

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 40842/11

| | |
|----------------------------|--------------------------------------------|
| (1) | REPORTABLE: YES <u>NO</u> |
| (2) | OF INTEREST TO OTHER JUDGES: YES <u>NO</u> |
| (3) | REVISED. |
| <u>Mabasa</u> SIGNATURE | |
| <u>12.06.2014</u> DATE | |

In the matter between:

ANELE MATAKATA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MABASA AJ:

- [1] The Plaintiff, an electrical technical assistant, sued the defendant, the Road Accident Fund for damages resulting from injuries he sustained in a collision.
- [2] The parties had previously agreed the issue of liability in favour of the Plaintiff. The Plaintiff's special damages claim for past and future loss of income was settled in the amount of R700, 000.00. The defendant was ordered to provide the Plaintiff with an undertaking in terms of section 17 (4)(a) of the Road Accident Fund Act, 56 of 1996 in respect of future medical expenses. The only issue for determination is general damages.

FACTUAL BACKGROUND

- [3] On 25 May 2009, at Moshoeshoe Street, Sebokeng, the Plaintiff was a passenger in a motor vehicle that was involved in a collision.
- [4] The Plaintiff suffered bodily injuries consisting of:
- 4.1 Fracture of the left acetabulum
 - 4.2 A sciatic nerve injury of his left leg
 - 4.3 A head injury
 - 4.4 A chest injury
 - 4.5 A lumbar spine injury
 - 4.5 Sequelae of the above injuries.

- [5] He was in hospital for approximately 2 weeks. He underwent surgery in the form of an open reduction and internal fixation of the left acetabulum. The left drop foot was treated in a drop foot splint.

EXPERTS

- [6] The experts in the matter provided joint minutes. The orthopaedic surgeons, Dr Versveld and Dr Sara, agreed that the Plaintiff sustained a fracture of his left acetabulum, with features of early osteoarthritis of his left hip. They agreed that provision should be made for the conservative management of the left hip symptoms with provision for future treatment as set out in their individual medico- legal reports. They further agreed that he sustained a sciatic nerve injury of his left leg. The doctors agreed that he sustained a head injury. Dr Sara found no evidence of loss of consciousness in the medical notes, and no evidence of the treatment given for the injury and concluded that he is currently asymptomatic from this. Dr Versveld is of the opinion that he suffered sequelae from the head injury, with memory problems and personality changes. The doctors also agreed that he sustained a chest injury. Dr Versveld is further of the opinion that he sustained a back injury with wedging of thoracic and lumbar vertebra. Dr Sara found his back to be clinically normal. Dr Versveld is also of the opinion that he sustained a neck injury whereas Dr Sara found his neck to be clinically normal. Both doctors agree that he suffered serious long-term impairment of a body function as a result of the accident.

- [7] The occupational therapists Ms E. Kruger and Ms. K Thlaku agreed that the plaintiff would benefit from occupational therapy and special and adapted equipment. They also agree that he will require some assistance with regard to gardening. The rest of the minutes relates to loss of earning potential which has already been settled between the parties.

GENERAL DAMAGES

- [8] With regard to general damages Mr Grobbelaar for the Plaintiff submitted that the Plaintiff sustained serious orthopaedic injuries resulting in permanent damage and poor long-term prognosis. He also argued that the Plaintiff sustained a head injury with resultant memory loss and behavioural deficits. He further submitted that general damages in the sum of R850, 000.00 would be a reasonable reward and in this regard to referred to the case of *Federated Employers Fire and General Insurance and Another v McKenzie* 1969 (2J2) QOD 23 where general damages in the sum of R12, 000.00 was awarded (current value of R745, 000) to an 18-year-old girl who suffered multiple orthopaedic injuries. He also referred to *Abraham Smith obo Duduzile Ngobeni* 2011 (SGHC) where the injured was a 25-year-old female who suffered a closed head injury with concussion and complicated neurophysical sequelae. The court awarded an amount of R1 million in respect of general damages. Also *Cordeira v the Road Accident Fund* 2010 6 QOD A4-45 (GNP) a 17 year old schoolboy sustained a severe primary head

injury and a secondary brain injury resulting in the neurocognitive deficits. He awarded an amount of R800 000.00 in respect of general damages. The current value of this amount is R997000.00.

