REPUBLIC OF SOUTH AFRICA

THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

JUDGMENT

Case no: 2011/16477

In the matter between

ADVOCATE ANTON LOUW OBO

BOITUMELO CHANTA MOHONO **Plaintiff**

And

ROAD ACCIDENT FUND **Defendant**

Neutral citation: *Mohono B C v RAF* (16477/2011)

Coram: DIPPENAAR AJ

Heard: 6 August 2013

Delivered: 6 August 2013

Supplementary judgment: 12 August 2013

Summary: Damages awarded for minor who sustained serious neurological and orthopaedic injuries as a pedestrian in a motor vehicle collision.

ORDER

Damages are granted in favour of the plaintiff in an amount of R4.9 million and a curator bonis appointed in terms of draft order marked “X”.

SUPPLEMENTARY JUDGMENT

Dippenaar AJ:

[1] On 6 August 2013 I granted judgment in favour of the plaintiff and awarded damages to the plaintiff in an amount of R4.9 million together with ancillary relief as set out in the draft order which was marked “X” and initialled for identification purposes. At the time of my judgment I indicated that I would give additional written reasons for the judgment in due course. These written reasons supplement the judgment and order granted on 6 August 2013.

[2] Advocate Anton Louw had been appointed as curator ad litem to the patient, who was an eight year old minor at the time of the accident. Merits had been conceded in the plaintiff’s favour and the defendant accepted liability for 100 per cent of the patient’s proven damages. The plaintiff’s claim for damages is set out in para 11 of the plaintiff’s particulars of claim. The claim for past hospital and medical expenses in an amount of R10 000 was abandoned at trial. The estimated future hospital and medical expenses were settled between the parties by means of an undertaking given by the defendant under s 17(4)*(a)* of the Road Accident Fund Act.

[3] The issues which were to be determined at the trial related to the plaintiff’s future loss of income or earning capacity and general damages. I granted an award in an aggregate amount of R4.9 million in this regard. These reasons supplement my judgment for the above finding.

[4] The parties were in agreement that the patient had suffered a total loss of earning capacity and a total loss of person of between 59 per cent and 64 per cent. She had been eight years old at the time of the accident and was presently 13 years old. The nub of the dispute between the parties was on what basis the plaintiff’s loss of earning capacity was to be determined.

[5] On behalf of the plaintiff it was contended that the patient would have obtained a tertiary education whereas the defendant contented she would not have advanced beyond a grade 12 education. I have already dealt with the reasons for accepting Ms Gibson’s views above the views of Ms Prag in this regard.

[6] The joint minutes of the aforesaid remedial therapist and educational psychologists reflected the joint views of Gibson and Prag and do not reflect any material point of departure, save for the fact that Prag does not deal with many of the

issues at hand, but merely urges that cognisance be taken of the socio-economic circumstances and status of the patient and the fact that neither of her parents had attained a grade 12 qualification.

[7] The industrial psychologists, Dr Kellerman and Dr Du Toit agreed on the basis of the test results reported in the reports of Gibson, Prag and Dr Van der Walt that the patient was of average to above average intellectual functioning pre-accident. They further agreed that the patient would have entered the labour force after completion of grade 12 earning intermittently for two to three years on a Paterson derived grade A1/A3 whilst completing her studies. She would then have been able to earn on a Paterson derived grade B1/2 total package and would have progressed on a grade C3/C4 towards the age of 45 years where she would have reached her career ceiling. She would thereafter have received inflationary increases until retirement at the age of 60 to 65 years.

[8] Du Toit, acknowledging Prag's opinion, and whilst agreeing with the views of Kellerman, projected a second earning scenario based on the fact that the patient would not have attained a university education. For the reasons already given in my judgment I am of the view that Gibson's views are to be preferred above those of Prag and that the views of Prag are not properly motivated to such an extent where on the probabilities they should be taken into consideration.

[9] It was undisputed that the actuarial calculations of the patient's loss of earning capacity, based on the contents of the joint minutes between the industrial psychologists, Kellerman and Du Toit, and taking into account an agreed contingency of 20 per cent, amounted to an amount of R3 830 011. For purposes of the total award which was made, I rounded the figure off to R3.8 million. Having regard to the evidence presented to me, I am of the view that such amount constitutes a fair compensation for the patient in relation to her loss of earning capacity.

[10] The remaining issue which needed to be determined was an appropriate and fair award in respect of general damages. I was referred to two authorities which related to recent general damages awards for similar and/or comparable injuries

sustained. The parties were further in agreement that the patient should be compensated for the consequences of both the neurological and orthopaedic injuries sustained by her, both of which were of a serious nature.

[11] I was referred to *Codeiro v Road Accident Fund* 2010 (6) QOD A4-45 GNP Case Number 49639/2008, a judgment of Webster J in the North Gauteng High Court during 2010, referred to in my judgment of 6 August 2013, which related to an award of R800 000 as general damages in relation to commensurate neurological injuries as had been sustained by the patient. It was common cause between the parties that a similar award in respect of general damages would be appropriate in the present instance.

[12] I was further referred to *Roe v Road Accident Fund* 201 (6) QOD J2-59 Case Number 16157/09, a judgment of Van Oosten J in the Gauteng South High Court, during 2010, referred to in my judgment, which related to general damages awarded in relation to the orthopaedic injuries and their sequelae sustained by the patient in an amount of R650 000.

[13] Having considered the evidence and argument presented and the serious nature of both the neurological and orthopaedic injuries suffered by the patient, the general damages award should take the sequelae of both these injuries into account. I am of the view that an amount of R1 100 000 would constitute a fair and reasonable award in the circumstances.

[14] In the circumstances, I am of the view that an aggregate amount of R4.9 million constitutes a fair and equitable amount in relation to both these heads of damages. The plaintiff and the defendant agreed that this amount would be appropriate and would be fair and reasonable to both the plaintiff and the defendant in the circumstances.

[15] In light of the serious and permanent brain injuries sustained by the patient, it was further necessary to appoint a curator bonis. The draft order provided for the appointment of a suitable individual with sufficient experience in these matters, Mr A Kitshoff who had consented to the appointment. His appointment was made subject

to the normal safeguards and controls and having regard to the powers as set out in *Ex Parte Du Toit* 1968 (1) SA 33 (T).

[16] The curator ad litem, advocate A Louw, was present during the proceedings and addressed me on the best interests of the patient.

[17] I accordingly granted an order in terms of the draft order marked “X” dated 6 August 2013.

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E F DIPPENAAR
ACTING JUDGE

APPEARANCES:

PLAINTIFF:	Adv A Louw (curator ad litem) Adv JC Prinsloo Instructed by Renier van Rensburg Incorporated, Johannesburg
DEFENDANT:	Adv OM Moeti Instructed by Mohlala Incorporated, Johannesburg