

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 15/24390

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

...3/3/2017.....
DATE

.....
SIGNATURE

In the matter between:

D P

And

ROAD ACCIDENT FUND

J U D G M E N T

MAHALELO A J:

[1] The plaintiff instituted an action against the defendant for damages arising from certain bodily injuries which he sustained in a motor vehicle accident which occurred on 28 March 2012 along Maseru Road in Meadowlands, Soweto.

[2] At the time of the accident the plaintiff was a pedestrian crossing the street when he was hit by the unidentified insured motor vehicle from behind.

[3] The issues in dispute with regard to the plaintiff's claim were:

- 3 1. future medical expenses;
- 3.2. past and future loss of earnings; and
- 3 3. general damages.

[4] The defendant has conceded the merits on a previous occasion, 80/20% in favour of the plaintiff and both parties agreed on the amount of R278 522.00 in respect of loss of income both past and future. With regard to future medical expenses the defendant has undertaken to provide the plaintiff with a certificate in terms of [section 17 \(4\) \(a\) of the Road Accident Fund Act, No. 56 of 1996](#), as amended.

[5] The defendant's counsel stated that there was no agreement on general damages and that all issues relating to general damages must be proved in the normal manner and the defendant's submission was that the plaintiff did not suffer any loss for general damages. Consequently what remains to be determined is whether the plaintiff qualifies for general damages and the quantum.

[6] The plaintiff commissioned various expert reports dealing with the injuries he sustained and the *sequelae* thereof whilst the defendant did not commission any such reports. The parties agreed that no evidence would be led in respect of the claim and that the evidence and opinions contained in the bundle of the experts' reports be placed on record as evidence. The agreed

bundle of documents was handed in and admitted into the record as exhibit “1”.

[7] It was not in dispute that as a result of the accident, the plaintiff sustained a fracture of the right femur, injury to the right hip (total hip replacement), abrasions on the right knee, concussive head injury of a mild degree and an injury to mandibles. It was equally not disputed that the plaintiff was born on 21 September 1969 and therefore 47 years of age at the time of the trial.

[8] The plaintiff’s counsel took the court through the various expert reports dealing with the plaintiff’s injuries, the *sequelae* thereof and its impact on the plaintiff’s life including the impact on the enjoyment of the amenities of his life, as well as its impact on his work capacity.

[9]

[9] The issue of the plaintiff’s brain injury is of central importance in this matter as it impacts directly on the plaintiff’s claim. In this regard the various reports commissioned by the plaintiff which stand as evidence in the trial deal with the head injury as follows:

9.1 Dr L F Segwapa, a neurosurgeon, states the following in his report dated 16 July 2015 about the plaintiff:

“He sustained a direct trauma to the craniofacial structures...There are features of a mild concussive brain injury. He reports memory problems and poor concentration. He should undergo detailed neuropsychological evaluation by the clinical psychologist to determine the extent of his cognitive impairments.”

The report goes on to comment that the plaintiff lost amenities of normal living as a result of the accident.

[10] The report of Dr Von Bormann, an orthopaedic surgeon, dealt mainly with the plaintiff's hip injury and concluded that the plaintiff will permanently have a painful limp on the right side and missing teeth. The report states further that, the plaintiff had a successful total hip replacement on the right side due to trauma. Furthermore that both of his knees have post traumatic patella-femoral arthropathy and the right ankle has aggravated post degenerative osteoarthritis. According to Dr Von Bormann the degenerative osteoarthritis of the plaintiff's lower limbs have been aggravated and the degeneration accelerated by the accident. Dr Von Bormann opined that the plaintiff will have to undergo a number of surgical procedures in the future. These will include at least one revision of the total hip replacement on the right side and a total right knee replacement. He deferred to the occupational therapist and clinical psychologist regarding the plaintiff's employability and the possibility of early retirement.