- [9] The Defendant's counsel, Mr Sewpershatd submitted that the Plaintiff's orthopaedic injuries are not in dispute. However, the Plaintiff's head injury is in dispute since the Plaintiff did not submit any report by either a neurosurgeon or a neurologist to indicate the severity of the injury. It was therefore unknown to the Defendant whether the head injury was mild, moderate or severe. The Defendant submitted that a head injury is not a brain injury. Dr Versveld is an orthopaedic surgeon and therefore not an expert to express an opinion on the neurological sequelae of a head injury. Further it was argued that the occupational therapists did not mention a serious head injury with sequelae. Accordingly the cases relied on by Mr Grobbellaar are not on par with the Plaintiff's injuries, as they relate to moderate and severe head injuries.

THE CASE LAW.

- [10] In *Mpondo v Road Accident Fund* 2011 (6F2) QOD 11 (ECG) the court stated that:

"It is widely accepted that assessment of general damages is not an easy exercise. When considering past awards made in comparable cases a proper basis for comparison must be ascertained. In this exercise the court should, in my view look at the *pattern of awards* made in comparable circumstances

rather than a singular award made in respect of injuries similar to the case at hand. It is not enough to compare the general nature of the injuries; all factors affecting the assessment of damages must be taken into account. Once it is established that the circumstances are sufficiently comparable, then such cases are to be used to provide a *general yardstick* to assist the court in arriving at an award 'not substantially out of general accord with previous awards in broadly similar cases'.

- [11] In *Hendricks v Road Accident Fund* 2002 (5F3) QOD 1 (C), a 50-year-old driver suffered a fracture and dislocation of right hip as well as a fracture of *symphysis pubis*. He underwent three failed total hip replacements during first 4 years after accident, and fourth was required. He suffered serious sequelae including restricted hip movements, severe antalgic limp requiring permanent use of two crutches. He also sustained multiple fractured ribs which caused flail chest initially, as well as fractures of four metatarsals of right foot, an injury to right knee-joint, and lacerations and contusions. He was awarded R145 000.00 in respect of general damages (current value R280 000.00 in 2014).
- [12] In *Peter v Road Accident Fund* 2003 (5F3) QOD 9 (BHC) a 40 year old male electrical technician sustained a displaced intra-articular fracture of acetabulum as a result of violent compression of femur head against it, as well as considerable articular ligamentous damage. Osteo-arthritis was to follow, which by itself would require total hip replacement in 5 years' time, and significant prospect of necrosis developing, in which

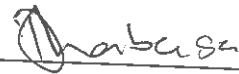
event the hip replacement would have to be performed even earlier. A second hip replacement (a more comprehensive and risky procedure than the first) to be required some 15 years later. He also had some marked scarring of right arm for which plastic surgery could achieve 50% improvement. He was awarded R180000.00 (R328 000.00 in 2014).

[13] In *Seconds v Road Accident Fund* 2006 (5F3) QOD 30 (SE) a 48-year-old female educator sustained several injuries, including posterior dislocation of the left hip joint and a fracture of the posterior wall of the acetabulum. After initial exploration of her left hip joint, a hip replacement was eventually undertaken. Thereafter her bone crumbled and she was eventually boarded due to her inability to continue with her work as educator. She was awarded general damages in the sum of R200 000.00 (R332 000.00 in 2014).

[14] It is clear from the medico-legal reports that the plaintiff in this matter sustained multiple injuries. In addition to the orthopaedic injuries described in paragraph 4 he sustained a head injury of unknown severity. Having regard to the expert opinion in the medico- legal reports, as well as the guidelines in *Mpondo supra*, and pattern of awards in comparable cases I am of the view that general damages in the sum of R450, 000. 00 would be reasonable.

[15] I accordingly make the following order:

1. The Defendant is ordered to pay the Plaintiff the sum of R450,000.00 for general damages.



MABASA AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Counsel for the Plaintiff: Adv

Instructed by: Mills & Groenewald, C/O Monte Coetzer Inc

Counsel for the Defendant: Adv A. Sewpersatd

Instructed by: Shai & Mngomezulu Inc

Date of Hearing: 04 June 2014

Date of Judgment: 12 June 2014