

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



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

**CASE NO: 26299/2018**

(1) REPORTABLE: / NO  
(2) OF INTEREST TO OTHER JUDGES: /NO

.....  
DATE

.....  
SIGNATURE

In the matter between:

**M C**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---

**MIA, AJ**

[1] The plaintiff was a 44 year old male when the collision occurred on 24 December 2017 at approximately 13h30 along the R23 road, Perdekop, Mpumalanga Province. The plaintiff was the driver of a Toyota Quantum with registration [...]GP. The collision occurred when the plaintiff swerved to avoid a vehicle which overtook and crossed into is lane of traffic. The oncoming vehicle (insured motor vehicle) was

travelling at a high speed and it is alleged the plaintiff swerved to avoid a collision and lost control of the vehicle when he swerved and moved onto the adjacent gravel road. He instituted an action for damages against the defendant in terms of the provisions of the Road Accident Fund Act, Act 56 of 1996 ("the Road Accident Fund Act") arising from bodily injuries that he sustained as a result of the collision.

- [2] The matter are heard on both the issue of liability and quantum. After the plaintiff's evidence was led and he was questioned by the defence on certain aspects the court was informed that the issue of liability (merits) was settled and conceded 90% in favour of the plaintiff's proven damages. The issue which remained unresolved between the parties and which I am required to determine are that of the quantum of the plaintiff's general damages and the plaintiff's past and future loss of earnings/income.
  
- [3] The matter came before me on the basis that neither of the parties would lead oral evidence of the experts. The parties agreed that the contents of the various medico- legal reports obtained on behalf of the parties and joint minutes compiled by the overlapping experts obtained would serve as proof of the injuries and their sequelae. In view of the defendant not having certain experts most of the injuries are common cause and the impact on the plaintiff and the sequelae are reflected in the reports of the experts. I am required to adjudicate the issues in dispute based on the reports and the submissions made during arguments based on the agreed facts and the reports of the experts.
  
- [4] As a result of the accident the plaintiff sustained traumatic injury to the cervical spine which caused paralysis to both his legs and arms resulting in sever quadriplegia. Consequently he also has bladder and bowel incontinence. There is significant permanent neurological sequelae. The various experts categorised the injuries as follows:
  - 4.1. Mr C sustained C3/4 damage with paraplegia;

- 4.2 He has an abdominal skin graft due to a split in the abdominal skin. Skin was harvested from his thigh which now also bears scars and is healed completely. He has features of one who has had a stroke. He is wheelchair bound, is able to sit upright in a wheelchair but has reduced sensation and weakness in his right hand and reported pain in his right knee, back and left foot and is not able to drive a car or live independently.
- 4.3 He has erectile dysfunction as well as bladder and bowel incontinence and requires rehabilitation as well as interventional physiotherapy.
- 4.4. His neurological prognosis is poor. According Dr Mudau, the neurologist, Mr C is at risk of developing deep vein thrombosis and a urinary tract infection. There is also a risk of developing bedsores due to his immobility.
- 4.5. Due to the impact of his injuries on the loss of amenities quality of his life he also experiences severe depression;
- 4.6. The impact of the injury also affects Mr C's future employment. Joint minutes of the Industrial psychologists Faith Chamisa-Maulana and Rirhandzu Lowane-Mayayise indicate that he earned R1500 per month and would have worked till he reached the age of 65 years old.

### **LOSS OF INCOME**

- [5] The industrial psychologists opine that Mr C was employed in a regulated industry and that whichever is the greater between his actual salary or the prescribed minimum encouraged by government should be the amount adopted to determine his future loss of earnings.
- [6] On the basis of the joint minute of the industrial psychologists, the average income of the plaintiff prior to the accident was R1500 per week. It is projected that he would have worked until the retirement age of 65 years in the taxi industry and that he would have received inflationary increments to his income. Despite the joint minute from the experts, Mr Chabane appearing for the defendant submitted that in

view of Mr C being employed as a taxi driver and there being no salary advice to support his oral evidence that he earned R1500 the total amount of his claim should be reduced by 30%-50%. He argued that it was convenient and easy to declare an income amount without providing a bank statement or salary advice and that the oral evidence of Mr C was not sufficient proof of his income. This he argued even though there was an opportunity to cross examine the plaintiff. Further Mr C's evidence remain constant despite the questions disputing his income.