[11] According to the report of the occupational therapist, Ms Tshukudu, the plaintiff is not currently suited to perform tasks which involve extensive standing, walking, driving and balancing on his right leg. She opined that the plaintiff meets sedentary and light type of work category where he will have to

alternate between sitting and standing to relieve pressure on the right hip. According to her, the plaintiff would probably be less competitive in the work environment due to the injuries he sustained. She concluded that the plaintiff will struggle with the demands of being a security due to pain in the knees and right hip and his level of productivity is compromised.

[12] Neuro- psychologist, Ms Grootboom conducted a range of tests on the plaintiff. She concluded that the plaintiff's cognitive profile is consistent with mild brain injury and that the plaintiff has been left with relative deficits in certain areas of cognitive functioning. She did, however also indicated in her report that this is possibly reflective of the plaintiff's premorbid cognitive functioning which was likely compromised. According to her, the psychological assessment results reveal that the plaintiff is not suffering from significant depressive symptoms but that he still seems to experience residual emotional symptoms, including unprocessed anger towards the driver of the motor vehicle involved in the accident as well as situational anxiety.

[13] Mr Shaik, the industrial psychologist undertook assessment of the plaintiff and concluded that the plaintiff's employment and earning opportunities have been negatively affected as a result of the injuries he sustained in the accident. Further that the plaintiff now faces occupational limitations and the capacity to work to his full potential has been compromised by the accident. According to Mr Shaik, considering the plaintiff's injuries and the negative impact on his occupational functioning, the plaintiff will be rendered a vulnerable individual in the open labour market.

[14] When one has regard to all the reports I have referred to then one must accept in favour of the plaintiff that he suffered a head injury which was in the

nature of a mild concussive injury. According to the report of Ms Grootboom the plaintiff has been left with relative deficits in certain areas of cognitive functioning. However in this regard the plaintiff's premorbid cognitive functioning was likely compromised. The plaintiff was psychologically vulnerable prior to the accident and according to Ms Grootboom the accident and the injuries he suffered exacerbated his pre- morbid vulnerabilities.

[15] The plaintiff's disability, as it emerged from the various medico-legal reports, is a consequence of the combined effect of the orthopaedic injuries and psychological conditions. Ms Tshukudu opined that the plaintiff will struggle with the demands of being a security and that she does not believe that the plaintiff will be competitive in that kind of work in the future. She concludes however that from a purely physical perspective the plaintiff has not been rendered unemployable. In her opinion the plaintiff is not currently suited to perform tasks which involve extensive standing, walking, driving and balancing on his right leg. She opined that the plaintiff meets sedentary and light type of work category where he will have to alternate between sitting and standing to relieve pressure on the right hip. She recognises that the plaintiff continues to experience pain in the knee and the right hip.

According to Dr Mogotsi who completed the serious injury assessment report the plaintiff suffered 34% WPI (Whole Person Impairment). The impairment has been rated using the 6th edition of the AMA guide CW5 MSCHIF.

GENERAL DAMAGES

[16] There is no doubt that the plaintiff sustained a concussive brain injury and various orthopaedic injuries of some significance as stated by the orthopaedic surgeon. The orthopaedic surgeon opined that the plaintiff will have to undergo a number of medical procedures in the future. Further that these procedures will include at least one revision of the total hip replacement on the right side and a total right knee replacement. The plaintiff regained his consciousness at the scene of the accident. He was conveyed by ambulance from the scene of accident to the hospital where he was admitted for three weeks. After the accident he is now a changed person with continuous physical complaints. He faces the real prospects of pain and surgical procedures as well as some physical disability. All the experts are agreed that the plaintiff should be compensated for the injuries he sustained in the accident. For all the reasons stated above the plaintiff now has to be compensated adequately and fairly in the form of general damages.

[17] In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries sustained by him including their nature, permanence, severity and their impact on his lifestyle.

