as normal. Plaintiff will not require any surgery for this injury and only conservative treatment is opined.[3]

[8] The predominant injury suffered by the Plaintiff was a head injury and concomitant brain injury. Neurosurgeons examined the Plaintiff and prepared reports and a joint minute was also obtained.[4] In terms of their joint minute:

[8.1] They record the neck injury with cervical spine fractures at levels C2 and C7. The Plaintiff sustained a head injury with skull fractures and severe traumatic brain injury. This was a high-impact head injury with multiple skull fractures in the frontal bone and base of the skull, brain oedemas were present and an acute subdural hematoma. Plaintiff lost consciousness at the scene of the collision and had a recorded Glasgow Coma Scale of 9/15. This reduced to 3/15 on arrival at hospital after she had been resuscitated, intubated and ventilated.

[8.2] She was admitted to the Intensive Care Unit and treated for raised intracranial pressure. The brain injury was compounded by secondary hypoxic brain injury and raised intracranial pressure.

[8.3] ACT brain scan revealed fractures involving the frontal bone, left temporal bone, left orbital roof and anterior cranial fossa. There was low oxygen saturation due to the raised intracranial pressure which compounded the situation and caused a secondary hypoxic brain injury.

[8.4] Plaintiff complains of chronic recurrent headaches and has short term memory loss and mood changes. Deference is given to the clinical psychologists for an evaluation on her cognitive functions and psychological state post-accident.

[8.5] Plaintiff has no focal neurological deficits i.e. does not suffer from ataxia, spasticity or hemiparesis.

[9] Plaintiff was evaluated by clinical psychologists to determine the extent of the neurocognitive and neuropsychological deficits due to the brain injury. Reports and a joint minute were obtained from these experts.[5] In terms thereof:

[9.1] Plaintiff demonstrated the presence of significant neuropsychological impairments and resultant decline in cognitive functioning/intellectual capacity. The range and severity of the neurocognitive impairment is commensurate with the outcome of a severe traumatic brain injury of the nature and extent recorded by the neurosurgeons. No improvement is expected. Plaintiff has suffered emotional damages that were profound and has rendered her mental health state severely compromised. Her mental well-being remains a significant threat. The injury has left her significantly impaired and has resulted in a loss from a functional point of view in all the key areas of her life including educational prospects, life roles and in an occupational context. Her ability to sustain meaningful employment has been permanently damaged. Importantly, the Court notes that the experts agree that the Plaintiff would not manage independent living without significant risk. Funds to be awarded must be properly protected.

[10] In their joint minute the occupational therapists opined Plaintiff will probably need to venture into an occupation that does not require as much interpersonal involvement-relationships as her behavioural difficulties might have a negative effect on relationships. She has ventured into the realms of education and these experts are weary that due to the organic nature of her psychological challenges and her increased vulnerability to develop additional psychological challenges, it would not be advisable that she works with pre-teens or teenagers in large groups.[6] In other words, her chosen career path post-morbidly will

also have significant challenges and limitations.

- [11] Plaintiff was also evaluated by a specialist psychiatrist. The expert opines that a traumatic brain injury in a young brain can cause a wide range of both internalising and externalising behaviour problems. This would include impulsivity, executive dysfunction, emotional ability, anger-aggression and concomitant attention and conduct difficulties.[7]
- [12] Further reports were filed by experts of other disciplines but the Court is of the view that those opinions do not have any significant bearing on the evaluation of the injuries and determination of a fair and reasonable amount of compensation for general damages.

C. COMPARABLE AUTHORITIES

- [13] Counsel for Plaintiff referred this Court to certain authorities which he submits are comparable and can be used as a yardstick to support an award in the vicinity of R1.9 million for general damages. This Court also had cognisance of certain other authorities. This Court refers to the following authorities:

[13.1] *Ngomezulu v Road Accident Fund*: [8] The Court referred to other authorities in reiterating that it is the sequelae of a brain injury, rather than the classification of the injury, which is of primary importance. [9]

[13.2] *ME v Road Accident Fund* (unreported judgment by Moshidi J, Gauteng Local Division, Johannesburg): [10] Plaintiff suffered a severe head injury characterised by loss of consciousness and resultant brain damage. Resultant neurocognitive deficits including impaired memory and concentration, poor mental tracking and persistent debilitating headaches. Plaintiff also presented with neuro-behavioural deficits including change of personality, aggressive behaviour, short temperedness and irritability. Plaintiff

also had reduced GCS reading of 4/15 upon admission. The severe traumatic injury was characterised by both diffuse and focal components. Upon discharge Plaintiff was still wheelchair bound and could not mobilise on his own. Plaintiff relies on the help of others for daily activities and self-care including a care-giver for the remainder of his lifespan. An amount of R1.9 million was awarded

for general damages.