- [7] In regard to the question of Mr C's income the plaintiff's psychologist indicates the sectoral determination for the determination of wages in the taxi industry over the period July 2017 and June 2018 was R3 679-R3085 per month for drivers. The quantum year book for 2019 suggests earnings assumption for taxi drivers at R82 000.00.
  
- [8] Having regard to the actuarial report and the joint minutes, Ms Smit submitted that the amount of R1500 per week be used to calculate the future loss of income. She argued that Mr C's evidence was clear in this regard. The defendant had not rebut this evidence and to place a higher burden on the plaintiff because he was employed as a taxi driver and received a cash payment should not prejudice him. She also pointed out that both industrial psychologists consulted Mr C's employer and confirmed this amount. Mr Chabane argued that he did not question the actuarial calculation and accepted the amounts submitted on behalf of Mr C, however he argued that a further 30% deduction be made after the total loss of earnings was calculated to accommodate the uncertainty of Mr C's income relating to the proof thereof.
  
- [9] The foregoing amount of R1500 per week translated into an actuarial calculation by the plaintiff's actuary provided for a 5% contingency deduction. The past loss of earning was thus calculated at R113 579 less 5% which amounted to R107 900.05. The future loss was

calculated at R 274 903 less a 10% contingency deduction bringing the future loss amount to R1 147 412.70. The addition of the two amounts resulted in the amount of R1 255 312.75. The social grant received to date totalling R19 547.66 was deducted from the above amount realising a total of R1 235 765.15. The matter was settled on the basis that the plaintiff was attributed 10% of the fault and thus received 90% on the amount calculated thus 10% (R112 357.00) is deducted due to the apportionment on the merits, resulting in an amount of R 1 123 408.09. I have applied a further 10% contingency deduction to account for the uncertainty in inflationary and fuel increases which impact the taxi industry and may directly impact salaries and wages due to increased running costs. The plaintiff's loss of earnings is thus calculated at the amount of R1 011 067.29.

### **GENERAL DAMAGES**

- [10] I turn now to the general damages which is claimed in the amount of R2 000 000.00 less 10% totalling R1 800 000.00.
- [11] Ms Smit relied on three cases to support her argument that general damages be awarded in the amount of R1 800 000.00. She referred to *Morake v RAF* (52700/15) [2017] ZAGPPHC 761 where the issue of general damages was in dispute. The plaintiff was 64 years old sustained a spinal fracture, laceration to his head, abrasions to his shoulder, contusions to his right hand, degloving injuries over the occipital skull and the loss of a front tooth. He was wheelchair bound after the accident. The plaintiff was awarded R2 500 000.00.
- [12] As further guidance Ms smit referred to *Jiyane v RAF* (88870/2014)[2016] ZAGPPHC 1227, where the plaintiff was 41 years old and sustained vertebral injuries, a bilateral haemo-pneumothorax with left lung contusion, clavicle fracture, sterna fracture, haemorrhagic shock, abdominal trauma with liver lacerations, renal failure as well as injuries complicated by sacral as well as bilateral trochanteric pressure sores, which resulted in a debrided right thigh and right femurectomy

as well as a head and brain injury. The amount of R1 600 000 was awarded as general damages.

[13] The third case referred to by way of comparison was the matter of *Webb v RAF* (2203/14) [2016] ZAGPPHC 15, the plaintiff sustained a fracture and T12/L1 fracture resulting in paraplegia, displaced radius and ulna fracture. The plaintiff was involved in the collision when he was 20 years old and had become wheelchair bound as a result of his injuries. The award for general damages was R1500 000.00

[14] In referring to the above cases Ms Smit argued that the general damages of the plaintiff ought to be granted in the amount of R 2000 000.00 having regard to the current values of the above awards to the present time. She conceded however that there be a deduction of 10% due to the apportionment of liability to the plaintiff.