[18] In *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194 at 199 the court held:

*“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 upon the judge’s view of what is fair
in all the circumstances of the case”*

[19] That still remains the legal position. There is no hard and fast rule of general application requiring a court to consider past awards. Such awards are seldom on all fours with the facts of the case under consideration.(See *Road Accident Fund v Marunga* 2003 (5) SA 165 (SCA).

[20] Based on the above principles I have endeavoured to assess what I consider to be a fair compensation. I have also taken into consideration that whilst the plaintiff must be sufficiently and properly compensated for the injuries he has suffered in the accident, the defendant should not be unnecessarily burdened with an inordinately high award despite the recent tendency by the courts to pitch the awards higher than in the past. *De Jongh v Du Pisanie* NO [2004] ALL SA 565 (SCA).

[21] The injuries the plaintiff sustained and the *sequelae* thereof have been stated above.

[22] The plaintiff has claimed the sum of R900 000.00 whilst the defendant argued that the plaintiff's general damages should be assessed at R450 000.00 only. In this regard both have referred me to various decided cases on the subject dealing with past awards made in comparable cases. Counsel for the plaintiff especially referred me to the judgment in *Hall v Road Accident Fund* 11330/2008 QD[Vol VI] J2-126 [Service 6,2013] wherein the plaintiff , who sustained a fracture of the left humerus, fractured ribs on the left

side, a concussive head injury of a moderate degree, a left 6th cranial nerve lesion, soft tissue spinal injuries of the neck and back was awarded an amount of R700 000.00 which translates in 2016 to R866 000.00. I have had regard to such cases and they serve a useful guide only.

[23] Whilst there may be certain similarities between some of the cases and the present, fact of the matter is each decision differs on the facts and the considerations raised therein from the present. Past awards serve no more than to give some indication or guidance as to what sort of awards are appropriate on the facts of a particular case. To the extent that guidance may be derived from these matters I have given careful consideration to them. There is no evidence of a serious brain injury with permanent damage at issue in the present matter. The plaintiff according to the reports submitted is still employable though in a precarious position.

[24] In my view the amounts suggested by the parties' counsel are not reasonable. On a consideration on all the facts of the present matter and the previous awards made in similar matters it is my considered view that an award of R600 000.00 in respect of pain and suffering, loss of amenities of life, disfigurement and disability is justified.

[25] In the result I make the following order:

25.1 The defendant shall pay to the plaintiff the amount of R222 817.60

(Two Hundred and Twenty Two Thousand Eight Hundred and Seventeen Rand and Sixty cents) in respect of the plaintiff's past

and future loss of earnings;

25.2 The defendant shall pay to the plaintiff the sum of R600 000(Six Hundred Thousand Rand) general damages for pain and suffering as well as general amenities of life;

25.3 It is recorded that defendant undertakes in terms of Section 17(4) of the Road Accident Fund, 56 of 1996 to furnish the plaintiff with 80% of the costs of any future accommodation of the plaintiff in a hospital or nursing home as well as the treatment of and/or rendering of a service to him or supplying of goods due to the injury sustained by him in the accident and the *sequelae* thereof after such costs have been incurred and upon proof thereof;

25.4 The defendant is ordered to pay interest on the amounts as set out in paragraphs 25.1 and 25.2 above at the prescribed legal rate from a date 14 days after the date of this judgment to date of payment;

25.5 The defendant is ordered to pay the plaintiff's costs of suit including the qualifying expenses, if any, of the following experts:

1. Dr P F B Von Bormann
2. Dr Craig Pearl
3. Dr L F Segwapa
4. Ms L Grootboom
5. Ms E M Tshukudu

6. Mr Z Shaik
7. Algorithm Consultants & Actuaries

M B MAHALELO
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

Counsel for the plaintiff: Adv Lufele

Instructed by: NT Mdlalose Incorporated

Counsel for the defendant: Adv Smit

Instructed by: Borman Duma Zitha Attorneys

Date of hearing: 6 December 2016

Date of judgment: 3 March 2017