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

CASE NO: 17158/2017

1. Reportable: No
 2. Of interest to other judges: No
 3. Revised: Yes, 28 February 2020
- _____

In the matter between:

M, A

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Amount of general damages suffered in a motor vehicle collision. The plaintiff suffered a moderate to severe head injury and scarring.

JUDGMENT

DE VILLIERS, AJ

- [1] The plaintiff was injured in a motor vehicle collision on 16 May 2016. The RAF accepted liability for 80% of his proven damages. The parties have settled all damages claims, save for the claim for general damages. Accordingly, the only matter for decision before me was the general damages suffered by the plaintiff consequent upon the collision.
- [2] The parties agreed to a statement of facts, and the plaintiff testified. The parties further agreed that two joint minutes and a number of expert reports (where only the plaintiff had submitted reports) may be received into evidence, and that the factual averments and the opinions expressed therein are common cause. There was one exception to this agreement, a clinical psychologist expressed an opinion that the plaintiff had suffered a severe head injury. The plaintiff agreed that a clinical psychologist is not qualified to have formed the opinion and accepted the neurosurgeon's opinion that the plaintiff suffered a moderate to severe head injury.
- [3] The main heads of general damages in this matter are (a) scarring, and (b) the head injury.
- [4] The extent of the scarring was clearly visible in court. The plaintiff wears dreadlocks that cover what is described as a "*14 cm x 1 cm hypertrophic scar over the right preauricular area*". The other scars are described as:
- [4.1] *"Approximately 4 cm transverse scar over the right forehead;*
- [4.2] *Approximately 2cm oblique scar over the left upper eyelid with ptosis;*
- [4.3] *Approximately 4cm scar over left lower eyelid and cheek; and*
- [4.4] *Multiple scars over the left cheek."*
- [5] The scarring to the plaintiff's left eye area is clearly visible and is, with due respect, although unsightly, not shockingly so. The other scars to the plaintiff's forehead and to his left cheek are less visible and are not unsightly. The plaintiff's main complaint is that, in his community, a man with a scarred face is associated with gangsterism. People fear and avoid such a person,

he testified. The scarring would form a part of the general damages that is awarded below, but not the major component thereof.

[6] The general damages based on the head injury is the major part of the plaintiff's claim for general damages. It is common cause that the plaintiff has been rendered unfit to work as a result of this injury. The RAF has agreed to pay him more than R1.5 Million in damages for his loss of earnings. He had a business repairing electronic and refrigeration goods. The plaintiff testified that his life changed dramatically after the collision. The work he can no longer do, was his hobby too. Enjoying his work, he would open his shop early in the morning, and often would work till late. Friends would visit him whilst he worked, and they would listen to music. He derived great satisfaction from his work.

[7] The plaintiff has nothing to do now. He is a burden on others. Not only has his work stopped, but he can no longer go to the gym, box or do martial arts. His personality changes made him less attractive to his friends and he has lost contact not only with work and gym friends, but also his school friends. The agreed facts and opinions by the clinical psychologist were:

"The Plaintiff has a Grade 12 level of education along with tertiary training in electronics (diploma) and refrigeration (certificate). He has previously worked as a technician in the related field for various companies, before starting his own business repairing electronics. His educational background suggests that the Plaintiff was of at least an average to high average premorbid intellectual potential.

The neurocognitive deficits and reported word-finding difficulties, along with his observed dysarthric speech, and comprehension and expression difficulties would be in keeping with the expected outcome following a severe brain injury, with a left-hemispheric focus. The Plaintiff's sister confirms the speech and language deficit, saying he makes little sense and does not respond to conversation appropriately.

The Plaintiff reported minimal symptoms of depression on psychometric assessment and his mood was clinically observed to be euthymic, and his affect varied. However, the Plaintiff lacks insight into his deficit, which would account for this. The Plaintiff expressed that he only feels unhappy when he thinks about the accident. The Plaintiff displays neurovegetative and behavioural changes such as social withdrawal, passivity, lack of interest, poor appetite, sleep disturbances and irritability (as noted by his sister) These

changes, as well as the lack of insight can be attributed to the significant injury to the brain.

From a neuropsychological perspective, the Plaintiff is not a fair competitor in the open labour market. His fluctuations in attention, comprehension difficulties, slowed psychomotor and processing speeds, as well as stimulus resistance difficulties renders him unemployable as the Plaintiff would have difficulties understanding and following instructions and would be too slow to be effective. In addition, he lacks drive and ambition now, which is due to the injury to the brain.

Given the suspected organic aetiology of these symptoms it suggests that therapeutic intervention would play a supportive role only.

The Plaintiff has suffered a head injury with expected (moderate to) severe neurocognitive, neurobehavioral and altered mood sequelae."