[15] Mr Chabane argued that the cases relied on by the Ms Smit overstated the compensation due to the plaintiff as they included injuries over and above the spinal injuries resulting in higher awards. The cases which he requested the court to have regard to where he submitted more appropriate as they were only dealt with spinal injuries. The first case *Nokemane v RAF* 2011 (6A3) QOD 1 (ECG) related to a 39 year old driver who sustained thoracic spinal injuries resulting in permanent paraplegia. The court awarded general damages of R800 000.00.

[16] In *Robyn v RAF* 2013 (6A3) QOD 32 (GNP) a 28 year sustained a dislocation fracture of T12 and a haematoma over the site of the fracture. The general damages were determined in the amount of R920 000.00. In view of the above two awards, Mr Chabane submitted that it would be the amount of R1 200 000.00 was a fair amount as general damages in the present time.

[17] The determination in awarding an appropriate amount that should be fair to both parties is in the courts discretion. The plaintiff should be properly but not overly compensated with an inordinately high award

which would burden the defendant.<sup>1</sup> I have had regard to the general considerations in the cases placed before me. In this regard I have considered the decision in *Bay Passenger Transport Ltd v Franzen* 1975 (1) SA 269 (A) at p274 where the Court summarised the proper approach to be followed as follows:

“Comparable cases, when available, should rather be used to afford some guidance in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous and broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. All the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and the sequelae may have been either more serious or less than those in the case under consideration.”(see also *Protea v Lamb* 1971 (1) SA 53D at 536 A-D).

[18] I have had regard to the comments by the Court in the matter of *De Jongh v Du Pisanie NO* [2004] 2 All SA 565 SCA, where the Court reduced the award of the Court *a quo* from R400 000 to an amount of R 250 000 for a head injury. At para [65] the Court noted the tendency to award high amounts and cautioned against same as it was not mathematically accurate.

[19] I am mindful that merely following the trend to grant high awards slavishly does not take cognisance of the view of Holmes J in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E–F that:

“[T]he court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant’s expense.”

I am equally aware of the view expressed in *Hulley v Cox* 1923 AD 234 at 246:

---

<sup>1</sup> *De Jongh v Du Pisanie N.O.* [2004] All SA 565 (SCA)

“we cannot allow our sympathy for the claimants in this very distressing case to influence our judgment”.

[20] Having regard to the case law, the actuarial calculation and comparable case law, I have considered that the plaintiff is unemployable for the next 20 years due to the spinal injury. I am persuaded that the case law presented by Mr Chabane is more comparable to the injuries sustained by the plaintiff in the present matter. The cases relied on by Ms Smit have more complications and combined head and spinal injuries and many other injuries which impact on the calculation of damages. Similar awards updated to the present time are in the region of R1200 000 generally. It is not possible to find a case which matches the plaintiff's case exactly and the cases referred to serve as a guide with the award being an estimate and not an exact science.

[21] In view of the above the sum awarded is thus an amount of R1200 000 for general damages and R1 011 067.29 for loss of earnings which results in a total award of R 2 211 067.29 which takes into account the 10% deduction in view of the defendant only being accountable for 90% on the merits. The order attached marked “X”, is duly incorporated into the judgment, with the insertion of the amount of R 2 211 067.29.

---

**S C MIA**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**



**Appearances:**

On behalf of the plaintiff

: Adv AE Smit

Instructed by

: DJ Nkosi Attorneys

On behalf of the Defendants

: Adv VJ Chabane

Instructed by

: Z &amp; Z Ngogodo Attorneys

Date of hearing

: 4 June 2019

Date of judgment

: 12 June 2019