

SOUTH AFRICA / JUDGMENT

S.S.F v Road Accident Fund (47763/2014) [2018] ZAGPPHC 943 (7 December 2018)

[2018] ZAGPPHC 943

COURT

North Gauteng High Court, Pretoria

BEFORE

MNGQIBISA-THUSI

CASE / FILE NUMBER

47763/2014

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Policy**REPUBLIC OF SOUTH AFRICA****GAUTENG DIVISION, PRETORIA****(1)**

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

Case No: 47763/2014

7/12/2018

In

the matter between:

S[...]

S[...]

F[...]

Plaintiff

and

ROAD

ACCIDENT

FUND

Defendant

JUDGMENT

MNGQIBISA-THUSI J:

- [1] Plaintiff, Mr S[....] S[....] F[....], is seeking damages against the Road Accident Fund ("the defendant") for injuries sustained in a motor vehicle accident which occurred on the Malekuta Road, Kabokweni. At the time of the accident the plaintiff was a passenger at the back of a bakkie.
- [2] The defendant has conceded merits 100% in favour of the plaintiff and the parties have reached settlement on the issue of loss of income. The defendant has agreed to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act[1], for future medical and hospital expenses.
- [3] The only issue to be decided is the quantum for general damages.
- [4] There is agreement that the plaintiff sustained the following injuries:
- 4.1 an open fracture of the right forearm (radius and ulna);
 - 4.2 an interphalangeal joint dislocation of the right thumb;
 - 4.3 fractures of thoracic vertebrae (T8 and T9);
 - 4.4 injury to the right clavicle;
 - 4.5 blunt chest trauma; and
 - 4.5 fracture to the left scaphoid.
- [5] There is no dispute that, as concluded by the medical experts (orthopaedic surgeons) that the plaintiff has suffered a serious injury under the narrative test.
- [6] The parties have agreed that the only evidence to be led will be that of the plaintiff with regard to him taking his ARVs after he was diagnosed as being HIV positive. There is agreement that reference will be made to the joint minutes of the occupational therapists[2], orthopaedic surgeons[3] and industrial psychologists[4].
- [7] The plaintiff testified that he only became aware of his HIV status in November 2017. It appears that despite the diagnosis and being advised by Dr L Hartley, the medical examiner, to start taking ARVs, the plaintiff did not. In his evidence the plaintiff testified that he commenced with anti-retroviral treatment from 22 November 2017 and continues to do so.
- [8] It is not in dispute that due to the orthopaedic injuries the plaintiff sustained, he suffers from the following:

8.1 he has a painful right hand and wrist aggravated by certain activities. For instance he is no longer able to use his previously dominant right hand and as a result has been unable to return to his previous job as a bricklayer for which he qualifies;

8.2 he suffers from mid to lower backache when walking long distances, performing strenuous activities or bending;

8.3 he feels depressed and has disturbed sleeping patterns due to backache.

8.4 he has several scars on his right hand (forearm and wrist) and forehead;

8.5 suffers from mild hearing loss.

[9] It is further common cause that the plaintiff is on anti-retroviral treatment and the prognosis that his life expectancy would be 70% of that of a person who is HIV negative no longer applies.

[10] With regard to general damages the court in *Sandler v Wholesale Suppliers Ltd*[5] the court stated that:

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case."

[11] On behalf of the plaintiff I was referred to three cases, *Blyth v Van den Heever*[6], *Mohlaba v Road Accident Fund*[7], to which counsel for the defendant also made reference to; and *TJ Tobi v Road Accident Fund*[8]. Counsel for the defendant, besides the *Mohlaba* matter also referred me to four cases, *Thwala v Road Accident Fund*[9]; *Mlalandle v Road Accident Fund*[10]; *Vukubi v Road Accident Fund*[11]; *Dayimane v Minister of Correctional Services*[12]. I intend dealing only with the cases referred to which are comparable to the current matter. The matters referred to by counsel for the defendant involved more severe injuries and sequelae than is the case in the present matter and the awards ranged in today's values between R387, 000.00 and R590, 000.00.

[12] In *Blyth v Van den Heever*[13] the plaintiff sustained fractures of the radius and ulna of the right forearm which was followed by sepsis after he was operated upon. As a result of the injuries sustained the plaintiff finds it difficult to dress or bathe himself. There is also a possibility that he may undergo an operation to amputate his right arm and to be fitted with a prosthesis. Further, the plaintiff was no longer able to participate in sports and suffered severe pain. The court awarded an amount of R 776,000.00 (2018 value).

