

SOUTH AFRICA / JUDGMENT

V v Road Accident Fund (58747/2015)

[2017] ZAGPPHC 521 (25 August 2017)

[2017] ZAGPPHC 521

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

58747/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA DIVISION)

Case

No. 58747/2015

Not

reportable

Not

of interest to other judges

Revised.

25/8/2017

In

the matter between:

D

V PLAINTIFF

and

THE

ROAD ACCIDENT

FUND DEFENDANT

JUDGMENT**MILLAR, A J**

1. The present matter came before for the determination of the quantum of general damages only. The parties had settled all other aspects of the matter and I was requested to make an order incorporating those aspects together with my finding at the conclusion of the case.
2. The matter was argued on Wednesday 23 August 2017 and after argument I made an order in favour of the plaintiff *inter alia* for the payment of general damages in the sum of R375 000.00 (three hundred and seventy-five thousand rand).
3. I indicated at the time of the handing down of the order that I would furnish my reasons in due course. These are now my reasons for the order.
4. The facts upon which I am to make my decision are all common cause.[1] It was agreed by the parties that I could have regard to all the medico legal reports in Exhibit "B" and the minutes "C", "D" and "E" as though the experts concerned had testified and given the contents of their respective reports in evidence. No evidence was led and the matter was argued on the papers before me.
5. The plaintiff, a personal assistant was born on 4 April 1979. She was injured in a motor vehicle collision on 1 February 2014 when as a passenger she was injured when the driver of the vehicle lost control.
6. The plaintiff sustained a compound fracture of the left tibia. This necessitated surgical treatment and she thereafter developed osteomyelitis[2]. This in turn necessitated further surgery with the plaintiff undergoing no less than 5 surgical procedures. She sustained a soft tissue injury to her back, a knee injury and very serious scarring[3] on her left leg.
7. Besides the pain, suffering and discomfort suffered by the plaintiff in consequence of the injuries she sustained in the immediate aftermath of the collision, this continued in consequence of the further surgical procedures and thereafter . The plaintiff suffered from depression for a while[4], is self-conscious about the scarring and has to contend with the ongoing sequelae of the injuries. There is also a risk of the recurrence of the osteomyelitis and that if it does recur the plaintiff will no doubt be required to undergo further extensive treatment. The medical experts paint a guarded picture of the plaintiffs future with the spectre of further medical treatment and surgery[5]. The plaintiff has to use medication two or three times a week for the control of pain and this is likely to be indefinite. The plaintiffs pain and suffering as a result of the injuries sustained in the collision is on what is before me, ongoing.

8. The plaintiff has also suffered an extensive loss of amenities of life. She is not viewed in the same light by her employers as a result of the extended time she has had to take to recuperate and recover from her injuries and subsequent surgeries. The plaintiff was a keen hiker before and can no longer do this anymore. She is unable to walk her dogs as frequently as she used to or to look after the animals of others as she used to do from time to time. The plaintiff cannot wear the same type of clothing as she did before because of the scarring and this has affected her general enjoyment of life.
9. Counsel for the plaintiff argued for an award of general damages in the sum of R420 000.00. This was globular figure taking in to account the totality of the injuries sustained by the plaintiff and their sequelae.
10. Counsel for the defendant argued for an award of general damages of no more than the sum of R300 000.00. This was similarly a global figure.
11. I am indebted to both counsel for the heads of argument that they have submitted. I was referred to a number of different cases. I would mention however that both specifically referred me to the case of Kubayi v Road Accident Fund[6] in respect of which there are largely similar features to the present case. While the plaintiff in the Kubayi case suffered a shortening of the leg by 1,5 cm which has not happened to the plaintiff in this case, she has suffered extensive scarring. The present day value of the award in the Kubayi case, adjusted for inflation is R376 000,00.
12. It is trite that while awards made in previous cases provide guidance, each case must be decided on its own facts.[7]
13. In my opinion, it is neither appropriate nor practical to attempt to break down the individual heads of damage and to make an award piecemeal. The plaintiff suffered the damages that she did in an indivisible fashion, firstly by sustaining the injuries she did in the collision, being hospitalized and undergoing surgeries and thereafter having her enjoyment of life affected.
14. According, in the exercise of my discretion, I regard the sum of R375 000.00 (three hundred and seventy-five thousand rand) as an appropriate award in respect of pain and suffering, loss of amenities of life and disfigurement.
15. In the circumstances, the draft marked "X", as amended, was made an Order of Court.