[8] Clearly the plaintiff suffered pain, mental pain, loss of amenities of life, and the handicap of disability. Such damages "... *are not susceptible to exact or immediate calculation in monetary terms. In other words, there is no real relationship between the money and the loss*" as confirmed in *Van der Merwe v Road Accident Fund and Another (Women's Legal Centre Trust as Amicus Curiae)* 2006 (4) SA 230 (CC) para 39. I must guard against my sympathy resulting in an award that is unfair to the RAF [*De Jongh v Du Pisanie* NO 2005 (5) SA 457 (SCA) paras 56-66 and *Road Accident Fund v Delport* NO [2006] 1 All SA 468 (SCA) para 24]. The summary of the law on achieving a balanced outcome (reasonable, fair, and adequate) as set out in *Mashigo v Road Accident Fund* [2018] ZAGPPHC 539 paras 10-15, is useful.

[9] The plaintiff referred me to the cases listed below in suggesting an award of R1 200 000.00. I do not summarise the cases, in some respects they are comparable, and others not:

[9.1] *Torres v Road Accident Fund* (04/29294) ZAGPJHC (27 March 2007), not reported on SAFLII, where general damages of R600 000.00 was awarded (current value R1 249 000.00);

[9.2] *Anthony v Road Accident Fund* [2012] ZAGPJHC 13, where general damages of R1 600 000.00 was awarded (current value

R1 836 000.00). This case was an unusual case, and the award was in excess of any comparable cases;

[9.3] *Dlamine v Road Accident Fund* [2012] ZAGPJHC 13, where general damages of R850 000.00 were awarded (current value R1 281 000.00). The injuries in this case are comparable to the present matter;

[9.4] *Mashigo v Road Accident Fund* [2018] ZAGPPHC 539,¹ where general damages of R450 000.00 were awarded (current value R493 560.00). The plaintiff suffered unsightly scars on her breasts and arms. Her claim for general damages was largely premised in these injuries. She still suffered from the emotional trauma related to the accident and the effects of the severe scars. Davis J held in para 22:

“The plaintiff in this case experienced pain and suffering when sustaining the injuries. She continued suffering pain for some time thereafter, and currently still has pain although to a lesser degree. She will again experience pain during or subsequent to reconstructive surgery. She had lived with unsightly scars to her breasts since the accident and will continue to do so until reconstructive surgery. She might even remain with permanent scarring. She was, as a result of the pain in her breasts, not able to breastfeed her second child and was deprived of the nurturing and bonding experience which is part of the crucible of motherhood. In addition, she suffered minor orthopaedic injuries which impacted negatively on her amenities of life. Taking all this into consideration, I am of the view that an amount of R 450 000 will be a fair and reasonable amount in the circumstances and I will insert this amount into the draft order provided wherein the other aspects of the Plaintiffs claims and costs have been catered for”; and

[9.5] *Mtshali v Road Accident Fund* [2017] ZAGPPHC 868, where general damages of R850 000.00 were awarded (current value R975 000.00).

¹ Also referred to earlier herein.

[10] The RAF referred me to the two cases that follow in suggesting an award of R700 000.00. I also do not summarise them. In some respects, they are comparable, and others not:

[10.1] *Maroti v Road Accident Fund* [2017] ZANWHC 119, where general damages of R600 000.00 were awarded (current value R660 000.00). General damages of R1.8 million was claimed. The plaintiff stayed in hospitals for a period of 2 to 3 months and suffered pain acutely for a least a month. He lost his first wife in the accident. He suffers from severe headaches that can last from 24 to 48 hours which he gets two to three times a week. He suffers from epileptic convulsions, has water leakage from his nose and has lost smell (which has also affected his taste). He has a deteriorating memory. He forgets instructions, names and places. He cannot travel or drive alone. He is forgetful when performing self-care home management and life skill activities. A surgical scar on his head behind his hair line and a scar over his left orbit are visible. He suffered a traumatic brain injury which has resulted in long-term neurocognitive deficit within a moderate degree of severity.

[10.2] *S v Road Accident Fund* [2018] ZAGPJHC 452, where general damages of R850 000.00 was awarded (current value R975 000.00).

[11] It seems to me that the combination of some damages due to the scarring, as well as the general damages caused by the brain damage, would place this matter towards the higher end of general damages in reasonably comparable cases. In my view, that amount in this case is R1 million.

[12] I make the following order:

1. The defendant is ordered to pay to the plaintiff the sum of R800 000.00 in respect of general damages,
2. The defendant is ordered to make payment of interest on the aforesaid amount at the rate of 10.5 percent per annum calculated

from the 15th calendar day from date of this judgment until date of payment in full;

3. The defendant is ordered pay the plaintiff's taxed or agreed party-and-party costs.

DP de Villiers AJ

Heard on: 10 February 2020

Delivered on: 28 February 2020

On behalf of the Plaintiff: Adv A Louw

Instructed by: Kruger & Pottinger Inc

On behalf of the Defendant: Adv Z Buthelezi

Instructed by: Maluleke Msimang & Associates