[13] In *Mohlaba v Road Accident Fund*[14] the plaintiff, who was 22 years old at the time of the accident, sustained a fracture of the right proximal radius and ulna. As a result a bony ankylosis formed between the proximal radius and ulna. Further, the plaintiff has no pro- and supination of his forearm which remains in a fixed position 20 degrees pronation. As a result of losing the full use of his right forearm he was no longer able to work as a motor mechanic and to partake in fishing. The plaintiff was awarded an amount of R632, 000.00

(2018 value) as general damages.

[14] After being referred to several comparable cases which have been considered, plaintiffs' counsel suggested that a sum in the amount of R850, 000.00 would be an appropriate award for general damages. On behalf of the defendant counsel suggested an amount of R550, 000.00. However, no two cases are similar and each case must be treated on its own merits.

[15] In *Protea Assurance Company Limited v Lamb*[15] the court held that:

"... the trial court or the court of appeal, as the case may be may pay regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a 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 inquiry as to become a fetter upon the court is general discretion in such matters. Comparable cases, when available, should rather be used to afford same guidance, in 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 at upon this basis by reference to the 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".

[16] Having considered the authorities I was referred to by Counsel, I am of the view that the cases of *Blyth* and *Mohlaba* (supra) are comparable although in the *Blyth* matter the sequelae are more serious as there is a possibility that the plaintiff's arm might be amputated.

[17] It is common cause that at the time of the accident the plaintiff was 29 years old and working as a bricklayer. There is no dispute that as a result of the injuries the plaintiff sustained he has suffered some loss of amenities. He is no longer in a position to work as a bricklayer and to do sports. He further suffers from pain and is depressed, suffers from mild hearing loss and has severe scarring on his arm.

[18] I am of the view, taking into account the expert reports submitted and the changes in the plaintiff's lifestyle and the loss of the use of his right forearm, that general damages in the amount of R 650, 000.00 would be fair and reasonable under the circumstances.

[19] In the result, the following order is made:

1. Defendant to pay the plaintiff the amount of R650, 000.005 as general damages.
2. Defendant is ordered to provide the plaintiff with a written undertaking in terms of section 17(4) (a) of the Road Accident Fund Act, 6 of 1996.

3. Defendant is ordered to pay the plaintiffs taxed or agreed party and party costs which costs shall, inter alia, include the costs consequent upon the obtaining of all the medico-legal reports of the plaintiff's experts, namely:

3.1 Dr T Bingle (neurosurgeon)

3.2 Ms F Du Tait (occupational therapist)

3.3 Dr L Berkowitz (plastic and reconstructive surgeon)

3.4 Mr PC Diedericks (industrial psychologist)

3.5 Dr L Hartley (medical examiner)

3.6 Dr SL Biddulph (orthopaedic surgeon)

3.7 Dr VM Close (orthopaedic surgeon)

3.8 Dr M Vorster (forensic psychiatrist)

3.9 Dr M Rudolph (ear, nose and throat specialist)

3.10 Mr L Lemmer (audiologist)

3.11 GRS Consulting (actuary).

NP MNGQIBISA-THUSI

Judge of the High Court

Appearances:

For Plaintiff: Adv S Maritz (instructed by Schutte De Jong Inc)

For Defendant: Adv RB Mphela (instructed by Diale Mogashoa Attorneys)

[1] Act 56 of 1996.

[2] Mrs F du Toit and Mrs T Thembo.

[3] Dr J Sibanyoni and Dr VM Close.

[4] Mr PC Diedericks and Ms M Mathabela.

[5] 1941 AD 194 at 199.

[6] 1979(30 4) QOD 38 (A).

[7] (12010/2014) (2016] ZAGPPHC 12 (21 January 2016).

[8] Unreported judgment under case no 868/2010, Eastern Cape, Grahamstown (9 September 2013).

[9] 2011 (60 4) QOD 1 (GNP).

- [10] 2011 (6J2) QOD 90 (ECP).
- [11] 2007 (5J2) QOD 188 (E).
- [12] 2012 (6E4) QOD 15 (ECO).
- [13] 1979(30 4) QOD 38 (A).
- [14] (12010/2014) [2016] ZAGPPHC 12 (21 January 2016).
- [15] 1977 (1) SA 530 (AD) at 535 H-5368.
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