

SOUTH AFRICA / JUDGMENT

Yimba v Road Accident Fund (44866/2017) [2019] ZAGPPHC 485 (19 September 2019) [2019] ZAGPPHC 485

COURT

North Gauteng High Court, Pretoria

BEFORE

E.M. Kubushi

CASE / FILE NUMBER

44866/2017

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

CASE NO: 44866/2017

19/9/2019

In the matter between-

NONHLANHLA PHILIPINE YIMBA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KUBUSHI J

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- [1] The plaintiff a 39 years old woman was involved in a motor vehicle accident that occurred on 8 July 2016. She was 36 years old at the time of the accident and a passenger in the insured motor vehicle. She is now claiming damages against the Road Accident Fund for injuries she sustained in the said accident.
- [2] When the parties appeared before me merits had previously been settled at 100% in favour of the plaintiff. Only the issue of quantum was to be determined The heads of damages claimed by the plaintiff were: future medical and hospital expenses. loss of earnings and general damages. The future medical and hospital expenses were taken care of in terms of section 17(4)[1] undertaking by the defendant Damages for loss of earnings were settled by agreement between the parties at the sum of R570 506 (Five Hundred and Seventy Thousand Five Hundred and Six Rand) on the day of trial. What sought to be determined was the amount for general damages .
- [3] The parties were agreed that the plaintiff was entitled to be compensated for general damages. What they were not agreed about was the amount which could be said to be fair and reasonable taking into account the injuries suffered by the plaintiff and their sequelae .
- [4] No evidence was led and the parties argued on the basis of the medico-legal reports of their respective experts, which were admitted. The plaintiff filed six (6) medico-legal reports of a neurologist, a neuropsychologist, an orthopaedic surgeon, an occupational therapist; an industrial psychologist and an actuary. The defendant, on the other hand, filed medico-legal reports of five experts: an orthopaedic surgeon, a neurosurgeon. a neuropsychologist, an occupational therapist and an industrial psychologist Joint minutes were also prepared by the neuropsychologists, industrial psychologists. occupational therapists and orthopaedic surgeons.
- [5] There was no dispute between the parties about the injuries the plaintiff sustained and the resultant sequelae.
- [6] The plaintiff is said to have sustained a mild to moderate diffuse traumatic brain injury (with skull fractures) and a fractured lumbar vertebra.
- [7] The plaintiff's fourteen (14) month old son was killed in the same motor vehicle accident, she as a result suffered emotional issues like bereavement and grief which caused her emotional shock and trauma
- [8] The Clinical neuropsychologists in their joint minute report that based on the available objective information, performance results and collateral documentation, the plaintiff sustained a head injury resulting in long. term neuropsychological difficulties. The experts agreed that the plaintiff suffered from cognitive difficulties, presents with severe travel and related anxiety, depression, post traumatic stress symptoms and reduced tolerance. They also agree that a general decrease in quality of life has occurred as a result of the accident and that the plaintiff's emotional, physical and cognitive difficulties have affected her overall functioning in personal, occupation and social spheres.
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- [9] These experts were not agreed as to whether the head injury should be classified as mild or moderate and deferred to the neurologists and neurosurgeons in this regard.
- [10] The plaintiff's neurologist diagnosed a brain injury of moderate severity whilst the defendant's neurosurgeon opined that such injury was of a mild nature. But, the defendant accepted, for the purpose of argument that the head injury be regarded as mild to moderate in nature.
- [11] The plaintiff contended that a fair amount in the circumstances of the plaintiff should be between R750 000 (Seven Hundred and Fifty Thousand Rand) and R800 000 (Eight Hundred Thousand Rand). In support of this argument, the plaintiff referred me to a number of decided cases. The sequelae of the injuries in those cases are said to be analogous to those of the plaintiff in this matter, namely

11.1 Tobias v Road Accident Fund:[2] the plaintiff in that judgment, a fitter and turner, suffered moderate diffuse axonal brain injury as well as a fracture of the tibia, which resulted in the plaintiff suffering neurocognitive and neuropsychological deficits. Additionally, the plaintiff's employment became limited as a result of his injuries. The court awarded an amount of R450 000 (Four Hundred and Fifty Thousand Rand), which amounts to a present-day award of R722 000 (Seven Hundred and Twenty Two Thousand Rand).

11.2 Van der Mescht v Road Accident Fund:[3] the plaintiff in that case, a female marketing executive suffered a moderate brain injury as well as a fracture of the pelvis and thoracic vertebrae. Her injuries healed well but she suffered a period of post-accident amnesia as well as neurocognitive and neuropsychological issues. The plaintiff in that case was awarded R400 000 (Four Hundred Thousand Rand) which amounts to R642 000 (Six Hundred and Forty Two Thousand Rand), presently.

11.3 Madan NO v Road Accident Fund:[4] the plaintiff suffered a mild brain injury as well as a fractured nasal bone which resulted in the plaintiff suffering neurocognitive and neuropsychological deficits. The plaintiff was awarded R350 000 (Three Hundred and Fifty Thousand Rand), which presently amounts to R535 000 (Five Hundred and Thirty Five Thousand Rand).

