


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 4158/2018

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
19/03/2020 DATE	
 SIGNATURE	

In the matter between:

SAMBO CARLOS FRANCISO

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

HEARD ON: 13 MARCH 2020

JUDGMENT

MIA, J

- [1] The plaintiff claimed compensation for damages, in terms of the Road Accident Fund Act 56 of 1996(the Act), due to bodily injuries he sustained in an accident that occurred on 15 November 2017. The plaintiff was a passenger in the motor vehicle which overturned after the driver lost control thereof. He sustained injuries to the left hand and

fractures to the left thumb, left middle finger, left ring finger and little finger (pinkie). The finger fractures were managed with a k-wire fixation. The left middle finger was amputated in 2018 due to osteosis. He also sustained a de-gloving injury of the palmar area and a laceration over the scalp.

- [2] The issue of liability on the merits has already been resolved. The plaintiff will be entitled to 100% of his proven claim. The issue of loss of earnings and past medical expenses is postponed *sine die*. The question of general damages is agreed upon. The parties handed up a joint memorandum of settlement which provided that the defendant is to pay the plaintiff the sum of R 500, 000.00 in respect of general damages and to provide the plaintiff with an undertaking in terms of section 17(4)(a) of the Act in respect of his future medical expenses.
- [3] Counsel for the plaintiff and defendant relied on two experts reports namely the orthopaedic surgeon's reports Dr K. Bila for the plaintiff and Dr MY Hassan for the defendant. The reports both reflect the same injuries and applied the narrative test which indicated that the plaintiff suffered a 30% impairment of his whole person having regard to his ability to carry out daily activities; to maintain his pre- accident quality of work; being able to safely cross the street; to enjoy sport and leisure activities; and being free from anxiety and being stigmatised because of disfigurement from the injury. According the orthopaedic surgeons the plaintiff will need to consult further experts with regard to treatment and computation of the loss of earnings claim.
- [4] In quantifying the general damages counsel for the plaintiff relied on *M.S. v RAF* 8758/16 ZAGPJHC 201(14July 2017) where the court awarded general damages in the amount of R650, 000.00. In that matter, the plaintiff, a labourer sustained severe bodily injuries which included (i) a head injury with loss of consciousness; (ii) a dislocation of

the left elbow; (iii) degloving of the cubital fossa and severe laceration of brachial artery resulting in a flaccid left arm, leaving the plaintiff unable to work.

- [5] Counsel for the defendant in contrast relied on the unreported case of *FTM v RAF* 9439/2010 (27/02/2012) where a five month old minor sustained compound fractures to the right hand thumb and index finger and a degloving injury to the right forearm which resulted in a scar. In that matter, the court awarded general damages in the amount of R250, 000.00. According to the Quantum Year Book 2020 the current value would be an amount of R418, 000.00.

- [6] The award for general damages is intended to compensate the plaintiff for his pain and suffering, the discomfort he has endured, the disfigurement as a result of the scarring, the amputation and any loss of amenities of life. Watermeyer J said In *Sandler v Wholesaler Coal Suppliers Ltd* 1941 AD 194 at 199:

"The question now arises whether the Court should increase the amount awarded to the appellant for pain and suffering and permanent disability. In considering that question it must be recognised that though the law attempts to repair the wrong done to the sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty.

- [7] As indicated there is a 30% impairment. Whilst noting the plaintiff's injuries and the cases referred to by counsel, I am mindful that following the trend to grant high awards slavishly or endorsing

settlements which affect the public purse 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."

[8] In *Bay Passenger Transport Ltd v Franzen* [1975] All SA 658 (A) the Court per Trollip JA held

"In recent years there have been several appeals to this Court raising the issue of the *quantum* of general damages awarded for pain and suffering, disability, loss of amenities, disfigurement, etc., for bodily injuries sustained in a vehicle collision. Hence, it is opportune, I think, to sound a note of caution about the correct judicial approach to adopt in the admittedly difficult problem of deciding what amount to award for such damages.

Awarding damages for the items mentioned is, of course, anomalous, since they do not involve any patrimonial loss; moreover, the so-called loss is not susceptible of being measured with any certainty in terms of money. The latter imponderability is usually also aggravated by reason of having to adjudge, not only past, but also future "loss" in respect of those items, which involves some degree of judicial prophecy. The best that a court can do is to decide "by the broadest general considerations" on an amount which it considers to be "fair in all the circumstances of the case" (*Sandler v. Wholesale Coal Suppliers Ltd.*, 1941 A.D. 194 at p. 199). But, because of that very anomaly and imponderability, the general rule that should be observed in

assessing the amount is, I think, the well-known, fundamental one that, in such circumstances of difficulty and dubiety, defendants should be regarded with greater favour than plaintiffs, *favorabiliores rei potius quam actores habentur* (Digest 50.17.125). In other words, in striving to determine an amount that will be fair in all the circumstances, the Court should act conservatively rather than liberally towards the plaintiff lest some injustice be perpetrated on the defendant. That must also apply where the defendant is, as is now usually the case, a registered insurance company being sued for compensation under the Motor Vehicle Insurance Act 29 of 1942. Furthermore an award of general damages of the kind under enquiry, especially one determined or confirmed by this Court, often serves as some guide to future awards and might therefore influence their course (cf. *Sigoumay v. Gillbanks*, 1960 (2) S.A. 552 (A.D.) at p. 555H). Hence, the incidence of successive liberal awards of such general damages in cases under that Act might ultimately redound to the disadvantage of the general motoring public by way of having to pay increased premiums."

- [9] I have considered the amount agreed upon between the parties in the amount of R500, 000.00. It over reaches previous awards given for similar or more serious injuries by at least R82, 000.00. Having raised same with counsel, neither counsel could refer me to other authorities justifying the amount of R500, 000.00 and were not averse to the amount being adjusted accordingly. I am of the view that having regard to the injuries suffered by the plaintiff and considering what is fair in the circumstances of the present matter an adequate award for the general damages will be the amount of R400,000.00

1. The defendant shall pay the plaintiff an amount of R400, 000.00 in respect of general damages.
2. The defendant shall pay the aforesaid amount as per paragraph one on or before 12 April 2020.
3. The issue of past medical expenses and past and future loss of earnings is postponed *sine die*.
4. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996, for the costs of future medical expenses of the plaintiff including the costs of a nursing home and expenses for the treatment of, or rendering of a service or supplying of goods to him resulting from a motor vehicle accident on or about 15 November 2017 after the costs have been incurred and on proof thereof.
5. The defendant shall pay the plaintiff's costs as agreed on a High Court Scale, as allowed by the taxing master and such costs shall include the costs of all qualifying experts.
6. In the event that costs are agreed, the party and party costs are payable within 14 days from the date of taxation, *alternatively* date of settlement of costs, whereafter interest will be payable at 10, 5% per annum from date of taxation *alternatively* date of settlement of costs to date of payment.



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

Appearances:

On behalf of the applicant	:	Adv. L Mashilane
Instructed by	:	Mulamula Incorporated
On behalf of the respondent	:	Adv. Shilowa
Instructed by	:	Borman Duma Zitha Attorneys
Date of hearing	:	13 March 2020
Date of judgment	:	19 March 2020