[13.3] *Adv Sekhukhune obo Makhondo v Road Accident Fund* (unreported decision by Manoim AJ in High Court Gauteng Division, Pretoria): [11] Plaintiff suffered a severe diffuse traumatic brain injury characterised by reduced GCS of 7/15 upon admission. Plaintiff presented with severe facial scarring which was visible and disfiguring as well as cognitive losses, behavioural changes and change in social circumstances.

Plaintiff having a significant impairment to her higher mental function skills. An amount of R1.8 million was awarded to the Plaintiff.

[13.4] *Megalane N.O. v Road Accident Fund*:^[12] An 11 year old school girl sustained a severe brain injury with diffuse and focal brain damage in the form of a subdural hematoma resulting in cognitive impairment characterised by poor verbal and visual memory, poor concentration and impaired executive functions. Speech

difficulties characterised by dysarthria and word retrieval difficulties, bilateral hemiparesis with severe spasticity of all four limbs and left facial paralysis. Confined to a wheelchair. An amount of R1 million was awarded with current value of R2 214 000.00.

[13.5] *Kgomo v Road Accident Fund*:^[13] A 14 year old boy suffered a brain injury and soft tissue injuries to shoulder, elbow and pelvic area. The sequelae included neurocognitive deficits and neuropsychological difficulties manifesting in attention deficits both verbally and visually. Memory deteriorated and experienced tiredness from walking with a drag. The current value of the award is approximately R1.175 million.

D. THE ASSESMENT OF GENERAL DAMAGES

[14] It is trite law that the assessment of general damages cannot with ease be done without any measure of mathematical accuracy and a Court has a wide discretion.^[14] It is equally trite that no two cases are similar and it is difficult to find a comparable matter that is on all fours in respect of the facts. Each case must be adjudicated on its own particular merits.

[15] Having considered carefully and cumulatively all the relevant circumstances of this matter and the available medical evidence detailing the serious nature of the injuries and sequelae, including the age of the Plaintiff and the fact that her life has for all intents and purposes been blighted, this Court is of the view that an amount of R1.5 million would be fair and reasonable compensation for her non-pecuniary damages.

The order

[16] The representatives for the Plaintiff provided this Court with a Draft Order containing all the necessary provisions relating to components of the award and costs. In terms of the Order a Trust is also to be erected to protect the funds on behalf of the Plaintiff as opined by the relevant experts. This Court is satisfied with the contents of the Draft Order.

[17] In consequence, I make the Draft Order marked "X" as dated and initialled by myself an Order of Court.

SIGNED AT PRETORIA ON THIS THE 10th DAY of JULY 2020.

CR VAN ONSELEN AJ

ACTING JUDGE OF THE HIGH

COURT GAUTENG DIVISION, PRETORIA

Counsel for the Plaintiff: Adv. P. Leopeng

- [1] See: Road Accident Fund Act, 56 of 1996
 - [2] See: Expert Bundle Vol.3, pp.195-196
 - [3] See: Expert Bundle Vol.3, pp.199, 200 and 201
 - [4] See: Joint Minute Bundle, pp.3-6
 - [5] See: Joint Minute Bundle, pp. 9-12
 - [6] See: Joint Minute Bundle, p.23
 - [7] See: Plaintiff's Expert Bundle, Vol.1, p.43
 - [8] See: QOD, VI, A4-95
 - [9] See: [par.75]
 - [10] See: Case Number 12601/2017
 - [11] See: Case Nr: 42601/2015
 - [12] QOD, Vol.V, A4-10
 - [13] See: (25846/10) [2011] ZAGPPHC
 - [14] See: Southern insurance Association Ltd v Bailey N.O. 1984 (1), SA 98 (A) at 114
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Prepared on 9 October 2026 · Esheria