11.4 Kritzinger and Kritzinger v Road Accident Fund:[5] the plaintiff, a father of two sons who were tragically killed in a motor vehicle accident which caused him to suffer severe emotional shock and trauma as a result whereof he suffered from chronic bereavement reaction with protracted grief. He also suffered from chronic post-traumatic stress disorder and chronic major depressive disorder. He was awarded R150 000 (One Hundred and Fifty Thousand Rand) in 2009, which amounts to present-day value of R251 000 (Two Hundred and Fifty One Rand)

- [12] The defendant, on the other hand, argued that a fair and just amount to be awarded to the plaintiff in this case should be an amount R550 000 (Five Hundred and Fifty Thousand Rand). The defendant also referred me to cases with sequelae of injuries that were said to be analogous to those of the plaintiff in this instance, namely

12.1 Makupula v Road Accident Fund:[6] the plaintiff, a five (5) year old boy with a mild to moderate diffuse axonal concussive brain injury with neurocognitive deficits associated with attention deficits, hyperactivity, poor concentration, poor executive functioning and poor scholastic performance. The court awarded an amount of R300 000 (Three Hundred Thousand Rand) which amounts to the present-day value of R482 000 (Four Hundred and Eighty Thousand Rand).

12.2 Vukeya v Road Accident Fund:[7] the plaintiff, a forty three (43) year old female cleaner suffered mild to moderate front lobe brain injury as well as orthopaedic injuries such as whiplash injury of the neck, lower back injury, fracture of the second metacarpal bone on the left hand and soft tissue injury of the left leg She as a result. suffered from chronic headaches and depression. The court awarded her R330 000 (Three Hundred and Thirty Thousand Rand) which translates to present-day value of R530 000 (Five Hundred and Thirty Thousand Rand).

[13] It is trite law that a court must consider and have regard to previous comparable cases when seeking appropriate compensation for general damages. An award made will be fair if it is consistent with previous cases of similar facts and law.[8] However, comparable cases offer some guidance in assisting a court to arrive at its award and should not be viewed as an absolute

standard.[9]

[14] When considering general damages a court has a wide discretion to award what it considers to be fair and adequate compensation for the injured party.[10] Even though I may have to consider the cases provided by the parties as a guide, it is, however, clear that all the cases I was referred to are not on all fours with the current case. I, therefore, have to arrive at a fair and appropriate award using my discretion in the light of all the facts before me.

[15] The effects of the injuries on the plaintiff are self-evident. It is common cause between the parties that the plaintiff suffered a head injury and a fractured vertebra.

[16] As regards the sequelae of the injuries the parties are in common cause, as well, and I accept that the plaintiff continues to suffer from chronic headaches, neurocognitive and neuropsychological deficits. I also accept that due to the loss of her child in the same accident the plaintiff suffers from emotional shock and trauma which should be compensated.

[17] I take note of the dictum in Road Accident Fund v Marunga[11] that a modern approach should be infused into the process of assessing damages and to consider individual freedom of opportunity, rising standards of living and the recognition that past awards have been significantly low.

[18] In the circumstances, it is my view that a fair and reasonable award as compensation to the plaintiff is an amount of R700 000 (Seven Hundred Thousand Rand).

[19] The claim for loss of earnings, as I have stated, was settled in the amount of R570 506 (Five Hundred and Seventy Thousand Five Hundred and Six Rand). It means therefore that together with the amount of R700 000 (Seven Hundred Thousand Rand) for general damages the plaintiff is entitled to a total sum of R1 270 506 (One Million Two Hundred and Seventy Thousand Five Hundred and Six Rand) plus the applicable interest and costs of suit

[20] I, therefore, make the following order.-

1 The plaintiff succeeds in her claim with costs.

2 The defendant is ordered to pay to the plaintiff an amount of R1, 270 506 (One Million Two Hundred and Seventy Thousand Five Hundred and Six Rand) together with interest a tempore morae at the prevailing rate of interest on the amount of R1, 270 506 (One Million Two Hundred and Seventy Thousand Five Hundred and Six Rand) from fourteen {14} days of judgment to date of payment

E.M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearance:

Counsel for Plaintiff:

Adv.CG Cross

Instructed by :

MED Attorneys

Counsel for Defendant: Adv. B. Magagula

Instructed by :

Diale Mogashoa Attorneys

Date heard:

10 September 2019

Date of judgment:

19 September 2019

[1] Act 56 of 1996

[2] 2010 (6) QOD 84-65 (GNP)

[3] 2010 (6) QOD JZ-42 (GSJ).

[4] 2010(6) QOD 84-65 (GNP).

[5] 2009 (5K3) QOD 21-(ECD).

- [6] 2010 (6) QOD 84-48 (ECM).
- [7] 2014 (7) 84 QOD 1 (GNP).
- [8] See *De Jongh v Du Plessis* NO 200S (5) SA 457 (SCA)
- [9] See *Protea Assurance Co Ltd v lamb* 1971(1) SA 530 (A) at 536.
- [10] *RAF v Marunga* 2005 (5) SA 164 (SCA) at 169E – F.
- [11] 2003 (5) SA 164 (SCA) at 170.
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Prepared on 10 October 2026 · Esheria