A MILLAR

ACTING JUDGE OF THE HIGH COURT

HEARD ON: 23 AUGUST 2017

JUDGMENT

DELIVERED ON: 23 AUGUST 2017

REASONS

HANDED DOWN 25 AUGUST 2017

COUNSEL FOR THE PLAINTIFF: ADV CAS GREYLING JORDAAN INSTRUCTED BY: WERNER BOSHOF ATTORNEYS

COUNSEL FOR THE DEFENDANT: ADV LW MAPONYA

INSTRUCTED BY: MATHIPANE TSEBANE ATTORNEYS

GAUTENG DIVISION, PRETORIA

Before His Lordship Mr. Justice Millar (AJ)

On the 23rd day of August 2017

Case number: 58747/2015

D V Plaintiff

THE ROAD ACCIDENT FUND Defendant

DRAFT ORDER

AFTER HAVING HEARD COUNSEL ON BEHALF OF THE PARTIES THE FOLLOWING ORDER IS MADE:

1. Defendant is ordered to pay Plaintiff delictual in respect of general damages in the amount of R375 000, 00
2. Defendant is ordered to pay Plaintiff delictual damages in respect of loss of earnings in the amount of R 344 095.00 (Three hundred and forty four thousand and ninety five thousand rand).
3. Defendant is ordered to pay plaintiff delictual damages in respect of past medical expenses in the amount of R 149 752.66 (One hundred and forty nine thousand seven hundred and fifty two rand and sixty six cents).
4. The above amounts shall be paid to the Plaintiffs Attorneys, Werner Boshoff Incorporated, in settlement of the Plaintiffs claim.
5. In the event of the aforesaid amount not being paid timeously , the Defendant shall be liable for interest on the amount at the prescribed rate per annum, calculated from the 15th calendar day after the date of this Order to date of payment;

6. The Defendant shall furnish the Plaintiff with an undertaking interms of Section 17(4)(a) of Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him/her resulting the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on 1 February 2014, to compensate the Plaintiff in respect of the said costs. The aforesaid undertaking is limited to 100%.
7. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject thereto that:

7.1 In the event that the costs are not agreed:

7.1.1 the Plaintiff shall serve a notice of taxation on the Defendant's attorneys on record;

7.1.2. the Plaintiff shall allow the Defendant 14 (fourteen) Court days from date of allocatur to make payment of the taxed costs;

7.1.3. should payment not be effected timeously , the Plaintiff will be entitled to recover interest at the prescribed rate per annum on the taxed or agreed costs from date of allocator to date of final payment.

7.2 such costs shall include:

7.2.1. the costs incurred in obtaining payment of the amount mentioned in paragraph 1 and 3 above;

7.2.2. the costs of senior-junior counsel, including senior-junior counsel's charges in respect of his full day fee for 22 August 2017 and 23 August 2017 as well as reasonable preparation;

3.1.1. the costs to date of this order, which shall further include the costs of the attorneys which include necessary travelling costs and expenses (time and kilometres) , preparation for trial and attendance at Court (which shall include all costs previously reserved). It will also include the reasonable costs of consulting with the Plaintiff to consider the offer, the costs incurred to accept the offer and make the offer an order of Court;

7.2.3. the costs of all medico-legal, radiological, actuarial, addendum and joint reports obtained by the Plaintiff, as well as such report furnished to the Defendant and/or to the knowledge of the Defendant and/or its attorneys , as well as all reports in their possession and all reports contained in the Plaintiff's bundles, irrespective of the time lapse between the reports by an expert;

7.2.4. the reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the experts as in 4.2.4 above;

7.2.5. the reasonable costs incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico-legal examinations of both parties;

7.2.6. the costs consequent to the Plaintiff's trial bundles and witness bundles, including the costs of 6 (six) copies thereof ;

7.2.7. the costs of holding all pre-trial conferences, as well as round table meetings between legal representatives for both the Plaintiff and the Defendant, including senior-junior counsel's charges in respect thereof, irrespective of the time elapsed between pre-trials;

7.2.8. the full costs of holding all inspections in loco, including senior-junior counsel's charges in respect thereof (if any);

7.2.9. the costs of and consequent to the holding of all expert meetings between the medico-legal experts appointed by the Plaintiff (if any);

7.2.10. cost for obtaining all documentation and lodging the matter at the RAF;

7.2.11. the full travelling expenses, time and accommodation costs of the Plaintiff, who is declared a necessary witness .

8. The amounts referred to on paragraphs 1,2,3 and 7 will be paid to the Plaintiff's attorneys, Werner Boshoff Incorporated, by direct transfer into their trust account, the details of which are as follows :

Account holder: WERNER BOSHOF INC TRUST ACCOUNT

Bank: Standard Bank, Lynnwood Ridge

Branch Code: 012 445

Account no: [...]

Ref: V896

BY THE COURT:

REGISTRAR

On behalf of Plaintiff: Adv. Cassie Jordaan

072-263-4100

On behalf of Defendant:

[1] The pleadings bundle was marked "Exhibit "A", The quantum bundle was marked Exhibit "B", the minute of the orthopaedic surgeons as Exhibit "C", the minute of the occupational therapists as Exhibit "D" and of the industrial psychologists as Exhibit" E".

[2] Exhibit "C" paragraphs 1and 2

[3] Exhibit "B" page 254 -The report of the plastic surgeon Dr Berkowitz and in particular pages 255 to 258 where the seriousness

of the scarring is described. There are also photographs of some of the scarring at pages 267 to 269.

[4] Exhibit "B" page 242 under paragraph 1.5

[5] Exhibit "C" page 3

[6] 2013 (6E4) QUO 27 (GNP)

[7] See Minister of Safety & Security v Seymour 2006 (6) SA 320 (SCA) at paragraphs 16 to 18

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Prepared on 11 October 2026 · Esheria